

# **BR/GT IV/36 e/70**

## **Travaux Préparatoires CBE 1973**



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

Brussels, 18 September 1970  
BR/GT IV/36/70

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- Secretariat -

WORKING PARTY IV

NOTE

Subject: Financial provisions of the First Preliminary Draft  
Convention (BR/GT IV/31/70)

- Observations by the United Kingdom Delegation on  
the draft financial provisions

The members of Working Party IV will find annexed hereto  
an observation by the United Kingdom Delegation on the draft  
financial provisions drawn up by the Working Party  
(BR/GT IV/31/70).

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BR/GT IV/36 e/70 rin/RT/cm



DRAFT FINANCIAL ARTICLES OF BR/GT IV/31/70

OBSERVATIONS BY THE UNITED KINGDOM DELEGATION

The United Kingdom delegation has the following observations and proposals to make with regard to the drafts of the financial articles as set out in Document BR/GT IV/31/70.

Article 42

To avoid confusion between, for example, Article 42a and item (a) of Article 42, it is suggested that the items mentioned in Article 42 should be numbered (i), (ii) and (iii).

Article 42a

Add at end of paragraph (1) the words:

"other than those mentioned in (i) and (ii) of Article 42."

Article 42b

It is understood that the intention is to levy the payment to the EPC on each renewal, not on the total income of each State from renewals; paragraph 1 does not make this clear.

It seems inequitable that the minimum payment should relate

to the unitary patent in the case of a group of countries: it is difficult to draft a provision to multiply the minimum payment by the number of countries in a group. It is suggested that, as the need to stipulate the minimum payment for a group of countries is remote, paragraph 3 should terminate at the word "scale" in the third line, the remainder being deleted.

It is suggested that these payments should as a general rule be made at regular intervals and the due dates should not be varied in accordance with the liquid resources required by the European Patent Office; it is therefore proposed that all the words "in accordance with the liquid resources required by the European Patent Office" should be deleted from paragraph (5). A proposed redraft of Article 42b is Annex A to this paper.

#### Article 42c

Payments under Article 42b cannot be fixed:- the word "payments" at the end of the first line should be replaced by the word "proportion". It also follows from this that the balanced budget cannot be ensured; furthermore Article 42d envisages that the two types of receipts referred to in Article 42c may not be adequate to balance the budget. Accordingly it is proposed to insert "as far as possible" after "ensure".

Article 42d

A draft is proposed in Annex B to this paper. It is suggested that the contributions provided for in this Article be repayable with interest. If it is desirable to provide this in Article 42g for the difficult introductory period, it would seem all the more desirable in other circumstances. This is provided for in paragraphs (4) and (5). Paragraph (5) requires that the longest-standing debt be repaid first; if this paragraph is omitted it would be difficult to deal with repayments if States have acceded to the Treaty in the intervening period. It is suggested that the expression "based on" in paragraph (2) is too vague and the Working Party may wish to adopt the expression "directly proportional to" if they decide to adopt the scale of national patent applications. There is also proposed an amendment to paragraph (2) which means that any PCT application designating a Contracting State will be taken into account.

Article 42e

The United Kingdom does not agree that payments in respect of renewals of European patents should be made in advance of the receipt of the renewal fees by the Contracting States. These payments should be made at regular intervals to be agreed, the due date to be not less than one month after the receipt of the renewal fees. Accordingly it is proposed that in paragraph 1 the words "payments under

Article 42(b) and" should be deleted from the second line and the words "payments and" from the fourth line.(1)

Article 42g

It is questioned whether it is necessary to stipulate for the transitional period having regard to what has already been stipulated generally in Article 42d. However, if retained and if the U.K. proposals on Article 42d are accepted, paragraph 2 is redundant.

Article 46

Delete the words "of its implementation" and insert the words "to which it relates".

Article 48

Paragraph (1), first line, delete "voted", insert "adopted" to accord with Article 47. Paragraph (2) is not clear - which "one twelfth" limitation mentioned in paragraph (1) is it intended to waive?

Paragraph (3) has not yet been considered by the Working Party. In the view of the United Kingdom, if the Budget has not been adopted, payments in respect of renewal fees for European Patents will continue to be paid to the European Patent Office and provisional special financial contributions may not be necessary. If they are they should be determined on the scale set out in Article 42d, paragraph 2. The U.K. proposes that paragraphs (3) and (4) read:-

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(1) Secretariat note: In article 42e, paragraph (1), first sentence the English text differs from the German and French texts.



"3. The payments referred to in Article 42(ii) shall continue to be paid under the conditions determined under Article 42b for the year preceding that to which the draft budget relates.

4. The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 42d, paragraph 2, applicable to the year to which the draft budget relates, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2 of this Article. Article 42b, paragraph 6, shall apply mutatis mutandis to these contributions."

#### Article 50

As drafted this Article does not seem to bring the balance sheet under the examination of the Audit Board, or within its report. It is suggested that the words "and balance sheet" be inserted after "account" in the first line of paragraph (1). As a consequence of this the words "and a balance sheet showing the assets and liabilities of the European Patent Office," should be inserted after "budget," in the second line of the paragraph (3): the second sentence of paragraph (3) should then be deleted.

#### Article 51

Paragraph (2) should be expanded to cover all payments

by States, on the following lines:

"The payments provided for in Article 42b, the contributions provided for in Article 42c, the advances provided for in Article 42e and the payments and contributions provided for in Article 48 shall be made available to the European Patent Office by the Contracting States in accordance with the provisions of the Financial Regulations adopted pursuant to Article 53".

Article 53

Paragraph (b) should be amended in accordance with the proposal above for paragraph (2) of Article 51:

"(b) The method and procedure whereby the various payments, contributions and advances provided for in Articles 42b, 42c, 42e, and 48 are to be made available to the European Patent Office by the Contracting States."

An additional paragraph is proposed as follows:

"(e) the various rates of interest provided for in Articles 42b, 42d, 42e, 42g and 48."

Article 187

It is proposed that paragraph (2) should be amended by:

- (i) inserting in the third line after the word  
"contributions", the words "provided for in Article  
42d and"
  - (ii) inserting in the fifth line after the word  
"advances" the words", on a provisional basis,".
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Draft proposed by the U.K. Delegation

Article 42b

Payments by the Contracting States  
in respect of renewal fees for European patents

- (1) The Contracting States shall pay to the European Patent Office in respect of each renewal of a European patent in those States an amount equal to a proportion to be fixed by the Administrative Council, of the fee received by the Contracting State for the renewal provided that, if the said proportion of the renewal fee for a European patent received by a Contracting State corresponds to an amount which is less than a minimum amount fixed by the Administrative Council, the Contracting State shall pay to the European Patent Office that minimum amount in respect of that renewal.
- (2) The proportion referred to in paragraph (1) of this Article shall not exceed 75% and shall be the same for all Contracting States.
- (3) If a group of Contracting States has availed itself of the authorisation given in Article 8 and has fixed a common scale of renewal fees applicable to that group, the proportion referred to in paragraph (1) shall be calculated on the basis of the common scale.
- (4) Each Contracting State shall communicate to the European Patent Office such information as the Administrative Council considers to be necessary to determine the amount of its payments.
- (5) The due dates for these payments shall be determined by the Administrative Council.
- (6) If a payment, or part thereof, under this Article is not remitted by the due date the Contracting State shall pay interest from the due date on the amount remaining unpaid. The rate of interest shall be prescribed in the Financial Regulations.



Draft proposed <sup>by</sup> the U.K. Delegation

Article 42 a

Special financial contributions

- (1) If the European Patent Office is unable to balance its budget under the conditions laid down in Article 42c, the Contracting States shall remit to the European Patent Office special financial contributions, the amounts of which shall be determined by the Administrative Council for the financial year in question.
- (2) The amounts of these contributions shall be determined in accordance with a scale directly proportional to the number of patent applications filed in, or in respect of, the respective Contracting States during the last year but one prior to the establishment of the European Patent Office.
- (3) Article 42b, paragraphs 5 and 6, shall apply mutatis mutandis to the contributions referred to in this Article.
- (4) The contributions paid by Contracting States under paragraph (1) of this Article shall be repaid together with interest at a rate to be prescribed in the Financial Regulations. Repayments shall be made in any year for which it is possible to provide for this purpose in the budget, and the amount thus provided shall be distributed among the Contracting States in accordance with the scale mentioned in paragraph (2) of this Article.
- (5) The contributions remitted in any year shall be wholly repaid before any contributions or parts thereof remitted in any subsequent year are repaid.





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

Brussels, 28 September 1970

BR/GT IV/36/70 Add.

- Secretariat -

ADDENDUM  
to BR/GT IV/36/70

Subject: Financial provisions of the First Preliminary  
Draft Convention (BR/GT IV/31/70)

- Observations by the United Kingdom Delegation  
on the draft financial provisions

At the request of the United Kingdom Delegation,  
page 7 of the annex to BR/GT IV/36/70 should read as  
follows:

Article 187.

This Article refers to the "date of Establishment" of  
the European Patent Office in paragraphs 1 and 2 and its  
note states that this term should be defined in Article 186.  
The latter was considered by Working Party I at its meeting  
from 7th to 11th September and it was unanimously agreed  
that the European Patent Office comes into being when the  
Convention comes into force. Consequently the UK propose  
that paragraph 1 of Article 187 should read:

" ... shall extend from the date of entry into force of  
this Convention to 31st December ...",

and that paragraph 2 should read:

" ... as soon as possible after entry into force of this  
Convention. Until ..."

Furthermore it is proposed that paragraph (2) should  
be amended by:

- (i) inserting in the third line after the word  
"contributions", the words "provided for in  
Article 42d and"
- (ii) inserting in the fifth line after the word  
"advances" the words ", on a provisional basis,".

BR/GT IV/36/70 Add. dd/PE/prk

