Article 154 E

Travaux Préparatoires (EPC 1973)

Comment:

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Art154eTPEPC1973
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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 153a 15.4

The European Patent Office as an International Searching Authority

(1) The European Patent Office shall act as an International Searching Authority, within the meaning of Chapter I of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State in respect of which the Cooperation Treaty has entered into force, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Searching Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 17, paragraph 3(a), of the Cooperation Treaty.
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
(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 17, paragraph 3(a), of the Cooperation Treaty.
CORRECTION TO M/59/I/II of 11.9.1973

Insert the text of a new Article 153a in the amendments which should be made to the Convention in the event of the IIR being incorporated into the European Patent Office; these amendments are contained in M/59/I/II of 11 September 1973:

ARTICLE 153a

The European Patent Office as an International Searching Authority

(1) The European Patent Office shall act as an International Searching Authority, within the meaning of Chapter I of the Cooperation Treaty, in respect of applicants who are residents or nationals of a Contracting State in respect of which the Cooperation Treaty has entered into force, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Searching Authority in respect of an applicant who is a resident or national of a State which is not a Contracting State to the Cooperation Treaty and in respect of which the Assembly of the International Patent Cooperation Union has appointed the Office as a competent International Searching Authority, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.
MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 18 September 1973
M/101/I
Original: French

CONGRESS DOCUMENT

Drawn up by: French delegation
Subject: New Article 153a

(3) Für Entscheidungen, die das Europäische Patentamt als Bestimmungsamt nach Artikel 25 Absatz 2 Buchstabe a des Zusammenarbeitsvertrags zu treffen hat, ist die Prüfungsabteilung zuständig.

**Artikel 154**

Das Europäische Patentamt als mit der internationalen vorläufigen Prüfung beauftragte Behörde


(3) Für Entscheidungen über einen Widerspruch des Anmelders gegen eine vom Europäischen Patentamt nach Artikel 34 Absatz 3 Buchstabe a des Zusammenarbeitsvertrags für die internationale vorläufige Prüfung festgesetzte zusätzliche Gebühr sind die Beschwerdekammern zuständig.

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(2) The international application shall be supplied to the European Patent Office in one of its official languages. The applicant shall pay to the European Patent Office a national fee provided for in Article 22, paragraph 1, and Article 39, paragraph 1, of the Co-operation Treaty.

(3) When the European Patent Office acts as a designated Office, thy Examining Division shall be competent to take decisions which are required under Article 25, paragraph 2(a), of the Co-operation Treaty.

**Article 154**

The European Patent Office as an International Preliminary Examining Authority

(1) The European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Co-operation Treaty for applicants who are residents or nationals of a Contracting State bound by that Chapter subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Preliminary Examining Authority for an applicant who is a resident or national of a State not party to the Co-operation Treaty or not bound by Chapter II of that Treaty in respect of which the Assembly of the International Patent Co-operation Union has, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization, specified the European Patent Office as a competent International Preliminary Examining Authority.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 34, paragraph 3(a), of the Co-operation Treaty.

**Article 155**

The European Patent Office as an elected Office

The European Patent Office shall act as an elected Office within the meaning of Article 2(xiv) of the Co-operation Treaty if the applicant has elected any of the designated States referred to in Article 153, paragraph 1, or Article 149, paragraph 2, for which Chapter II of that Treaty has become binding. Subject to the prior

**Artikel 152**

Einreichung und Weiterleitung der internationalen Anmeldung

(1) Währt 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 Zusammenarbeitvertrag rechtzeitig genügen kann.

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

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

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**Artikel 153**

Das Europäische Patentamt als Bestimmungsamt


(1) Subject to the prior approval of the Administrative Council, the European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State party to the Paris Convention for the Protection of Industrial Property in respect of which the Assembly of the International Patent Co-operation Union has appointed the European Patent Office as a competent receiving Office, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

**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.

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

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**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
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 Patentreteilungsverfahrens
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
888. The Chairman noted the Committee's agreement to the Norwegian delegation's proposal on the grounds that Article 153 referred to the European Patent Office in its capacity as a designated Office and that it was therefore not appropriate for there to be a provision referring to the European Patent Office as an elected office.

