Article 39 E

Travaux Préparatoires
(EPC 1973)

Comment:

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Art39eTPEPC1973
Zahlungen der Vertragsstaaten aufgrund der für die Aufrechterhaltung der europäischen Patente 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
M/ 146/R 2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
**Artikel 37**

Zahlungen der Vertragsstaaten aufgrund der für die Aufrechterhaltung der europäischen Patente erhobenen Gebühren


(2) Jeder Vertragsstaat teilt der Organisation alle Angaben mit, die der Verwaltungsrat für die Feststellung der Höhe dieser Zahlungen für notwendig erachtet.

(3) Die Fälligkeit der Zahlungen wird vom Verwaltungsrat festgelegt.

(4) Sind die genannten Zahlungen nicht fristgerecht in voller Höhe geleistet worden, so hat der Vertragsstaat den ausstehenden Betrag vom Fälligkeitstag an zu verzinsen.

**Artikel 38**

Bemessung der Gebühren und Anteile – besondere Finanzbeiträge

(1) Die Höhe der Gebühren nach Artikel 36 und der Anteil nach Artikel 37 sind so zu bemessen, daß die Einnahmen hieraus den Ausgleich des Haushalts der Organisation gewährleisten.

(2) Ist die Organisation jedoch nicht in der Lage, den Haushaltsplan nach Maßgabe des Absatzes 1 auszugleichen, so zahlen die Vertragsstaaten der Organisation besondere Finanzbeiträge, deren Höhe der Verwaltungsrat für das betreffende Haushaltsjahr festsetzt.

(3) Die besonderen Finanzbeiträge werden für jeden Vertragsstaat auf der Grundlage der Anzahl der Patentanmeldungen des vorletzten Jahres vor Inkrafttreten dieses Übereinkommens nach folgendem Aufbringungsschlüssel festgelegt:

- a) zur Hälfte im Verhältnis zur Zahl der in jedem Vertragsstaat eingereichten Patentanmeldungen;
- b) zur Hälfte im Verhältnis zu der zweithöchsten Zahl der Patentanmeldungen, die von den Staatsangehörigen eines jeden Vertragsstaats in den anderen Vertragsstaaten eingereicht werden.

Die Beträge, die von den Staaten zu tragen sind, in denen mehr als 25.000 Patentanmeldungen eingereicht werden, werden jedoch zusammengefaßt und erneut im Verhältnis zu der Gesamtzahl der in diesen Staaten eingereichten Patentanmeldungen aufgeteilt.

**Article 37**

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

(1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75% per cent and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation.

(2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of its payments.

(3) The due dates for these payments shall be determined by the Administrative Council.

(4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.

**Article 38**

Level of fees and payments – Special financial contributions

(1) The amounts of the fees referred to under Article 36 and the proportion referred to under Article 37 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced.

(2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question.

(3) These special financial contributions shall be determined in respect of each Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:

- a) one half in proportion to the number of patent applications filed in each Contracting State;
- b) one half in proportion to the second highest number of patent applications filed by the nationals of each Contracting State in the other Contracting States.

However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25,000 shall then be taken as a whole and a new scale drawn up determined in proportion to the total number of patent applications filed in these States.
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

PREPARATORÝ 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
French Delegation stated that this question was being studied in all Ministries of Finance, especially in France but there were also other possibilities being studied by the French Government which the wording should be wide enough to cover. It was agreed that whether or not there should be an internal tax was a matter for discussion in connection with the Protocol on Privileges and Immunities.

**Article 42b (Payment by the Contracting States in respect of renewal fees for European Patents)**

161. The question was raised as to the treatment of contributions already paid by a State which withdraws from the Convention, both in respect of contributions paid and future renewal fees. There was also the question of contributions payable by States which join the negotiations such as Monaco and Yugoslavia or which accede to the Convention after the date of its entry into force. The Conference agreed that this whole question should be referred back to Working Party IV which was invited to report in time for the final session of the Conference in June 1972.

**Article 42c (Level of fees and payments – special financial contributions)**

162. A point of particular difficulty was the special financial contributions to be paid by the Member States and the Working Party had adopted two variants for the consideration of the Conference. The first was a simple scale
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 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 fee received for a European patent in those States an amount equal to a proportion of that fee, to be fixed by the Administrative Council, provided that, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the European Patent Office.

(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; the minimum amount referred to in paragraph 1 shall apply 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 payments.

(5) The due dates for these payments shall be determined by the Administrative Council.

(6) If a payment is not remitted fully 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.
FIRST PRELIMINARY DRAFT OF A CONVENTION

ESTABLISHING

A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- Stage reached on 29 January 1971 -
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).

BR/GT IV/32 e/70 ond/PA/bm
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 WIFO/DIRTI 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/PA/bm
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 lor/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.
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.

BR/GT IV/31 e/70 sw
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

PRELIMINARY DRAFT CONVENTION
FOR A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Articles 42 to 42 k, 43 to 53 and 187

Text either approved in principle by Working Party IV
or drawn up by its Drafting Committee
(meeting 6 to 9 July 1970)

compared synoptically with
the financial provisions of the Draft Convention relating to a European
Patent Law as drafted by the EEC "Patents" Working Party

BR/GT IV/31 e/70 rti/PB/sw
Article 39

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

(1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75 per cent and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation.

(2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of its payments.

(3) The due dates for these payments shall be determined by the Administrative Council.

(4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.