Article 152 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. 152

MPÜ

Einreichung und Weiterleitung der internationalen Anmeldung

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provision was also adopted to authorise the national authorities of the host country to withdraw the right to a place of business for reasons of "ordre public".

(d) Deletion from the list of professional representatives

The Main Committee examined the grounds for deletion of professional representatives from the list and re-arranged them in Rules 103 (permanent solution) and 107 (transitional period). No difficulties were presented by the three grounds for deletion which apply both in the transitional period and in the permanent solution, namely, death or legal incapacity of the representative, his ceasing to be a national of one of the Contracting States, where the President does not grant or is not required to grant exemption from this requirement, or his ceasing to have a place of business or employment in any of the Contracting States. There was unanimous agreement that, in respect of representatives during a transitional period, the national central industrial property office in question must, in these three cases, withdraw the certificate which it has issued and the representative must be deleted from the list. There was, however, disagreement as to whether the mere surrender of the place of business in the State in which the certificate was granted should result in the withdrawal of the certificate, if the representative establishes another place of business in another Contracting State. The Committee's answer was in the negative. The majority adopted the viewpoint that it would be unfair and unjustifiable to make representation before the European Patent Office during a transitional period dependent on a merely national requirement of any State that the place of business should be within its territory. This restriction on the national central industrial property offices was incorporated in Rule 107 relating to the transitional period, while at the same time it was laid down that the national offices could withdraw the certificate, apart from on one of the three above-mentioned grounds, pursuant to other conditions of national law and, in particular, on disciplinary grounds.

Subject to these limitations, representatives entered on the list during the transitional period will, throughout this period, be required to have a certificate issued by the national central industrial property office of a Contracting State. This requirement will, however, cease to apply on the expiry of the transitional period after which the certificate will be devoid of all effect. Thus, representatives during the transitional period and representatives newly authorised after having taken the European qualifying examination will have equal status under the permanent solution. Both kinds of representative will therefore be subject to the disciplinary power decided upon by the Administrative Council pursuant to Article 134, paragraph 7(c); in order to avoid a situation where there would be no disciplinary supervision, the disciplinary power should begin to apply not later than on the expiry of the transitional period.

The Main Committee also remedied other defects in Rules 103 and 107 by including in them provisions laying down that, when the ground for deletion no longer obtains, a representative deleted from the list may be re-entered on it.

13. Conversion procedure (Articles 135-137/Rules 104)

Article 135, paragraph 1, sets out the grounds for the conversion of a forfeited European patent application into a national application. It was proposed to delete the possibilities for conversion under the national laws of the Contracting States in paragraph 1(b). It was maintained that, firstly, Articles 120 and 121 protected the applicant sufficiently against the consequences of omissions and, secondly, that there were no grounds to justify pursuit at national level of European patent applications refused or European patents revoked on material grounds. The principal objection raised against this proposal for deletion was that it was a matter for the national laws whether conversion should be permissible in cases other than those compulsorily prescribed, i.e. in cases where national law provided for forms of protection such as utility models, the grant of which was conditional on less exacting requirements than those applicable to the grant of patents for invention. The great majority of the Committee subsequently rejected the proposal, so that the existing solution was retained.

14. Revocation and prior rights (Articles 138-139)

With regard to the grounds on which, pursuant to Article 138, a European patent may be revoked, the Main Committee made it clear that extension of the protection conferred can be a ground for revocation, irrespective of whether the extension occurs during opposition proceedings or national proceedings. This clarification takes account of the fact that a change in the claims of a European patent during national revocation proceedings or during national proceedings for partial surrender may result in an inadmissible extension of protection. Moreover, the Committee refused to impose, in paragraph 2 of the same Article, any restrictions on national laws in respect of the form in which limitations of European patent claims can be made in cases of partial revocation.

