Article 142 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.
Art. 142

MPÜ

Einheitliche Patente

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Dokumente der MDK

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<th>E 1972</th>
<th>142</th>
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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
PART IX
SPECIAL AGREEMENTS

Article 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 any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

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

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 140 to 166
Article 142

Proposal: Replace the title of Article 142, "Unitary patents", by another title, for example "Multinational patents"

Reason: The title of Article 80 is "Unity of invention", that of Article 117 is "Unity of the European patent application or European patent" and that of Article 142 is "Unitary patents", with "unity" and "unitary" having a different meaning in each case.

The most appropriate name for a patent common to a group of Contracting States would be "common patent" or "Community patent", but the term "Community patent" is already aptly used for the common patent for the countries of the European Communities, i.e. for the patent for the Common Market. The expression "multinational patents" could therefore be considered as a generic term to cover patents common to a group of Contracting States, and can easily be translated into the other two official languages of the European Patent Office.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 10 September 1973

M/54/I/II/III

Original: German

CONFFERENCE DOCUMENT

**Drawn up by:** The Swiss delegation

**Subject:** Proposals for amendments to the draft texts
NEUNTER TEIL
BESONDERE ÜBEREINKOMMEN

Artikel 142
Einheitliche Patente

(1) Eine Gruppe von Vertragsstaaten, die in einem besonderen Übereinkommen bestimmt hat, daß die für diese Staaten erteilten europäischen Patente für die Gesamtheit ihrer Hoheitsgebiete einheitlich sind, kann vorsehen, daß europäische Patente nur für alle diese Staaten gemeinsam erteilt werden können.

(2) Hat eine Gruppe von Vertragsstaaten von der Ermächtigung in Absatz 1 Gebrauch gemacht, so sind die Vorschriften dieses Teils anzuwenden.

Artikel 143
Besondere Organe des Europäischen Patentamts

(1) Die Gruppe von Vertragsstaaten kann dem Europäischen Patentamt zusätzliche Aufgaben übertragen.


Artikel 144
Vertretung vor den besonderen Organen

Die Gruppe von Vertragsstaaten kann bestimmen, daß die Befugnis, vor den in Artikel 143 Absatz 2 genannten besonderen Organen als zugezollerter Vertreter aufzutreten, auf die Personen beschränkt wird, die Staatsangehörige eines Vertragsstaats der Gruppe sind und ihren Geschäftssitz oder Arbeitsplatz in einem dieser Vertragsstaaten haben.

Artikel 145
Engerer Ausschuß des Verwaltungsrats

(1) Zur Überwachung der Tätigkeit der nach Artikel 143 Absatz 2 gebildeten besonderen Organe wird ein engerer Ausschuß des Verwaltungsrats eingesetzt, dem das Europäische Patentamt das Personal, die Arbeitsräume und die materiellen Mittel zur Verfügung stellt, die es zur Durchführung seiner Aufgaben benötigt. Der Präsident des Europäischen Patentamts ist dem engeren Ausschuß des Verwaltungsrats gegenüber für die Tätigkeit der besonderen Organe verantwortlich.

(2) Die Zusammensetzung, die Zuständigkeit und die Tätigkeit des engeren Ausschusses bestimmt die Gruppe von Vertragsstaaten.

PART IX
SPECIAL AGREEMENTS

Article 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 any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

Article 143
Special departments of the European Patent Office

(1) The group of Contracting States may give additional tasks to the European Patent Office.

(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments.

Article 144
Professional representation before special departments

The group of Contracting States may provide that the entitlement to act as professional representatives before the special departments referred to in Article 143, paragraph 2, may be limited to persons who are nationals of one of the Contracting States of the group and who have their place of business or employment in one of these Contracting States.

Article 145
Select committee of the Administrative Council

(1) A select committee of the Administrative Council shall be set up for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting 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

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 Swiss delegation asked whether States concluding a special agreement under Article 8a would have to set up separate bodies.

It was observed that Working Party I had considered that, especially for technical reasons, it was not desirable to provide for a second patent office for the second Convention, but that it was more practical to provide for a single Office, within which certain special organs could be set up for the purposes of applying the second Convention, it being understood, of course, that the expenditure incurred by these special organs would be borne only by the States parties to the special agreement.

