

# **BR/GT I/148 e/72**

## **Travaux Préparatoires EPC 1973**

### **Comment:**

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness.

The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.



INTER-GOVERNMENTAL CONFERENCE  
FOR THE SETTING UP OF A EUROPEAN  
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 24 février 1972

BR/GT I/148/72

---

- Secretariat -

NOTE

Subject: The Nordic system with reinstatement of patent applications

Drawn up by: The Swedish delegation

---

BR/GT I/148 e/72 prk



The Nordic system with reinstatement of patent applications

During the Conference in January 1972 the Swedish delegation was asked to submit information about the system used in the Nordic countries giving the applicant the possibility to reinstate his application when he has not observed a time limit given by the Patent Office. This note intends to meet the wishes of the Conference.

Section 15 of the patent laws in the Nordic countries contains the following provision:

"If the applicant has not complied with the requirements for the application, or if the Patent Office finds other objections to the acceptance of the application, the applicant shall be notified thereof by an official action, and be given a fixed period to answer the objections or to make the necessary connections.

If the applicant fails within the given period, to answer the action or to take steps to meet the objections raised, the application shall be dismissed as abandoned. The action shall include a notice to that effect.

Nevertheless, the application shall be reinstated if, within four months from the expiration of the fixed period, the applicant answers the action or takes steps to meet the objections raised and at the same time pays the prescribed reinstatement fee."

This system where an application is considered withdrawn combined with the reinstatement possibility has been practised in Sweden since 1931 and in Norway since 1948. Because of the good experiences in these two countries the system was then introduced in all Nordic countries when the new patent laws entered into force in 1968.

The good experiences depend probably to a very large extent on the fact that the applicant has the possibility to reinstate the application. Without this possibility the applicants would in most cases in order to gain sufficient time for reflection and to safeguard their interests, submit a formal reply to the official action within the given period but without thereby making good the deficiencies in the applications. This would oblige the Patent Office to take up the application for a substantive decision, involving considerable effort, in spite of the fact that the applicant by that time has lost interest in the application. The period is construed in the following way. It covers the period for appeal (2 months) and furthermore some additional time to compensate somewhat for the delay before an answer to an action is usually taken up for consideration by the Office.

If the time limit for reinstatement is construed in such a manner the applicant has the same time to reflect regardless whether he files a formal answer or not.

The possibility of reinstatement applies to all kind of periods set by the Office in various actions during the examination procedure. For instance this applies to the

non-payment of the filing fee in which case the applicant gets an action according to section 15.

However, the system is most important in connection with actions concerning the examination of novelty and patentability. The figures from 1969-1971 show that on average about 6,000 applications a year were considered to be withdrawn since an action was not answered within the period given (6 months in the normal case). The possibility to reinstate was used in about one fifth of these cases.

As the total number of patent applications finally decided upon is about 20,000 a year the above-mentioned figures mean that about one fourth of the applications is finally decided by the withdrawal-fiction-system. As these decisions are very simple they can be taken by clerks thus saving money and work in the examination procedure.

The reinstatement fee is at present 75 Swedish crowns (the filing fee is 400 crowns and the appeal fee is 300 crowns). The reinstatement procedure can be applied several times during the procedure in one and the same application. However, the reinstatement fee is increased in such a case and becomes twice the fee for reinstatement the first time. It is however rather unusual that an application is reinstated more than once.

---

BR/GT I/148 e/72 prk

