

BR/GT II/8 e/70

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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, 2 September 1970
BR/GT II/8/70 rev. 1

- Secretariat -

WORKING PARTY II

WORKING DOCUMENT

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

Final and general provisions

Articles a to h

drawn up by the Drafting Committee

PART IV bis

FINAL AND GENERAL PROVISIONS

Revision

Article a

(1) This Convention may be reviewed 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 may be convened by a decision of the Administrative Council, upon the request, under the terms laid down in Article h, of a majority of three-quarters of the members present. (1)

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

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

.../...

(1) This text and that of Article d below call for a supplement to Article m relating to the Administrative Council, to the following effect:

"(2 bis) The following shall require a majority of three-quarters of the votes of the States represented in the Administrative Council:

- (a) a decision to convene a Conference for the purpose of reviewing the Convention, as referred to in Article d, paragraph 2, and
- (b) a decision on the accession of a State referred to in Article d, paragraph 4."

(4) (a) The revised text shall enter into force one year after the deposit of the last instrument of ratification or accession by three-quarters of the Contracting States to this Convention.

(b) Such States as have not ratified the revised text shall cease to be parties to the Convention as from the entry into force of the revised text.

Reservation of acquired rights
in cases of non-ratification

Article b

To be examined later.

Signature - Ratification

Article c

(1) This 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) This 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.

Accessions

Article d

(1) This Convention shall be open to accession by the States referred to in Article c, paragraph (1).

Instruments of accession shall be deposited with the Government of

(2) This Convention may also be open to accession by other European States in accordance with the following provisions:

Requests for accession shall be addressed to the Government of , which shall notify the Contracting States to the Convention thereof.

Requests shall be considered by the Administrative Council. A request shall be accepted if a majority of three-quarters of the members present vote in favour thereof. Three-quarters of the Contracting States to the Convention must be represented when the vote is taken.

In the case of a favourable decision, instruments of accession shall be deposited with the Government of

(3) The Government of shall notify the Governments of the Contracting States to the Convention of the deposit of instruments of accession.

(4) Any State which has been a party to the Convention and has ceased so to be as a result of the application of Article a, paragraph 4 (b), may accede again to the Convention pursuant to paragraph 1 of this Article.

Entry into Force

Article e (new)

(1) This Convention shall enter into force two months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180,000 for all the said States.

(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the second month after the deposit of the instrument of ratification or accession.

/Territorial field of application

Article f

To be examined later.7

Settlement of disputes

Article g

(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 one of the States parties to the dispute. 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.

Note

A further possibility would be to provide for the compulsory jurisdiction of the International Court of Justice.

Limitation of reservations

Article h (new)

Signature, ratification or accession to the Convention may not be subject to any reservations other than those provided for by this Convention.

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BR/GT II/8 a/70 sw

PART IV bis

FINAL AND GENERAL PROVISIONS

Revision

Article a

(1) This Convention may be reviewed 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, ~~XXX~~ Conferences may be convened by a decision of the Administrative Council, upon the request, under the terms laid down in Article h, of a majority of three-quarters of the members present. (1)

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

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

.../...

(1) This text and that of Article d below call for a supplement to Article m relating to the Administrative Council, to the following effect:

"The following shall require a majority of three-quarters of the votes of the States represented in the Administrative Council :

- (a) a decision to convene a Conference for the purpose of reviewing the Convention, as referred to in Article d, paragraph ~~3~~ 2, and
- (b) a decision on the accession of a State referred to in Article d, paragraph 4."

(4) (a) The revised text shall enter into force one year after the deposit of the last instrument of ratification by three-quarters of the Contracting States to ~~xxxxxx~~this Convention.

(b) Such States as have not ratified the revised text shall ~~xxxx~~ 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

To be examined later.

Signature - Ratification

Article c

(1) This 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 ~~xxx~~ option of taking part therein.

(2) This 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.

Accessions

Article d

(1) This Convention shall be open to accession by the States referred to in Article c, ~~(xx)~~ paragraph (1).

Instruments of accession shall be deposited with the Government of

(2) This Convention may also be open to accession by other European States in accordance with the following provisions :

Requests for accession shall be addressed to the Government of, which shall notify the Contracting States to the Convention thereof.

Requests shall be considered by the Administrative Council. A request shall be accepted if a majority of ^{members} thereof three-quarters of the ~~XXXXXX~~ present vote in favour ~~XXXXXX~~. Three-quarters of the Contracting States must be represented when the vote is taken.

In the case of a favourable decision, the instrument of accession shall be deposited with the Government of x.

(3) The Government of shall notify the Governments of the Contracting States to the Convention of the deposit of the instruments^I of accession.

(4) Any State which has been a party to the Convention and has ceased so to be as a result of the application of Article a, paragraph 4 (b), may accede again to the Convention pursuant to paragraph 1 of this Article.

Entry into Force

Article e (new)

(1) This Convention shall enter into force two months after the deposit of the last ~~instrument~~ instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180,000 for all the said States.

(2) Any ratification or accession ~~shall take effect~~ ^{following after} the entry into force of this Convention shall take effect on the first day of the second month after the deposit of the instrument of ratification or accession.

Territorial field of application

Article f (new)

(1) Every Contracting ~~State~~ 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 ^{declarations or} ~~declarations or~~ notifications mentioned in paragraph 1 of this Article.

