

# **BR/GT II/6 e/70**

## **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 21 July 1970

BR/GT II/6/70

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- Secretariat -

WORKING DOCUMENT

for the  
draft of a Convention establishing a European System  
for the Grant of Patents

submitted by the Chairman of Working Party II

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Final and general provisions (1)

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(1) Comments on certain Articles are annexed.

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PART VI bis

FINAL AND GENERAL PROVISIONS

Revision

Article a

(1) The present Convention shall be reviewed periodically with a view to the introduction of amendments having in practice proved to be essential for the correct working of the European system for the grant of patents or of amendments such as to make for the greater efficiency of that system.

(2) For this purpose, Conferences shall be held every five years, unless the Administrative Council, by a majority of five-sixths of the members present, considers that the convening of such a Conference should be advanced or delayed.

(3) A Conference shall not be deemed to be validly constituted unless at least half of the Contracting States to the Convention are represented at it.

A majority of five-sixths of the Contracting States represented at the Conference shall be required for the adoption of a revised text of the Convention.

(4) (a) The revised text shall enter into force six months after the deposit of the last instrument of ratification by five-sixths of the Contracting States to the present Convention.

(b) Such States as have not ratified the revised text shall be deemed to have denounced the Convention, with effect from the entry into force of the revised text.

Reservation of acquired rights  
in cases of non-ratification

Article b

(1) In no case shall non-ratification of the revised Convention impair rights acquired pursuant to the present Convention before the entry into force of the revised text.

(2) European patent application which are before the European Patent Office on the date of entry into force of the revised text, as laid down in Article a (4), and in which States have been designated which have not ratified the said text, shall be transferred as soon as possible by the European Patent Office to the national authorities of the said States competent in the field of patents.

Signature - Ratification  
Entry into force

Article c

(1) The present Convention shall be open for signature until (the date to be inserted should allow for signing over a period of six months) by the States invited to the Inter-Governmental Conference for the setting up of a European system

for the Grant of Patents or informed of the holding of that Conference and offered the option of taking part therein.

(2) The present Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of ..... which shall notify such deposit to the Governments of the States referred to in (1) above.

(3) The present Convention shall enter into force two months after the deposit of the last instrument of ratification by six States on whose territory the number of patent applications filed in 1968 amounted to a total of 115,000 for all the said States.

#### Accessions

#### Article d

(1) (a) The present Convention shall be open to accession by the non-signatory States referred to in Article c (1).

(b) It may also be open to accession by other European States in accordance with the provisions of paragraphs 2 and 3 of this Article.

(2) Requests for accession shall be addressed to the Government of ....., which shall notify the Contracting States to the Convention of requests made by States referred to in paragraph 1(b).

(3) Such requests shall be considered by the Administrative Council.

A request for accession by a State referred to in paragraph 1 (b) shall be accepted if a majority of five-sixths of the Members present vote in favour of it.

Three-quarters of the Contracting States must be represented when the vote is taken.

(4) In the case of a favourable decision, the instrument of accession shall be deposited with the Government of ....., which shall notify the Governments of the Contracting States of such deposit.

Accession shall take effect on the first day of the second month after the deposit of the instrument of accession.

#### Territorial field of application

##### Article e

(1) Every Contracting State, either on signing or on ratifying or on acceding to the Convention, shall declare whether the Convention applies to the whole or to a part of its territories or to one or more or to all of the States or territories for which it is responsible.

This declaration may be added to at any time thereafter by notification to the Government of ..... Such notification shall take effect on the first day of the second month after it has been received by that Government.

(2) The Government of ..... shall inform all the Governments of the Contracting States of the declaration or notifications mentioned in paragraph 1 of this Article.



Settlement of disputes

Article f

(1) Any dispute between two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.

(2) If such agreement is not reached within six months from the date when the Administrative Council was seized of the dispute, the dispute shall be submitted to an arbitral tribunal at the request of one of the parties concerned.

(3) The tribunal shall consist of three arbitrators.

Where two States are parties to a dispute, each State shall appoint an arbitrator.

Where more than two States are parties to a dispute, two of the arbitrators shall be appointed by agreement among the States concerned.

If the States concerned have not appointed the arbitrators within a period of two months from the date on which the request for convening the tribunal was notified to them by the Administrative Council, any of the States concerned may ask the President of the International Court of Justice to make the necessary appointments.

In all cases the third arbitrator shall be appointed by the President of the International Court of Justice.

If the President is a national of one of the States parties to the dispute, the Vice-President shall make the appointments referred to above, unless he is himself also a national of the States parties to the disputes. In this last case, the appointments shall be made by the member of the Court who is not a national of one of the States parties to the dispute and who is selected by the President to make the appointments.

