Article 3 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. 3  
MPÖ  
Territoriale Wirkung

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Dokumente der MDK

| L 1972                                                   | 3                             | M/146/R 1                                | Art. 3                 |
ENTWURF EINES ÜBEREINKOMMENS
ÜBER EIN EUROPÄISCHES PATENTERTEILUNGSVERFAHREN

CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS
(EUROPEAN PATENT CONVENTION)

PROJET DE CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 1
Original: English/French/German

CONFEREECE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 1 to 26
ERSTER TEIL
ALLGEMEINE UND INSTITUTIONELLE VORSCHRIFTEN

Kapitel I
Allgemeine Vorschriften

Artikel 1
Europäisches Patenterteilungsverfahren

Durch dieses Übereinkommen wird ein den Vertragsstaaten gemeinsames Recht für die Erteilung von Erfindungspatenten geschaffen.

Artikel 2
Europäisches Patent

(1) Die nach diesem Übereinkommen erteilten Patente erhalten die Bezeichnung europäisches Patent.


Artikel 3
Territoriale Wirkung

Die Erteilung des europäischen Patents kann für einen, mehrere oder alle Vertragsstaaten beantragt werden.

Artikel 4
Europäische Patentorganisation

(1) Durch dieses Übereinkommen wird eine Europäische Patentorganisation gegründet, die eine gemeinsame Einrichtung der Vertragsstaaten ist, nachstehend genannt wird und mit verwaltungsmaßiger und finanzieller Selbständigkeit ausgestattet ist.

(2) Diese Organisation hat die Aufgabe, die europäischen Patente zu erteilen. Die Durchführung dieser Aufgabe wird von einem Europäischen Patentamt wahrgenommen, dessen Tätigkeit von einem Verwaltungsrat überwacht wird.

Vgl. Regel 8 (Patentklassifikation)

Kapitel II
Die Europäische Patentorganisation

Artikel 5
Rechtsstellung

(1) Die Organisation besitzt Rechtspersönlichkeit.

PART I
GENERAL AND INSTITUTIONAL PROVISIONS

Chapter I
General provisions

Article 1
European system for the grant of patents

This Convention hereby establishes a system of law, common to the Contracting States, for the grant of patents for invention.

Article 2
European patent

(1) Patents granted by virtue of this Convention shall be called European patents.

(2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless otherwise provided for by this Convention.

Article 3
Territorial effect

The grant of a European patent may be requested for one or more of the Contracting States.

Article 4
European Patent Organisation

(1) This Convention hereby establishes a European Patent Organisation, common to the Contracting States and hereinafter referred to as the Organisation, which shall be endowed with administrative and financial autonomy.

(2) The Organisation shall grant European patents. This task shall be carried out by a European Patent Office, whose work shall be supervised by an Administrative Council.

Cf. Rule 8 (Patent classification)

Chapter II
The European Patent Organisation

Article 5
Legal status

(1) The Organisation shall have legal personality.
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
would be difficult in its opinion, to accept the possibility of the Co-operation Treaty being applicable vis-à-vis all the Contracting States parties to the Second Convention, if not all of these States had ratified that Treaty. Failing ratification of the Co-operation Treaty by all these States, the nationals of third countries which were contracting parties to the PCT would, within a Contracting State party to the Second Convention but which had not ratified the PCT, enjoy advantages which the nationals of the latter State would not enjoy in the said third countries.

On the other hand, it was pointed out that the Contracting States to the Second Convention had the faculty of providing that a Community patent could be granted on the basis of an international application, even if not all these States had ratified the PCT.

In this connection, it was also observed that the Second Convention provided in Article 96 that certain rules of an international convention (Continental shelf) were binding for all the Contracting States without all of them having to ratify that convention.

(c) Articles on which the delegations had made observations

Article 2, paragraph 2, and Article 3

14. Two delegations pointed out that these two provisions would be better placed in Part II, Chapter III, relating to the effects of the European patent.
MINUTES

of the

second meeting of the Co-ordinating Committee

held in Brussels from 15 to 19 May 1972

1. The second meeting of the Co-ordinating Committee was held in Brussels from 15 to 19 May 1972 with Dr HAERTHEL, President of the German Patent Office, in the Chair.

Representatives of the Commission of the European Communities, of the IIB and of WIPO took part as observers. The representatives of the Council of Europe sent their apologies for being unable to attend. The list of those taking part in the meeting is given in Annex I to this report.

2. The Co-ordinating Committee - hereinafter referred to as the Committee - adopted the provisional agenda as contained in BR/174/72, supplemented as follows:

BR/209 e/72 i/o/XM/prk .../...
Article 3
Territorial effect

A European patent may be requested for one or more of the Contracting States.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Text drawn up by the Conference Drafting Committee
8 to 24 March and 10 to 20 April 1972)
II

Articles 1 to 30

General provisions – Substantive Patent Law
(Report by the British delegation: BR/16/69)

13. The Conference noted, as regards Article 2a, that in view of the provisions of Article 68a an applicant may apply for a European patent for one Contracting State only. It therefore felt that the drafting of the English text of Article 2a should be adapted accordingly and that the note to the Article should be deleted.

14. The Conference observed as regards Article 2, that the present state of developments did not allow it to be determined whether computer programmes could be the subject of a patent.

15. A number of delegations stated that they would have preferred in Article 11 (3), a solution consisting in adopting the alternative laid down in Article 6 of the Strasbourg Convention, i.e. a solution which would simply avoid double protection for one and the same invention. It was pointed out by other delegations that this solution would not fit in with the system of deferred examination adopted for the present Convention. This was because, where examination is requested for the later application while no request for examination has yet been introduced for the earlier application, this solution does not allow a decision be taken in respect of the later application until the end of the procedure for the grant of the earlier application. For these reasons, the Conference retained the text adopted by the Working Party for Article 11 (3), subject to reconsidering the matter once the interested circles have had the opportunity to present their observations.
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

.../...
Article 2 a) - Territorial limitation

10. The Working Party draws attention to the fact that no decision has been taken as to whether the European patent can be requested for only one Contracting State. (see also comments on Article 8 a)).

Article 3 - European Patent Office

11. No comment.

Article 4 - European Patent Court

12. The Working Party did not consider it necessary to retain a provision on the setting up of a European Patent Court.

The British delegation reserved the right to announce its final views on this question when all the Articles of the preliminary draft have been drawn up.

Article 5 - Persons entitled to apply for a European patent

13. The Working Party attempted to draw up a text which, conforming to the principles set out on this subject in the memorandum (doc. BR/2/69, point II - 3), would be based on the provisions of Article 2 of the Paris Convention. This was one of the reasons for which the term "registered place of business", which was the subject of the Working Party's discussions, has been replaced by the terms drawn from the Paris Convention : "real and effective industrial or commercial establishment".
MINUTES

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

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. HAERTEL, 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.
For only one Contracting State, a European Patent can be requested. In this particular case, the Patent should be re-examined. Note: for some or all of the Contracting States, a European Patent may be requested.

Working Party text

Art. 2 a
of the European Free Trade Association —
the Draft of an Open European Patent Convention drawn up by the Member States

— Working Party and

the 1965 version of the Draft Convention as established by the EEC "Patenten"

... compared synonymically with...

(8 to 11 July 1969)
Prepared by Working Party I

Art. 1 to 41

For a European System for the Grant of Patents

Preliminary Draft Convention

— Secretariat —

BR/6/69

Brussels, 27 July 1969

BR/6/69

69 o/69 mk
Article 3
Territorial effect

The grant of a European patent may be requested for one or more of the Contracting States.