A further proposal, in connection with the rules laid down in Article 139 governing the relationship between European and national patents, to provide that, in cases of collision, the European patent should always take precedence was also unsuccessful. The Committee, by a great majority, rejected this solution which would have been a further step towards adopting a maximum solution, principally in the belief that, in the interests of flexibility, the national laws of the Contracting States should be left to adopt such collision rules as they considered justified.

15. Relationship between the Convention and the PCT (Articles 150-157/Rules 105-106)

The Main Committee re-examined the provisions of Articles 150-157, linking the Convention and the Patent Cooperation Treaty/PCT, i.e., the provisions governing the procedure for international applications which are the subject of proceedings before the European Patent Office. In the course of this examination, it remedied the remaining defects and, where necessary, removed discrepancies between the provisions of the Convention and those of the PCT.

With regard to material content, the amendment made by the Main Committee to Article 157 concerning the effects of the publication of the international application on proceedings before the European Patent Office should be noted. A consequence of the previous text of paragraph 1, according to which publication of the international application by the International Bureau of WIPO takes the place of the publication of a European patent application, would have been that, in each case, the published international application would have formed part of the state of the art, pursuant to Article 52, paragraph 3. This legal consequence was regarded as unjustified where an application, which has not been published in an official language of the European Patent Office, is withdrawn before its communication to the European Patent Office. Therefore, the Committee, after a thorough examination of the relevant provisions of the PCT, decided by a large majority to take account of this case by providing that an international application published pursuant to Article 21 of the
ANNEX I
REPORT
by Mr. Paul Braendli, Lic. iur.
Vice-Director of the Federal Intellectual Property Office (Switzerland)
on the results of Main Committee I’s proceedings

ANNEX II
REPORT
by Mr. R. Bowen
Assistant Comptroller, British Patent Office
on the results of Main Committee II’s proceedings

ANNEX III
REPORT
by Mr. Fressonnet
Deputy Director of the Institut National de la Propriété Industrielle (France)
on the results of Main Committee III’s proceedings

ANNEX IV
REPORT
by Mr. A. Fernandez Mazarambroz
Head of the Spanish Patent Office
on the results of the Credentials Committee’s proceedings
with regard to full powers for signing the Convention
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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
Article 152
Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 75, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Cooperation Treaty.

(3) Each international application shall be subject to the payment of the transmittal fee, which shall be payable on the filing of the application.
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 152

Filing and transmittal of the international application

(1) Unchanged from 1972 published text.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Cooperation Treaty.

(3) Unchanged from 1972 published text.

M/136/I/R 10 ge
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 27 September 1973

M/136/I/R 10

Original: English/French/German

TEXTS DRAWN UP BY
THE DRAFTING COMMITTEE OF MAIN COMMITTEE I
AT THE MEETING ON 26 SEPTEMBER 1973

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Artikel 152
Einreichung und Weiterleitung der internationalen Anmeldung

(1) Wählt der Anmelder das Europäische Patentamt als Anmeldeamt für seine internationale Anmeldung, so hat er diese unmittelbar beim Europäischen Patentamt einzureichen. Artikel 73 Absatz 2 ist jedoch anzuwenden.

(2) Die Vertragsstaaten ergreifen im Fall der Einreichung einer internationalen Anmeldung beim Europäischen Patentamt durch Vermittlung der zuständigen Zentralbehörde für den gewerblichen Rechtsschutz alle geeigneten Maßnahmen, um sicherzustellen, daß die Anmeldungen so rechtzeitig an das Europäische Patentamt weitergeleitet werden, daß dieses den Übermittlungspflichten nach dem Zusammenarbeitsvertrag rechtzeitig genügen kann.

(3) Für die internationale Anmeldung ist die Übermittlungsgebühr zu zahlen, die gleichzeitig mit der Anmeldung zu entrichten ist.

Vgl. Regel 105 (Weiterleitung der internationalen Anmeldung an das Europäische Patentamt)

Article 152
Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 73, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Co-operation Treaty.

