Article 147 E

Travaux Préparatoires
(EPC 1973)

Comment:
The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness. The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.
Zahlungen aufgrund der für die Aufrechterhaltung des einheitlichen Patents erhobenen Gebühren

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MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
MV 146/R 6
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 140 to 166
Artikel 146
Deckung der Kosten für die Durchführung besonderer Aufgaben

(1) Sind dem Europäischen Patentamt nach Artikel 143 zusätzliche Aufgaben übertragen worden, so trägt die Gruppe von Vertragsstaaten die der Organisation bei der Durchführung dieser Aufgaben entstehenden Kosten. Sind für die Durchführung dieser Aufgaben im Europäischen Patentamt besondere Organe gebildet worden, so trägt die Gruppe die den besonderen Organen zurechenbaren Kosten für das Personal, die Arbeitsräume und die materiellen Mittel. Artikel 39 ist entsprechend anzuwenden.

(2) Sind dem Europäischen Patentamt zusätzliche Aufgaben übertragen worden oder sind für die Durchführung dieser Aufgaben im Europäischen Patentamt besondere Organe gebildet worden, so zahlt die Gruppe jeden Monat einstweilen besondere Finanzeinträge, sofern dies notwendig ist, um die Durchführung des Artikels 45 Absätze 1 und 2 zu gewährleisten. Artikel 37 Absatz 4 ist auf diese Beiträge entsprechend anzuwenden.

Artikel 147
Zahlungen aufgrund der für die Aufrechterhaltung des einheitlichen Patents erhobenen Gebühren


Artikel 148
Die europäische Patentanmeldung als Gegenstand des Vermögens

(1) Artikel 72 ist anzuwenden, wenn die Gruppe von Vertragsstaaten nichts anderes bestimmt hat.

(2) Die Gruppe von Vertragsstaaten kann vorschreiben, daß die europäische Patentanmeldung, soweit für sie diese Vertragsstaaten benannt sind, nur für alle diese Vertragsstaaten und nur nach den Vorschriften des besonderen Übereinkommens Gegenstand eines Rechtsübergangs sein sowie belastet oder Zwangsvollstreckungsmaßnahmen unterworfen werden kann.

Article 146
Cover for expenditure for carrying out special tasks

(1) Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these special departments. Article 39 shall apply mutatis mutandis.

(2) Where additional tasks have been given to the European Patent Office or special departments have been set up in the European Patent Office to carry out such additional tasks, the group shall, provisionally, pay each month any special financial contributions necessary to ensure implementation of Article 45, paragraphs 1 and 2. Article 37, paragraph 4, shall apply mutatis mutandis to these contributions.

Article 147
Payments in respect of renewal fees for unitary patents

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents, the proportion referred to in Article 37, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 37, paragraph 1, shall apply to the unitary patent. Article 37, paragraphs 3 and 4, shall apply mutatis mutandis.

Article 148
The patent application as an object of property

(1) Article 72 shall apply unless the group of Contracting States has specified otherwise.

(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTeilungsVERFAHREN

DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

PROJET DE CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN
PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
The Working Party decided not to adopt the suggestion of one delegation that the Administrative Council should fix an individual minimum amount for each group of States; the Working Party felt that this would lead to the logical conclusion that the minimum amount would have to be fixed individually for each-and every Contracting State and such a task would create too great difficulties for the Administrative Council.

The Working Party came to the conclusion that a uniform minimum amount for all Contracting States and groups of States would be the most expedient solution under these circumstances. It therefore decided to retain the last phrase of paragraph 3.

9. The Working Party also found it appropriate to delete the provision in paragraph 5 stating that the Administrative Council should determine the due date for payment in accordance with the liquid resources required by the European Patent Office; in its view, the Administrative Council's freedom of decision should not be limited in this respect.

Article 42c - Level of fees and payments
Article 42d - Special financial contributions

10. The Working Party combined these two provisions in a single Article (now Article 42c), in order to make it clear that the expenditure of the European Patent Office should basically be covered by the fees referred to in Article 42a and by the payments referred to in Article 42b. If this should prove impossible, the European Patent Office will be able to resort to financial contributions from the Contracting States. This will be particularly relevant during the first few years of operation of the European Patent Office.

BR/GT IV/41 e/70 1or/RT/pc
Article 42a - The European Patent Office's own resources

6. The Working Party adopted this Article - subject to a correction to the German text - with the same wording as in BR/GT IV/31/70. It did not feel it necessary to define the miscellaneous receipts of the European Patent Office in greater detail in paragraph 1.

Article 42b - Payments by the Contracting States in respect of renewal fees for European patents

7. Following a proposal by the United Kingdom delegation (BR/GT IV/36/70), the Working Party made it clear in paragraphs 1 and 2 that the Contracting States are to pay to the European Patent Office 75% of the national fee for each individual European patent and not 75% of their total income from renewal fees.

8. When paragraph 3 was discussed, the question was raised as to how the Administrative Council should determine, in the case of a group of Contracting States fixing a common scale of renewal fees applicable to that group, the minimum amount to be paid for each European patent. The general view was that the provision concerning the minimum amount would have no practical significance, at least for the EEC States, as the uniform fees for the planned unitary patent for the Common Market would in all probability be higher than the minimum amount fixed, whatever the level of this minimum amount might be.