In connection with this question, it was further observed that it was for the Administrative Council to appoint the President of the Patent Office and that there was no provision in the Convention limiting its choice of President.

The Conference observed that it would be for the Working Party concerned with the rules applying to the Administrative Council to examine the question of the contacts to be established with the International Patent Institute (IIB).

As regards the Appeals Committee for the staff of the Office, the representative of the General Secretariat of the Council of Europe mentioned the existing international administrative jurisdictions to whom competence could be given. This led to the observations that the Working Party responsible for drawing up the Statute of the Appeals Committee might study this proposal.
INTER-GOVERNMENTAL CONFERENCE FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Brussels, 30 January 1970
BR/26/70

- Secretariat -

MINUTES of the 2nd MEETING held at Luxembourg on 13 to 16 January 1970

Item 1 on the agenda (BR/14/69) (1)

OPENING OF THE MEETING

1. The Conference began its work at 10.00 a.m. on Tuesday 13 January at the Kirchberg European Centre, Luxembourg, with Dr. HAERTEL, President of the German Patent Office, in the Chair (2).

Item 2 on the agenda

ADOPTION OF THE PROVISIONAL AGENDA

2. The Conference adopted the provisional agenda submitted by the President.

(1) The agenda is given in Annex I
(2) The list of those attending the 2nd meeting is given in Annex II.

BR/26 e/70 kel/PA/mk
PART II

Patent law

Chapter I

Patentability

Article 8 a) - Special agreements

20. The Working Party noted that under the terms of the provision adopted by it, it is not possible to designate in an application some only of the Contracting States which are parties to a special agreement if that agreement establishes a unitary patent.

Article 9 - Patentable inventions

21. The Working Party incorporated the contents of Article 1 of the 1963 Strasbourg Convention into the provision of Article 9, paragraph 1.

22. As regards paragraph 2, the British and Swedish delegations wondered whether this provision could not be omitted from the Convention, so as to allow greater flexibility in the development of the rules applicable in the matter of patentable inventions. It could in this case be transferred to the Implementing Regulations.
MINUTES

of the meeting of Working Party I
(Luxembourg, 8 - 11 July 1969)

I

1. The first working meeting of Working Party I, set up by the Conference, was held at Luxembourg from Tuesday 8 to Friday 11 July 1969.

In accordance with the decision taken by the Working Party at its inaugural meeting held at Brussels on 21 May 1969, the Chair was taken by Dr. HAERTHEL, President of the German Patent Office.

In addition to the Commission of the European Communities, the following inter-governmental organisations, which had been invited to take part in the work of the Working Party, were represented: BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute (1).

(1) See annexed list of participants in the meeting of the Working Party.
### Article 8a

**Special agreements**

<table>
<thead>
<tr>
<th>1965 Draft</th>
<th>Working Party text</th>
<th>EFTA Draft</th>
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<td></td>
<td><strong>Any group of Contracting States may provide by a special agreement that a European patent granted for all those States has a unitary character throughout their territories and is subject to the provisions of that special agreement; and that a European patent may not be granted in respect of some only of these States.</strong></td>
<td><strong>Art. 2A(3)</strong> Any group of Contracting States may authorize the granting, in lieu of separate final patents, of a single common final patent effective in the whole of their territories.</td>
</tr>
</tbody>
</table>
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 1 to 41
prepared by Working Party I
(8 to 11 July 1969)

compared synoptically with

- the 1965 version of the Draft Convention as established by the EEC "Patents" Working Party and

- the Draft of an open European Patent Convention drawn up by the Member States of the European Free Trade Association

BR/6 6/69 mk
Situations might arise where the renewal fees for the European patent were payable by the proprietor very soon after the date of the mention of the grant of the patent. This would give rise to difficulties for the proprietor. The Member States of the European Communities therefore proposed a solution which would in any event allow a minimum of two months for payment as from the date of the mention of the grant of the patent.

869. The Committee agreed to this proposal.

**Article 142 — Unitary patents**

870. The Committee referred the comment by the Swiss delegation concerning the title of this Article to the Drafting Committee for examination (see M/54, page 22).

