

SUBJECT: Revision of the EPC: Part IX, Articles 142 – 149

DRAWN UP BY: The Danish Patent and Trademark Office

ADDRESSEES: Committee on Patent Law (for opinion)

SUMMARY

This document contains a proposal that changes Part IX Articles 142 – 149 EPC set out in the second proposal in document CA/PL 7/00 earlier set forward by the EPO. The new proposal is drawn up by the Danish Patent and Trademark Office. The aim of the proposal is to make it possible for competent national patent offices that wish to do so to take part in the work concerning the future Community patent.

I. REVISION OF PART IX ARTICLES 142 – 149 OF THE EPC.

1. In connection with the revision of the EPC it is important not only to make sure that the provisions of the convention are updated but also farsighted with respect to future developments. This means that the member states in the current revision process must bear in mind the future Community patent.
2. At the February meeting of the Committee on Patent Law, the Office submitted document CA/PL 7/00 in which the Office, based on the mandate of the June 1999 Intergovernmental Conference, suggested a revision of Part IX Art. 142 - 149 EPC. A broad support for the proposal to transform Art. 142 EPC into an umbrella provision and deleting Art. 143 – 149 EPC was expressed. During the discussions, however, a majority of the delegations considered that it was premature to change this part of the EPC, since the details of the future Community patent are still unknown.
3. The Danish delegation would, however, once again like to draw attention to the above-mentioned mandate from the Intergovernmental Conference on reform of the patent system in Europe that was held in June 1999. The mandate clearly states that a revised text relating to Part IX of the EPC must be prepared for the revision conference to be convened in the year 2000.

We must therefore engage in an in-depth discussion on this point.

4. Within the European Community a principle of subsidiarity exists. The future Community patent must reflect this principle. Since Part IX of the EPC was conceived with the 1975 Community Patent Convention in mind the Danish delegation believes that the principles within the European Community should especially be considered in the revision of this particular part of the EPC.
5. As to the contents of Part IX of the EPC, the idea is that the European Patent Office will be in charge of processing and granting future Community patents. This is what Part IX of the EPC must reflect. Since it is the Community patent that is the issue here, Part IX of the EPC must also entail the principles existing within the European Community. The Danish delegation therefore proposes a new wording of Part IX of the EPC based on the second proposal suggested by the Office in document CA/PL 7/00.

II. PROPOSED AMENDMENTS

THE EPO PROPOSAL IN CA/PL 7/00

PART IX SPECIAL AGREEMENTS

Articles 142 Unitary patents

(1) Any group of Contracting States which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those states.

(2) Where the European Community has provided under the Community legal order that a European patent granted for its member states shall have a unitary character throughout the territory of the European Community, paragraph 1 shall apply *mutatis mutandis*.

(3) Any group of Contracting States or the European Community, having so provided, may entrust additional tasks to the European Patent Office, in accordance with a special agreement to be concluded with the European Patent Organisation, laying down the conditions for the application of this Convention and governing in particular:

PROPOSED WORDING BY THE
DANISH PATENT AND TRADEMARK
OFFICE

PART IX SPECIAL AGREEMENTS

Articles 142 Unitary patents

(1) Any group of Contracting States **including the European Community** which has provided by a special agreement that a European patent granted for those States has unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those states.

(2) **Delete**

(2) Any group of Contracting states or the European Community, having so provided, may entrust additional tasks to the European Patent Office, in accordance with a special agreement to be concluded with the European Patent **Office**, laying down the conditions for the application of the Convention and governing in particular:

(a) any special departments to be set up within the European Patent Office, their supervision and representation before them;

(b) financial obligations and benefits, including the expenditure involved in carrying out these additional tasks and the payment of fees for such unitary patents;

(c) the European patent application as an object of property.

(a) any special departments to be set up within the European Patent Office, their supervision and representation before them;

(b) **that some part of the work with these patents should be handled by the competent national offices that wishes so;**

(c) financial obligations and benefits, including the expenditure involved in carrying out these additional tasks and the payment of fees for such unitary patents;

(d) the European patent application as an object of property.