BR/GT IV/41 e/70 lor/RT/gc
MINUTES

of the third meeting of Working Party IV
(Luxembourg, 13-15 October 1970)

1. The third meeting of Working Party IV was held in Luxembourg, from 13 to 15 October 1970, with Mr. E. ARMITAGE, Comptroller General, Patent Office, London, in the Chair.

The representatives of the International Patent Institute at The Hague and of WIPO/BIRPI took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe apologised for his absence. (1)

2. The Working Party began by examining, on the basis of various working documents (BR/GT IV/31/70 and BR/GT IV/36/70 with Addendum), the financial provisions of the First Preliminary Draft Convention establishing a European System for the Grant of Patents (Articles 42-53 and Article 187). It adopted these provisions as set out in BR/56/70.

(1) The list of participants is given in the Annex.
in respect of arrears. According to proposals by the German
delegation, it was also provided, in the draft of Article 42b,
that the rate of interest should be fixed at such a level
that the interest covers the cost of a corresponding line
of credit. While confirming their agreements on the principle
of fixing a rate of interest, the delegations decided, for
psychological reasons, not to refer to the rate of interest
in the Articles of the Convention, but to leave the rate
to be fixed in the Financial Regulations.

Article 42c

9. In Article 42c the principle will be laid down that
ordinary revenue fees, and payments by the Contracting
States in respect of the renewal of European patents are
to be fixed so as to balance the expenditure.

Article 42d

10. This Article regulates the call that the European
Patent Office may make on special financial contributions.
The second paragraph, which stipulates that the special
contributions will be determined in accordance with a
scale based on the number of patent applications filed in
the respective Contracting States during the last year but
one prior to the establishment of the European Patent Office,
is subject to reservations. The reservations apply till
the Spanish and Luxembourg proposals are examined during
the October meeting, since these two delegations have asked
for the adoption of a different scale (see points 56 and
60 below).
- 42b (payments by the Contracting States in respect of renewal fees for European patents)
- 42d (special financial contributions)
- 42e (advances)
- 42f (appropriation for unforeseeable expenditure)
- 42g (transitional period)
which will take account of these preoccupations.

6. The members of the Working Party also decided that the principle embodied in Article 42, according to which the fees and the payments of the Contracting States in respect of renewal fees for European patents must be fixed so as to cover all the EPO's expenditure is to be the subject of a new Article, viz. Article 42c, in order to affirm this principle more explicitly.

Article 42a

7. Article 42a will deal with the European Patent Office's own resources. This Article will also mention the miscellaneous receipts of the EPO.

Article 42b

8. Article 42b will regulate the payments by the Contracting States in respect of renewal fees for European patents. The various delegations agreed on the principle that when payments by the Contracting States in respect of renewal fees for European patents are not made by the due dates, they shall be subject to the payment of interest
MINUTES
of the second meeting of Working Party IV
(Luxembourg, 6 – 9 July 1970)

1. The second meeting of Working Party IV was held in Luxembourg, from 6 to 9 July 1970 with Mr. E. ARMITAGE, Comptroller General of the Patent Office, London, in the chair.

As at the first meeting, the representatives of the International Patent Institute at The Hague took part in the meeting as observers. The representatives of the Council of Europe and of WIPO/BIRPI apologised for their absence (1).

I. - ORGANISATION OF THE WORK

2. On the proposal of the Chairman, Working Party IV decided to organise its work as follows:

(1) The list of participants is annexed to this document.

BR/GT IV/32 e/70 ond/FA/bm
Article 42b
Payments by the Contracting States
in respect of renewal fees for European patents

Text drawn up by the Drafting Committee of Working Party IV

(1) The payments by the Contracting States in respect of renewals of European patents in those States shall, as a general rule, equal a proportion, which shall be the same for all the Contracting States, of their income from fees for the renewal of European patents. This proportion shall be fixed by the Administrative Council, but may not exceed 75%.

(2) Provided that, if the proportion of the renewal fee for European patents to be paid by any Contracting State corresponds to an amount which is below a minimum fixed by the Administrative Council, the payment to be made by the State in question may not be less than this minimum amount.

(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; the minimum amount referred to in paragraph 2 shall relate to the unitary patent.

(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 payment.

(5) The due dates for these payments shall be determined by the Administrative Council in accordance with the liquid resources required by the European Patent Office.

(6) If the payments are not made by the due date the sums outstanding shall carry interest as from that date. The rate of interest shall be laid down in the Financial Regulations.
been re-examined by the Working Party /etc.

Committee of Working Party IV, but have not yet

attached to H(3) have been drawn up by the drafting

2. 974.

H(3) have not yet dealt with attached H(3) and attached

as regards the first-mentioned attached Working Party

attached to H(2).

expected in the draft of the final version of

1970 - subject to such redrafting as might be required.

by Working Party IV at its meeting of 6 to 9 July

attached to H(2) and 187 were approved in principle.

INTRODUCTORY NOTE
Patent Law as directed by the EEC "Preparation Working Party"
the financial provisions of the draft convention relating to a European
compared specifically with

(meeting 6 to 9 July 1970)

So drawn up by the drafting committee

Texts other approved in principle by Working Party IV

Articles 42 to 45, 47 to 52 and 187

For a European system for the grant of Patents

Preliminary Draft Convention

Secretary

BR/47/IV/37/70

Protests, 14 July 1970
Article 147
Payments in respect of renewal fees for unitary patents

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents, the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis.