Article 174 E

Travaux Préparatoires (EPC 1973)

Comment:

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Art174eTPEPC1973
Art. 174
MPÜ
Kündigung

<table>
<thead>
<tr>
<th>Entwurf, der dem nebenstehenden Dokument zugrunde liegt</th>
<th>Art. Nr. im Entwurf/ Dokument</th>
<th>Dokument, in dem der Art. behandelt wird</th>
<th>Fundstel im Dokum</th>
</tr>
</thead>
<tbody>
<tr>
<td>BR/88/71</td>
<td>171</td>
<td>BR/125/71</td>
<td>Rdn. 145</td>
</tr>
</tbody>
</table>

Dokumente der MDK

<table>
<thead>
<tr>
<th>E 1972</th>
<th>173</th>
<th>M/108/II/R 4</th>
<th>S. 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;</td>
<td>173</td>
<td>M/146/R 7</td>
<td>Art. 174</td>
</tr>
<tr>
<td>&quot;</td>
<td>173</td>
<td>M/PR/II</td>
<td>S. 125</td>
</tr>
</tbody>
</table>
MINUTES
OF THE
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING
UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Munich, 10 September to 5 October, 1973)

published by the
Government of the Federal Republic of Germany
Article 174

Denunciation

Any Contracting State may at any time denounce this Convention. Notification of denunciation shall be given to the Government of the Federal Republic of Germany. Denunciation shall take effect one year after the date of receipt of such notification.
MUNICH DIPLOMATIC CONFERENCE

FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 7
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 167 to 178
Article 173

Denunciation

Any Contracting State may at any time denounce this Convention. Notification of denunciation shall be given to the Government of the Federal Republic of Germany. Denunciation shall take effect one year after the date of receipt of such notification.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 19 September 1973

M/108/II/R 4
Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE II
AT THE MEETING ON 18 SEPTEMBER 1973

Articles of the Convention:

<table>
<thead>
<tr>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
</tr>
<tr>
<td>17</td>
</tr>
<tr>
<td>22</td>
</tr>
<tr>
<td>23</td>
</tr>
<tr>
<td>25</td>
</tr>
<tr>
<td>28</td>
</tr>
<tr>
<td>29</td>
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<tr>
<td>33</td>
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<tr>
<td>143</td>
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<td>145</td>
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<tr>
<td>159</td>
</tr>
<tr>
<td>163</td>
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<td>164</td>
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<tr>
<td>165</td>
</tr>
<tr>
<td>167</td>
</tr>
<tr>
<td>173</td>
</tr>
<tr>
<td>176</td>
</tr>
</tbody>
</table>

Protocol on Privileges and Immunities of the European Patent Organisation:

<table>
<thead>
<tr>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
</tr>
</tbody>
</table>

(4) Für die Staaten, die die revidierte Fassung des Übereinkommens im Zeitpunkt ihres Inkrafttretens weder ratifiziert haben noch ihr beigetreten sind, endet mit diesem Zeitpunkt die Mitgliedschaft an diesem Übereinkommen.

Artikel 172
Streitigkeiten zwischen Vertragsstaaten

(1) Jede Streitigkeit zwischen Vertragsstaaten über die Auslegung oder Anwendung dieses Übereinkommens, die nicht im Verhandlungsweg beigelegt worden ist, wird auf Ersuchen eines beteiligten Staats dem Verwaltungsrat unterbreitet, der sich bemüht, eine Einigung zwischen diesen Staaten herbeizuführen.

(2) Wird eine solche Einigung nicht innerhalb von sechs Monaten nach dem Tag erzielt, an dem der Verwaltungsrat mit der Streitigkeit befaßt worden ist, so kann jeder beteiligte Staat die Streitigkeit dem Internationalen Gerichtshof zum Erlaß einer bindenden Entscheidung unterbreiten.