(3) Each international application shall be subject to the payment of the transmittal fee, which shall be payable on the filing of the application.

Cf. Rule 105 (Transmittal of the international application to the European Patent Office)

Artikel 153
Das Europäische Patentamt als Bestimmungsamt


Article 153
The European Patent Office as a designated Office

(1) The European Patent Office shall act as a designated Office within the meaning of Article 2(xiii) of the Co-operation Treaty for those Contracting States to this Convention in respect of which the Co-operation Treaty has entered into force and which are designated in the international application if the applicant informs the receiving Office in the international application that he wishes to obtain a European patent for these States. The same shall apply if, in the international application, the applicant designates a Contracting State of which the national law provides that designation of that State shall have the effect of the application being for a European patent.
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
too. In this way advance provision would also be made for the eventuality of the national patent offices of certain Contracting States being wound up in the course of time. The European Patent Office could then take over the function of receiving Office in place of the national office. For these reasons, the Working Party in no way restricted the possibility of the European Patent Office being chosen as a receiving Office.

63. The Working Party finally discussed whether, on filing an international application for which the European Patent Office could be the receiving Office, the applicant must file the application directly with the European Patent Office, or whether he can forward it to the European Office via a national office. The Working Party decided in favour of providing only for direct filing with the European Patent Office (2nd variant of paragraph 1), in order to enable the short time limit for the transmittal of the documents to the International Bureau to be met. It was in any case agreed that it must be open to every Contracting State to prescribe that international applications intended for filing with the European Patent Office must be introduced via its own national office. It is for this reason that the last sentence of paragraph 1 refers to Article 66, paragraph 2. In this case too, the European Patent Office would be responsible for examining whether the formalities of the PCT have been met.

Article 113e - The European Patent Office as a designated or elected Office

64. The following questions were discussed in connection
is available to act as an elected Office. The requirements
to be met for the European Patent Office to act as an
elected Office in an individual case are set out in Article
113e, paragraph 3.

**Article 113c - The European Patent Office as a receiving Office**

60. No comment.

**Article 113d - Filing and transmittal of the international application**

61. The Working Party agreed unanimously that, for an
international application, the applicant has the choice of
using either the European Patent Office or a national
office as the receiving Office within the meaning of the
PCT. The Working Party has expressed this in the opening
words of paragraph 1. In the Working Party's opinion this
does not pre-judge the question for which countries protection
can be requested via an international application having
the European Patent Office as receiving Office.

62. The Working Party discussed whether the European Patent
Office can also be a receiving Office when the applicant
does not want a European Patent, but only desires protection
in States which are not Contracting States to the European
Convention, and gave an affirmative answer. The Working
Party did not wish to exclude this possibility, but desired
instead to leave the applicant the choice between the national
patent office and the European Patent Office in this case.

BR/12 e/69 ern/PA/che
MINUTES
of the meeting of Working Party I
(Luxembourg, 24 to 28 November 1969)

I.

1. The third working meeting of Working Party I was held at Luxembourg from Monday 24 to Friday 28 November 1969, with Dr. HAERTHEL, President of the German Patent Office, in the Chair.

The Commission of the European Communities, BIRPI, the General Secretariat of the Council of Europe and the International Patent Institute took part in the meeting (1).

2. The Working Party agreed to appoint the following as rapporteurs:

- a member of the German delegation for Articles 88 to 96 c (Examination procedure) (2),

(1) See Annex for list of those attending the meeting of the Working Party.

(2) It was originally agreed at the October meeting that the German delegation should produce a report for Articles 88 to 104.

BR/12 e/69 kel/PA/mk
Article 113d
Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 66, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent national central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Co-operation Treaty.
of the European Free Trade Association —
— the Draft of an Open European Patent Convention drawn up by the Member States

— the 1962 and 1965 versions of the Draft Convention as established by the EEC

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Article 120 - Filing and transmittal of the international application

29. The Working Party agreed to stipulate in a new paragraph 3 that the transmittal fee referred to in Rule 14.1 of the Regulations under the PCT should be payable for PCT-applications. This fee would be payable on filing the application; the amount will be prescribed in the Rules relating to Fees.

Article 121 - The European Patent Office as a designated or elected Office

30. The Working Party confined this Article to defining the function of the European Patent Office as a designated Office. The European Patent Office as an elected Office is dealt with in the new Article 121b.

31. In paragraph 1 the Working Party decided to undertake, apart from a textual correction, an alignment on Article 4, paragraph 1(ii) of the PCT, according to which the applicant now had to notify on the international application itself that he required a European patent for the Contracting States designated, instead of being given a period of 12 months as from the date of priority.

32. Furthermore, the Working Party laid down in paragraph 1 the legal consequence in the event of a Contracting State specifying pursuant to the last provision contained in Article 4, paragraph 1(ii), of the PCT, that its being designated had the effect of an application for a European patent: the European Patent Office would also be a designated Office in this instance.

BR/94 e/71 aut/KM/prk .../...
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

--- Secretariat ---

Brussels, 6th April 1971
BR/94/71

MINUTES

of the 7th meeting of Working Party I
held at Luxembourg from 26 to 29 January 1971

---

Item 1 on the agenda (1) : Opening of the meeting and adoption
of the provisional agenda

1. The Working Party held its seventh meeting at
Luxembourg from Tuesday 26 to Thursday 28 January 1971
with Dr. HAERTEL, President of the German Patent Office,
in the Chair.

The meeting was attended by representatives of the
Commission of the European Communities, WIPO/OMPI and the
International Patent Institute (2). The representative
of the General Secretariat of the Council of Europe sent
his apologies for being unable to attend.

2. The Drafting Committee, under the Chairmanship of the
President of the Netherlands "Octrooiraad", Mr J.V.
VAN BENTHEM, held its meetings directly after the delib-
erations of the Working Party, and also on the morning
of 29 January 1971.

(1) For the provisional agenda (BR/GT I/101/71), see Annex I.
(2) For the list of those attending the meeting of the
Working Party, see Annex II.

BR/94 e/71 son/KM/prk
Article 120 (former Article 113d)
Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 64, paragraph 2, shall nevertheless apply mutatis mutandis.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent national central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Co-operation Treaty.

BR/70 e/70 fm.
FIRST PRELIMINARY DRAFT
OF A CONVENTION ESTABLISHING
A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Articles drafted by Working Parties I, II, III and IV)
PCT, for which the European Patent Office is a designated Office, shall be deemed to form part of the state of the art only if it is confirmed, i.e. if it is communicated to the European Patent Office in one of its official languages and the national fee prescribed is paid. In order to create better information facilities for third parties, the Committee provided for a mention to be made in the European Patent Bulletin of the publication by the International Bureau of WIPO of the international application, and, where the publication by the International Bureau is not in one of the official languages of the European Patent Office, for the compulsory publication of the international application communicated to the European Patent Office.

The Committee then inserted a new Article 153a, which empowers the European Patent Office to act as an International Searching Authority within the meaning of the PCT, pursuant to an agreement to be concluded with WIPO at the appropriate time.

16. Activities of the European Patent Office during a transitional period (Article 161/Rule 106)

The principle, laid down in Article 161, that the European Patent Office will, after opening, only be able to assume its activities progressively was not questioned. The Main Committee was also of the unanimous opinion that, during the transitional period, searches should be carried out in all areas of technology, a task which the European Patent Office should easily be in a position to perform after taking over the capacity of the IIB and the Berlin sub-office. This unequivocal declaration of intent was, like other general opinions expressed by the Main Committee, included in the Minutes. Nevertheless, in order to be able to meet difficulties, at present unforeseeable, which might subsequently arise, the Committee decided not to incorporate this principle in any binding form in Article 161. On the other hand, it was considered a firm principle that the Administrative Council should not be able to rescind decisions on the extension of the system once they had been adopted. Article 161 was re-worded accordingly.

