

BR/GT IV/48 e/72

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

Brussels, 11 February 1972
BR/GT IV/48/72

- Secretariat -

N O T E

Subject: Comments on points 5 to 7 of the Note by the
Chairman of Working Party IV (BR/GT IV/42/71)

Submitted by: Spanish delegation

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Comments from the Spanish delegation
on points 5 to 7 of the Note by
the Chairman of Working Party IV

(BR/GT IV/42/71)

In connection with points 5 to 7 of the Note by the Chairman of Working Party IV, contained in BR/GT IV/42/71, the Spanish delegation hereby states its preliminary views as follows:

1. Rates of interest on special financial contributions paid by the States and for which a refund is provided (points 2c and 5 of the Chairman's note).

In the opinion of the Spanish delegation, there should be one standard annual rate of interest for all Contracting States. There are a number of reasons to support this solution in the event of States making advances in the form of special contributions. These reasons include equality of treatment for the various States, the unitary nature of the contribution in question, on account of both the debiting and crediting body, i.e. the European Patent Office, and the reason for the contribution, and finally by virtue of what would appear to be the criterion, that should prevail, of an equitable apportioning of profits and expenditure; the latter must be the central principle of the philosophy which governs the special financial contributions of the Contracting States to the European Patent Office.

This idea of a single standard rate would make that rate independent in relation to other rates of interest in force on the free capital market.

The opinion of the Spanish delegation is similar to that of the Chairman of the Working Party in that the rate of interest should be low and should not exceed 4%.

2. Should a State acceding to the Convention after its entry into force pay an entry fee? (Points 2(e) and 6, first paragraph, of the Chairman's Note).

With regard to the problem which has arisen of whether a State acceding after the entry into force of the Convention must pay an entry fee in addition to its special contributions, the Spanish delegation, taking account of the fact that there are obvious reasons for and against such an entry fee, considers that it is not yet in a position to decide on this point which should be studied in more detail by Working Party IV.

Moreover, this Working Party should study not only whether or not it would be possible to provide for an entry fee of this nature, but also, in the event of such a fee being provided for, its amount, the form that it would take and the conditions in which it would be required.

3. Should a State ceasing to be a party to the Convention be required to pay a certain percentage of the national renewal fees for European patents granted during the time when it was a party? (Points 2(e) and 6, paragraph 2, of the Chairman's Note).

As regards a State ceasing to be a party to the Convention, the Spanish delegation considers that besides the specific problem referred to in the Chairman's Note, other important problems must also be studied.

Of these, the following should be mentioned:

- (a) The manner of compensating for the financial loss which will result from the absence of a State withdrawing from the Convention, and, consequently, the readjustment of the scale of contributions.

In view of the possibility of such an event or of the accession of a new State to the Convention, provision should perhaps be made in the Convention, or better still in the Implementing Regulations, for the procedure for the reallocation of shares, the date of the entry into force of the new shares etc.

- (b) The refunding of special financial contributions to States ceasing to be parties to the Convention.

Here, the problem arises as to whether the contributions paid in advance should be refunded in whole or in part, and also the method, time limit and conditions for any such refund.

- (c) The Chairman's Note raises the specific question of whether a State ceasing to be a party to the Convention may be required to pay the European Patent Office a certain percentage of the renewal fees received by it in respect of European patents previously granted. The Spanish delegation thinks that this question must be revised and studied in detail by Working Party IV; for although it is broadly speaking of the opinion that a State ceasing to be a party to the Convention should continue to pay the European Patent Office a percentage of these renewal fees, one must not disregard the theoretical and practical difficulties of imposing obligations under the Convention on a State which has withdrawn from the Convention.

4. Revision of the Report by Working Party IV and Annexes BR/57/70 (Point 7 of the Chairman's Note).

In connection with the need to revise Working Party IV's Report, BR/57/70, the Spanish delegation considers that the arguments set out in the Chairman's Note are very well founded, and it is in agreement with the suggested procedure for revision.

5. Finally, although the opinions of the delegations are not specifically asked for on the question raised in paragraph 2(b) of the Chairman's Note, namely whether the second variant of Article 44, paragraph 3, of the Convention should be amended by replacing the fractions, the Spanish delegation, for the reasons reiterated during the meetings of Working Party IV, and at the Inter-Governmental Conference, insists on its principle whereby the fractions of one quarter and three quarters respectively, as contained in sub-paragraphs (a) and (b) of the second variant, should not be replaced by halves.
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