

# **BR/GT I/161 e/72**

## **Travaux Préparatoires EPC 1973**

### **Comment:**

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

Brussels, 9 March 1972  
BR/GT I/161/72

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- Secretariat -

"PROTOCOL" SUB-COMMITTEE

WORKING PARTY I

(Brussels, 6 to 9 March 1972)

Proposal for  
the Protocol on the Recognition of Decisions  
in respect of the Right to the Grant of  
a European Patent

(Protocol on Recognition)

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Section I  
Jurisdiction

Article 1

(1) The courts of Contracting States shall, in accordance with Articles 2 to 5, have jurisdiction to decide claims, against the applicant, to the right to the grant of a European patent in respect of one or more of the States designated in the European patent application.

(2) For the purposes of this Protocol, the term "courts" shall include authorities which, under the national law of a Contracting State, have jurisdiction to decide the claims referred to in paragraph 1. Any Contracting State shall notify the European Patent Office of the identity of any authority on which such a jurisdiction is conferred, and the European Patent Office shall inform the other Contracting States accordingly.

(3) For the purposes of this Protocol, the term "Contracting State" refers to a Contracting State which has not excluded application of this Protocol pursuant to Article 159 of the Convention.

^ paragraph 1(c)

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Article 2

Subject to Articles 3 and 4, if an applicant for a European patent has his residence or registered place of business in a Contracting State, proceedings shall be brought against him in the courts of that Contracting State.

Article 3

Subject to Article 4, if the subject-matter of a European application is the invention of an employee, the courts of the Contracting State, if any, whose law determines the right to the grant of the European patent pursuant to Article 15, paragraph 1, second sentence, of the Convention, shall have exclusive jurisdiction over proceedings between the employee and the employer.

Article 4

(1) If the parties to a dispute concerning the right to the grant of a European patent have concluded an agreement, either in writing or verbally with written confirmation, to the effect that a court or the courts of a particular Contracting State shall decide on such a dispute, the court or courts of that State shall have exclusive jurisdiction.

(2) However, if the parties are an employee and his employer, paragraph 1 shall only apply in so far as the national law governing the contract of employment allows the agreement in question.

Article 5

In cases where neither Articles 2, 3 nor 4, paragraph 1, apply, the courts of the Contracting State in which the European Patent Office is located shall have exclusive jurisdiction.

Article 6

The courts of Contracting States before which claims referred to in Article 1 are brought, shall ex officio decide whether or not they have jurisdiction pursuant to Articles 2 to 5.

Article 7

(1) In the event of proceedings based on the same claim and between the same parties being brought before courts of different Contracting States, the court to which a later application is made shall ex officio decline jurisdiction in favour of the court to which an earlier application was made.

(2) In the event of the jurisdiction of the court to which an earlier application is made being challenged, the court to which a later application is made shall stay the proceedings until the other court takes a final decision.

## Section II

### Recognition

#### Article 8

(1) Final decisions given in any Contracting State on the right to the grant of a European patent in respect of one or more of the Contracting States designated in the European patent application shall be recognised without requiring a special procedure in the other Contracting States.

(2) The jurisdiction of the court whose decision is to be recognised and the validity of such decision may not be reviewed.

Article 9

Article 8 shall not be applicable where:

1. an applicant who has not contested a claim proves that the document initiating the proceedings was not notified to him either regularly or sufficiently early for him to defend himself, or
2. an applicant proves that the decision is incompatible with another decision given in a Contracting State in proceedings between the same parties which were started before those in which the decision to be recognised was given.

Article 10

(1) In relations between any Contracting States the provisions of this Protocol shall prevail over any conflicting provisions of other agreements on jurisdiction or the recognition of judgements.

(2) This Protocol shall not affect the implementation of any agreement between a Contracting State and a State which is not bound by the Protocol.

Amendments to the Convention necessitated  
by the Protocol on Recognition

Article 16

Patent applications by persons not entitled to apply

(1) If by a final decision it is adjudged that a person referred to in Article 15, paragraph 1, other than the applicant, is entitled to the grant of a European patent, that person may, within a period of ... months following the final decision, provided that the European patent has not yet been granted, in respect of those Contracting States designated in the application in which the decision has been taken or recognised, or has to be recognised on the basis of the Protocol on the Recognition of Decisions in respect of the Right to the Grant of a European Patent, annexed to this Convention,

(remainder unchanged)

Article 159

Reservations

(1) +

(a) +

(b) +

(c) that it shall not be bound by the Protocol on the  
Recognition of Decisions in respect of the Right to the  
Grant of a European Patent.

(2) +

(3) +

Article 161

Implementing Regulations and Protocol on Recognition

\_(1) The Implementing Regulations and the Protocol on the Recognition of Decisions in respect of the Right to the Grant of a European Patent shall be integral parts of the Convention.

(2) +

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