Artikel 173
Kündigung


Artikel 174
Aufrechterhaltung wohlerworbener Rechte

(1) Durch die Beendigung der Mitgliedschaft eines Staats an diesem Übereinkommen nach Artikel 171 Absatz 4 und Artikel 173 werden die nach diesem Übereinkommen bereits erworbenen Rechte nicht beeinträchtigt.

(2) Die europäischen Patentanmeldungen, die zu dem Zeitpunkt anhängig sind, zu dem die Mitgliedschaft eines benannten Staats am Übereinkommen endet, werden in bezug auf diesen Staat vom Europäischen Patentamt so weiterbehandelt, als ob das Übereinkommen in der nach diesem Zeitpunkt geltenden Fassung auf diesen Staat anwendbar wäre.

(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.

(4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

Article 172
Disputes between Contracting States

(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.

(2) If such agreement is not reached within six months from the date when the Administrative Council was seized of the dispute, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.

Article 173
Denunciation

Any Contracting State may at any time denounce this Convention. Notification of denunciation shall be given to the Government of the Federal Republic of Germany. Denunciation shall take effect one year after the date of receipt of such notification, unless the State concerned has earlier ceased to be a party to the Convention, pursuant to Article 171, paragraph 4.

Article 174
Preservation of acquired rights

(1) In the event of a State ceasing to be party to this Convention in accordance with Article 171, paragraph 4, or Article 173, rights already acquired pursuant to this Convention shall not be impaired.

(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, in so far as that State is concerned, as if the Convention in force thereafter were applicable to that State.
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
States had advocated that the competency of the International Court of Justice should be recognised in the largest possible number of disputes. They should not therefore make exceptions in the case of this Convention. The Conference endorsed this proposal and amended paragraph 2 accordingly. This removed the point of Articles 3 to 6 and the proposed amendments submitted by the German and Austrian delegations.

Article 169 (Limitation of reservations)

144. The Conference wished to specify, by means of an express reference to Article 158, that reservations apart from those provided for in that Article were not admissible.

Article 171 (Denunciation)

145. Paragraph 2 was transferred to Article 173, paragraph 2, along with a number of other provisions which provide that the Contracting States are to be informed by the State with whose Government the instruments of ratification are to be deposited (BR/117/71, Page 10).

Paragraph 3, which governed the preservation of acquired rights in the event of denunciation in a similar manner to Article 163, was combined with the latter provision to form a new Article 171a (BR/118/71, Page 20).
MINUTES

of the

4th Meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents

(Luxembourg, 20 to 28 April 1971)
Article 171

Denunciation

(1) Any Contracting State may at any time denounce this Convention. Notification of denunciation shall be given to the Government of ......... . Denunciation shall take effect one year after the date on which notification is given, unless the State concerned has earlier ceased to be a party to the Convention, pursuant to Article 162, paragraph 4 (b).

(2) The Government of ......... shall inform the Governments of the Contracting States of the denunciations referred to in paragraph 1.

(3) (a) Denunciation shall not prejudice rights acquired pursuant to this Convention prior to the expiry of the period provided for in paragraph 1.

(b) European patent applications which are before the European Patent Office on the date on which the denunciation takes effect pursuant to paragraph 1, and in which a State which has denounced the Convention has been designated, shall be dealt with by the European Patent Office, in so far as that State is concerned, on the basis of the provisions of the Convention applicable on the date on which the denunciation takes effect.

Note to Article 171(3):

The wording of this provision is derived from that of Article 163. If Article 163 were to be amended, amending Article 171, paragraph 3, would also have to be considered.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
under agreements concluded with inter-governmental organisations. It also considered that an agreement with INPADOC would come under private law.

170. The Austrian delegation stated that its proposal would not result in the exclusion of other information centres.

171. The United Kingdom delegation felt that the present text of Article 10, together with Article 31 (30), paragraph 3, clearly defined the respective powers of the President and the Administrative Council to conclude agreements. If the proposal were accepted, the interpretation given to the scope of Article 10 would no longer be valid.

172. The Committee voted on the Austrian proposal in M/78/I/II which was accepted and referred to the Drafting Committee.