(4) The arbitral decision shall be final and binding on the States concerned,

(5) The tribunal shall determine its own procedure, unless the States concerned agree otherwise.

(6) Each of the States parties to the dispute shall bear its own costs of representation before the arbitral tribunal; other costs shall be borne in equal parts by each of the States.

#### Exclusion of reservations

#### Article g

Signature, ratification and accession to the Convention shall be without reservation.

#### Denunciation - Revocation of declarations as regards the territorial field of application

#### Article h

(1) The present Convention shall be of unlimited duration.

(2) Subject to the provisions of Article a (4), if a Contracting State denounces the Convention, such denunciation shall take effect one year after the day on which notification of denunciation is made by the Government of ..... to the Governments of the other Contracting States.

(3) Any Contracting State may at any time declare that the Convention shall cease to apply to certain of its territories or to States or territories in respect of which it has made a declaration in accordance with the provisions of Article e. Such declaration shall take effect one year after the day on which notification of it is made by the Government of ..... to the Governments of the other Contracting States.

(4)(a) Such denunciations and declarations shall not prejudice rights acquired pursuant to the present Convention prior to the expiry of the time limit laid down in paragraphs 2 and 3 of this Article.

(b) European patent applications which are before the European Patent Office on the date of effect of the denunciations and declarations referred to in (a) above, and which designate States which have denounced the Convention or have made such declarations, shall be transferred as soon as possible by the European Patent Office to the authorities of the said States competent in the field of patents.

#### Languages

#### Article i

(1) The present Convention shall be drawn up in a single original in the English, French and German languages, to be deposited in the archives of the Government of



....., the three texts being equally authentic.

(2) Official texts of the present Convention may be drawn up in the official languages of other Contracting States.

Transmission of certified true copies

Article j

A certified true copy of the present Convention shall be transmitted by the Government of ..... to the Governments of all signatory States.

In witness whereof, the Plenipotentiaries authorised thereto, having presented their Full Powers found to be in good and due form, have signed the present Convention.

Done at ....., on.....



NOTES ON THE FINAL AND  
GENERAL PROVISIONS

Article a

The purpose of the Convention is to create a new body of law relating to the establishment of a European system for the grant of patents.

In view of this there can be no question of the various States parties to the Convention being bound by different texts.

The same problem had already arisen at the negotiations for the "International Convention for the Protection of New Varieties of Plants", concluded at Paris on 2 December 1961. The solution adopted in Article 27 of that Convention would not, however, have been adequate to ensure the proper working of the Convention establishing a European System for the Grant of Patents. For the purposes of this last Convention; it would not be enough for the States which had ratified a revised text to cease, as from its entry into force, to be bound by earlier texts to States which had not ratified that text.

It is imperative that, from the moment of the entry into force of a revised text - where fundamental amendments have been made, as in the case covered by Article a (4b) - States which have not ratified should not still be bound by earlier texts. Such a situation would give rise to insuperable difficulties.

This is the reason for the proposal that States which have not ratified a revised text should be deemed to have denounced the Convention as from the moment of entry into force of that text.

#### Reservation of acquired rights

It is self evident that rights acquired by States under the provisions of the Convention should be reserved - whether these States have formally denounced the Convention or are deemed to have denounced it under Article a (4b).

This is the purport of Article b, paragraph 1 (granted patents), and paragraph 2 (patent applications before the European Patent Office).

#### Entry into force

It is proposed that the entry into force of the Convention should be subject to the deposit of the instruments of ratification of six States on whose territory the annual number of patent applications filed totals 115,000 for all those States.

By way of illustration, the statistics for patent applications filed in 1968 are as follows:

BR/GT II/6 e/70 (Annex) and/PE/annexes ....



United Kingdom	62,000
Switzerland	19,500
Sweden	18,000
Austria	13,500
Spain	13,000
Denmark	6,000
Norway	5,000

For the same year, the figures for the Six Member States of the European Communities were :

Federal Republic of Germany	65,000
France	54,000
Italy	32,000
The Netherlands	19,000
Belgium	18,000
Luxembourg	2,500

#### Settlement of disputes

The provision dealing with the settlement of disputes is taken over unchanged from Article 38 of the "International Convention for the Protection of New Varieties of Plants", at present in force between the Federal Republic of Germany, Denmark, the Netherlands and the United Kingdom. The instrument of ratification of France is to be deposited in the very near future, since the relevant internal legislation was passed through Parliament on 12 June last. It should also be noted that Belgium, Spain, Italy and Switzerland have likewise signed this Convention, and it is only for technical reasons that they have not yet deposited their instruments of ratification.

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