

BR/GT I/153 e/72

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Comment:

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

Luxembourg, 28 February 1972
BR/GT I/153/72

- Secretariat -

N O T E

Subject: Proposal concerning Articles 19 and 107a

Drawn up by: the Swedish delegation

BR/GT I/153 e/72 gc

NOTE

With regard to the proposal in connection with
Article 19 and Article 107a in document BR/GT I/145/72
the Swedish delegation proposes the following alternative

Article 19 (a new paragraph 4a):

"The protection conferred by a European patent application in a country requiring a translation of the claims shall, if the text of the application in the language of proceedings and the text of the translation disagree, embrace only what is evident from both texts."

Article 107a (paragraph 6):

"The patent protection in a country, which according to paragraph 1 requires a translation, shall, if the text of the translation and the text of the patent granted in the language of proceedings disagree, embrace only what is evident from both texts."

Such a provision will make it necessary for the patent holder to provide for a satisfactory translation for the following reasons.

[The reasons are given in connection with Article 107a but are in principle valid also for Article 19 cases.]

The main point in providing the requirement for translation is that the general public in the country concerned should be able to judge the scope of patent protection by studying the translated text of the patent. Consequently there should be security that the protection in any case does not embrace anything which is not evident from the text of the translation.

On the other hand, the patent holder should by means of the translation not be able to extend the patent protection in the country concerned by furnishing broader claims than those of the patent as granted, i.e. in the language of proceedings.

Both these aspects are taken care of by the Swedish proposal.

It can be argued against the proposal that the patent holder has no possibility to check the translation and thus runs the risk that the claims in the translated version become more restricted than the claims of the patent in the language of proceedings. The proposed rule should, however, not be very much of an additional burden on the applicant, since there anyway must be a general obligation to supply a good translation. It seems natural that in this connection special care should be devoted particularly to the claims. Also an applicant in a Contracting State not having as an official language a language of proceedings runs a similar risk when his application is translated to the language of proceedings.

It is important from the information point of view that the translations are satisfactory and can serve the purpose of reproducing the technical information in the patents to the general public concerned in a sufficiently good manner.

The only sanction provided for in the present draft applies to the case where the applicant has not at all furnished a translation; there is however no sanction when the translation furnished is inaccurate. The Swedish proposal covers this gap.