173. The United Kingdom delegation pointed out that in Article 28 (30) there was an explicit reference to an intergovernmental organisation; Article 31 (33), paragraph 3, should therefore be amended to include such a reference as well. The Article under examination dealt with agreements to be concluded by the President on behalf of the Organisation with international organisations. Obviously this was limited to fairly important agreements and excluded agreements with non-governmental organisations. The President of the Office would be competent to conclude such agreements under Article 10.

174. The German, French and Netherlands delegations shared the view expressed by the United Kingdom delegation.

175. The Committee accepted the United Kingdom proposal on Article 31 (33) and referred it to the Drafting Committee.

**Article 33 (35) — Voting rules**

176. The Committee referred this Article to the Drafting Committee and asked it to examine also the German delegation's proposals in M/11, point 4 and M/47, point 11.

**Article 143 — Special departments of the European Patent Office**

177. The Committee referred the proposal from the Member States of the European Communities in M/14 to the Drafting Committee for examination.

**Article 145 — Select committee of the Administrative Council**

**Paragraph 1**

178. The United Kingdom delegation feared that this proposal might be interpreted in conjunction with Article 30 (32) as meaning that the select committee would be considered as a body set up by the Administrative Council of the European Patent Organisation and proposed that this paragraph be supplemented by the words: "At the request of the group of Contracting States".

179. The Committee understood the concern expressed by the United Kingdom delegation and referred the provision in question to the Drafting Committee so that an unambiguous wording could be found.

**Article 159 (160) — Appointment of employees during a transitional period**

**Paragraph 2**

180. The Committee did not adopt a proposal from UNEPA (M/62/I/II, point 8) that the words "for example" be inserted before the words "national courts".

**Article 165 (166) — Accession**

**Paragraph 2 (j (b))**

181. The Yugoslav delegation proposed in M/77/I/II that the words "at the invitation of the Administrative Council" be deleted to enable States which did not take part in the preparatory work to accede freely to the Convention.

182. The Swiss delegation considered that the text of the basic draft provided for all the desired options and should not therefore be amended.

183. The Yugoslav delegation then withdrew its proposal.

184. The Committee referred Article 165 to the Drafting Committee and asked it to consider the drafting proposal submitted by the United Kingdom delegation in M/40, point 25.

**Article 167 (168) — Territorial field of application**

185. The Committee recorded its agreement on a proposal from the United Kingdom delegation in M/40, point 26, to the effect that the words "unless the State concerned has earlier ceased to be a party to the Convention, pursuant to Article 171, paragraph 4" be deleted.

**Article 173 (174) — Denunciation**

186. The Committee recorded its agreement on a proposal by the German delegation that the last part of the second sentence be deleted in line with the amendment to Article 167, paragraph 3.

**Article 176 (177) — Languages of the Convention**

**Paragraph 2**

187. The Committee established that this provision did not in any way detract from the right of States to prepare and publish translations of the Convention in their official languages. However, only translations approved by the Administrative Council could be considered official texts within the meaning of this Article.

**B. Article 166 (167) of the Convention**

**I. Positions of the Delegations**

1001. The Committee began by holding a general exchange of views on the problems raised by the provisions relating to reservations.

1002. The Spanish delegation pointed out that it had submitted a proposal for an amendment to Article 166 which was set out in M/29. The Spanish proposal was based on a position which had already been stated during the discussions of the Luxembourg Inter-Governmental Conference. The reason for the proposal was that some countries would be unable to agree immediately to the incorporation of certain rules of the Convention in their legal systems without seriously weakening the present structure of some sectors of industry whose economic development was not yet sufficiently advanced. It was for this reason that, when the Luxembourg Inter-Governmental Conference opted for the maximum solution, provision had had to be made for the entry of reservations in certain cases and Article 166 of the draft Convention had been drafted. However, from the outset, the Spanish delegation had maintained that the scope for reservations provided was inadequate. The Spanish Government felt that the provision should chiefly be extended in two respects: chemical products should be included and provision should be made for the possibility of extending the ten-year