



BR/GT IV/43 e/71

Travaux Préparatoires CBE 1973

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

Brussels, 20 September 1971
BR/GT IV/43/e/71

- Secretariat -

NOTE

Subject : Comments of the German delegation on the note from
the Chairman of Working Party IV.

Pursuant to paragraph 8 of the note from the Chairman of
Working Party IV, in which he requested that the Secretariat
be informed of any reactions to his note, the German delega-
tion has submitted the comments contained in the Annex hereto.

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THE GOVERNMENT OF
INDIA
MINISTRY OF DEFENSE
NEW DELHI

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Comments
of the German delegation
on the note from the Chairman of Working Party IV
dated 16 June 1971
(BR/GT IV/42/71)

The German delegation has the following comments to make on points 5 to 7 of the note from the Chairman of Working Party IV:

ad 5. The German delegation would like to point out that the question of the payment of interest by the European Patent Office on the special financial contributions, pursuant to Article 44 (5), was last dealt with in the following two documents:

- (a) Proposal by the Chairman of Working Party IV in BR/GT IV/20/70, dated 16 June 1970, under 4 ;
- (b) Report by Working Party IV on the financing of the European Patent Office in BR/57/70, dated 16 November 1970, on page 56, paragraph 3 and on page 80, paragraph 1.

It emerges from the document mentioned in (a) above, that, taking the state of financial planning as it was then, and allowing for a two-year request period, an immediate full opening of the European Patent Office and the fees recommended, an interest rate of between 3 and 4% is practicable.

None of these factors is yet certain. The calculations on which the financial planning was based must be up-dated (see BR/GT IV/42/71 under No. 7). The period during which a request for examination may be made during the launching period is still undecided; later, it may possibly be extended from two to two and a half years after the date of filing or of priority (see notes to Articles 160 and 88 in the Second Preliminary Draft of the First Convention). Instead of an immediate full opening of the European Patent Office, provision has been made for a progressive extension of its field of activity. The stages have not yet been decided (see Article 157 in the Second Preliminary Draft of the First Convention). The fees laid down in the First Preliminary Draft of the Rules relating to Fees should be regarded as an indication only (see Introductory Note to the Joint Preliminary Draft of the Rules relating to Fees).

In these circumstances, the German delegation considers that it is premature to fix the level of the interest on the special financial contributions, particularly as such a rate need only be fixed definitively in the Financial Regulations to be adopted by the Administrative Council (see Article 35a paragraph 2 (a) and Article 52 d (d) of the Second Preliminary Draft of the First Convention).

There is certainly a case for following the suggestions of the Chairman of Working Party IV (BR/GT IV/20/70, dated 16 June 1970, No. 4, last sentence) and having Working Party IV recommend that no interest be paid on the special financial contributions. In this case Article 44(5) would have to be altered. Consideration might also be given to fixing a nominal interest rate of 1%.

BR/GT IV/43 e/71 (Annex) ph

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ad. 6. As regards the question of "Accession fee", the German delegation proposes the following new Article :

Article 165 a
Accession fee

Every State which ratifies or accedes to the Convention after the entry into force of this Convention shall pay a single financial contribution to the European Patent Office. The level of the single financial contribution shall be determined by the Administrative Council after the point of time indicated in Article 165 (3). Article 44 paragraphs 4 to 6 shall be applied accordingly to the single financial contribution.

This provision should make it possible for a financially sound State, which protracts ratification or accession over a long period, to pay an appropriate amount. On the other hand, it should also allow a less financially sound developing country (Cyprus, for example) to pay a purely nominal fee for late accession. Sentence 2 is intended to ensure that the Administrative Council, in the presence of the representative of the newly admitted State, should discuss and decide upon the amount of the single financial contribution to be made.

With a view to determining the financial rights and obligations of a State whose membership of the Convention comes to an end, the German delegation proposes the following new Articles :

Article 171 (a)
Financial rights and obligations
of a Contracting State which ceases to be a party to
the Convention

(1) Any State which has been a Contracting State to this Convention and whose membership has ceased under the terms of Article 162 (4) or Article 170, shall be reimbursed the special financial contributions which it has paid under Article 44 (2) by the European Patent Office, at the time and under the conditions whereby the European Patent Office reimburses special financial contributions which have been paid by other States during the same budgetary year.

(2) The State referred to in paragraph 1 shall still pay the proportions of the renewal fee, laid down by the Administrative Council pursuant to Article 43, in respect of the renewal fee for European patents in force in this State, even after termination of its membership.

This provision is based on the consideration that upon termination, the obligation to pay special financial contributions ceases, but everything else concludes normally, that is to say, paid up financial contributions provided for by Article 44 (5) and (6) are repaid at the given time, and proportions of the revenue in renewal fees under Article 43 for European patents granted are to be paid for such time as such patents remain in force in this State.

ad 7. The German delegation agrees to the proposals made by the Chairman of Working Party IV. The short meetings suggested by the Chairman for the period between the next meeting of Working Party IV on 22 to 25 February 1972 and the 6th Meeting of the Conference in June 1972 could perhaps be dispensed with if, on the basis of the decisions which the Working Party is to take at its next meeting, only modifications to the financial report and its annexes are to be made. In this case, the Chairman of Working Party IV could perhaps be empowered to make the modifications alone.

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