17. Adjustment of the Convention to take account of the decisions of Main Committee II and III

The textual amendments adopted by Main Committee III did not affect the provisions dealt with by Main Committee II, relating to the inclusion of Search Divisions as departments in the proceedings (Article 15), a measure by which the Convention was adjusted to take account of the integration of the IIB provided for in the Protocol on Centralisation, and to the setting up of a Legal Division as a further department in the proceedings (Article 15) competent for certain decisions. These adjustments entailed purely drafting amendments (Articles 91, 105, paragraph 1, 109, paragraph 3, Rules 44-47), deletion of provisions which had become superfluous (Article 124, Rules 48, 67, paragraph 2) and new provisions such as the Article 153a referred to under point 15 above.

III Protocol on Recognition

The Protocol on Recognition, which lays down rules governing jurisdiction and the recognition of decisions of courts and other authorities of the Contracting States in respect of the right to the grant of a European patent required an amendment as to substance only in one point. With respect to the provision on jurisdiction in the Draft Protocol (Article 5), it was pointed out that a plaintiff residing in a Contracting State claiming the right to the grant of a European patent vis-à-vis an applicant not residing within the territory of a Contracting State would always have to bring proceedings before the German courts and not, as would be desirable, before the courts of his place of residence. The Main Committee agreed that this was a valid point and supplemented Article 5 to the effect that the courts of the plaintiff's place of residence shall also have jurisdiction in such cases, with, however, the subsidiary jurisdiction of the courts of the Federal Republic of Germany being retained.

IV Recommendation on Preparations for the Opening of the European Patent Office

The Main Committee approved the Recommendation which provides for the setting up of an Interim Committee responsible for preparatory work for the opening of the European Patent Office. In addition, in the interests of a clear delimitation of responsibilities the preparation both of the five-year plan mentioned in the Protocol on Centralisation and of the study on the extension of searches to the documentation of the Contracting States, introduced into that Protocol by Main Committee II, was assigned to the Interim Committee. With regard to the point that the Working Parties of the Interim Committee should, as a general rule, each be composed of six signatory States, the Committee decided that the Federal Republic of Germany and the Netherlands, as the countries in which the European Patent Office was based, should always be admitted as observers at meetings of Working Parties of which they were not members, and that other States should be admitted as observers at meetings where problems of special interest to them were dealt with. Furthermore, it was made clear that not only inter-governmental but also private international organisations could be invited as observers.

V Resolution on training staff for the European Patent Office

Finally, as the last item of the negotiations the Main Committee approved without discussion the draft Resolution on training staff for the European Patent Office contained in M/37 which essentially provides for the formation of an Interim Committee responsible for the training and recruiting of examiners.

D Final remarks

Here a report closes which has, perhaps, been too detailed, but which has attempted to summarise in the space of scarcely one hour the results of three weeks of extensive negotiations. The report may also have succeeded in showing that, in spite of the multitude of individual problems, which were usually resolved, those parts of the Draft Convention and the Draft Implementing Regulations which were the subject of the Main Committee's deliberations have been retained without any substantial changes. This is a happy state of affairs and demonstrates how thoroughly the Drafts were prepared.

The rapporteur feels he should not finish without paying tribute to the Chairman of the Main Committee, Dr. Kurt Haertel, for the efficient but gentle manner in which he has guided the negotiations, thus enabling the Main Committee to deal with such a multitude of problems. Main Committee I is also indebted to Mr. van Bentheim, the indefatigable Chairman of Drafting Committee I, and his colleagues on that Committee, to the Secretariat staff, the interpreters and all the silent helpers whose selfless work has enabled the newly completed Drafts to be submitted today to the Committee of the Whole.