871. The Netherlands delegation wondered whether Article 35 of the Community Patent Convention pursuant to which the applicant was required to file at the European Patent Office a translation of the claims in one of the official languages of each of the Contracting States to that Convention which did not have English, French or German as an official language was covered by Article 63 of the European Patent Convention, which provided that any Contracting State may prescribe that the applicant for or proprietor of the patent must supply a translation of the text in which the European Patent Office intends to grant a European patent. If Article 63 were considered as not authorising the Member States of the European Communities to lay down a requirement such as that contained in Article 35 of the Community Patent Convention, an appropriate provision would have to be inserted, if necessary, in Article 142 of the European Patent Convention. This delegation also wondered if the words “supply to its central industrial property office” could be interpreted under the Community Patent Convention as covering the “central department” set up by the Contracting States by a special agreement.

872. The Committee considered that Article 63 of the Convention did in fact authorise the Contracting States of the Community Patent Convention to stipulate the requirement laid down in Article 35 thereof and also gave an affirmative reply to the question of interpretation raised.

873. The Netherlands delegation finally wondered whether Article 63 covered Article 35, paragraph 4, of the Community Patent Convention, which provided that translations of the claims were to be published by the European Patent Office.

874. The United Kingdom delegation considered that this provision was covered by Article 143, paragraph 1, which stated that the group of Contracting States could give additional tasks to the European Patent Office.

875. The Committee agreed with the United Kingdom delegation’s opinion.

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

876. The delegation of the Federal Republic of Germany explained to the Committee the proposal submitted by the Member States of the European Communities for an addition to be made to paragraph 2 of this Article (see M/14, point 11). This proposal was intended to ensure that, for the running of the special Departments set up under a special agreement, the President of the European Patent Office had all the powers provided under Article 10 for the general conduct of the Office’s operations.

877. The Committee agreed to this proposal.

**Article 144 — Professional representation before special departments**

878. The Chairman noted that a proposal had been put forward as regards this Article by the delegation of the Federal Republic of Germany (see M/47, point 19), and another by the United Kingdom delegation (M/64, page 3). If the German proposal were adopted it would not be necessary to examine the United Kingdom proposal, the substance of which was contained in the German proposal.

879. The delegation of the Federal Republic of Germany suggested that this Article be simplified in order to make it as flexible and comprehensive as possible. It therefore proposed that the provision in question be confined to stating that the group of Contracting States could lay down special arrangements to govern representation of parties before the special departments without any limitations being applied.

880. The Netherlands delegation supported this proposal.

881. The United Kingdom delegation was prepared to support the German proposal and withdraw its own. It wondered whether the title of the Article should not be amended by deleting the word “professional” in order to broaden its scope and render it applicable also to representation by employees.

882. The Committee agreed to the German proposal and the amendment suggested by the United Kingdom delegation.

**Article 149 — Joint designation**

883. The Committee referred the proposals of the Netherlands delegation (see M/52, page 14) and of the delegation of the Federal Republic of Germany (see M/47, point 44) to the Drafting Committee for examination.

**Article 150 - Application of the Patent Co-operation Treaty**

884. The Committee referred the proposal by the Luxembourg delegation (see M/9, point 28) to the Drafting Committee for examination.

**Article 153 — The European Patent Office as a designated Office**

885. The Committee examined the Norwegian delegation’s proposal (see M/71, page 3) concerning paragraph 2 of the Article, to the effect that the reference to Article 39, paragraph 1, of the Co-operation Treaty, should be deleted.

886. The Chairman said that if the Committee subscribed to the Norwegian delegation’s opinion that Article 153 should refer only to Chapter I of the PCT, whereas the fee referred to in Article 39 related to Chapter II, it would have to be considered whether another provision, the content corresponding to that of Article 153, paragraph 2, with a reference to Article 39 of the PCT, should not be included, possibly in Article 155. Failing such a provision the Convention would contain no stipulation regarding the national fee for the procedure under Chapter II of the PCT.

887. The WIPO delegation considered that this problem could be resolved in one of two ways: either by adopting the Norwegian delegation’s proposal and adding a provision to Article 155, as mentioned by the Chairman, or else keeping Article 153, paragraph 2, as it stood — which would have the advantage of making superfluous one part of the Norwegian delegation’s proposal on Article 155, paragraph 2, first sentence, i.e. the addition of a sentence regarding the periods of time laid down in Article 39 of the PCT.