Article 153a (154) — The European Patent Office as an International Searching Authority

889. The Committee examined the proposal for a new Article 153a submitted by the French delegation in M/101.

890. The French delegation stated that following the decisions taken by Main Committee II a new Article ought to be included to cover the eventuality of the European Patent Office acting as an International Searching Authority.

891. The Chairman noted that the French delegation's proposal met with support.

892. After congratulating the French delegation on this proposal, the WIPO delegation made two comments. Firstly, it wondered whether this provision should not be made clearer so that it would also apply in an eventuality which did not appear to be covered in paragraph 2 of this new Article. Paragraph 1 covered the eventuality of the European Patent Office acting as a PCT searching authority on behalf of nationals and residents of Contracting States to the Convention and paragraph 2 enabled the European Patent Office also to act as a searching authority for applicants who were nationals or residents of States other than PCT Contracting States. However there was an intermediate group, namely those States (and their nationals and residents) which were not Contracting States to the European Convention, although they were Contracting States to the PCT. It should be possible to cover this case as well by a suitable provision. The WIPO delegation's second remark was on the wording of paragraph 2 of this Article, which made reference to the Office being appointed as a competent International Searching Authority by the Assembly of the International Patent Co-operation Union. In the sort of case referred to in Rule 19.1 of the PCT, it seemed more appropriate to speak of a receiving Office.

893. The French delegation was in favour of the first suggestion put forward by the WIPO delegation.

894. The Committee agreed to the French delegation's proposal as amended in the manner suggested by the WIPO delegation. This Article was referred to the Drafting Committee.

Article 153 (156) — The European Patent Office as an elected Office

895. The Committee examined the Norwegian delegation's proposal (see M/71, page 3) for the addition of a new paragraph 2 to this Article.

896. The Norwegian delegation said that its proposal was the logical corollary to the proposal adopted by the Committee with regard to Article 153, paragraph 2. The final sentence in this new paragraph was designed to meet the eventuality of an "elected" State making use of the option of making a reservation, as provided for in Article 64, paragraph 2, of the PCT.

897. The Chairman proposed that the Committee approach these two problems separately. The first problem was the inclusion in Article 153 of a provision corresponding to Article 153, paragraph 2, laying down that the application must be filed in one of the official languages of the European Patent Office and that the national fee specified in Article 39, paragraph 1, of the PCT must be paid. The second problem was where one of the elected States had availed itself of the reservation provided for in Article 64, paragraph 2, of the PCT.

898. The WIPO delegation said that, with regard to Chapter II of the PCT, the effect of the Norwegian proposal would be to do away with the uniformity of treatment between European patent applications based on a PCT application. Under the new wording proposed by the Norwegian delegation, the European States would be given the opportunity to decide, each on their own account, whether or not to avail themselves of the reservation provided for in Article 64, paragraph 2. If a State availed itself of this option, the practical consequence would be that even under Chapter II the applicant would have to produce the translations after twenty months and not after twenty-five months as laid down in Chapter II. Thus, if a European State so decided, the European Patent Office would receive the translations after twenty months and would examine the application at that time; this would mean that a decision by one State would automatically apply to all the other States. The WIPO delegation pointed out that although compatible with the PCT, this measure represented an important decision on which the Committee ought to conduct a searching examination.

899. The Norwegian delegation pointed out that the problem had a much broader scope, since the present text of the Convention did not prevent a Contracting State from making use of the right to enter reservations as provided for in Article 64, paragraph 2. Furthermore, a State could also avail itself of the option to make a reservation under Article 64, paragraph 1, and declare that it was not bound by the provisions of Chapter II of the PCT. As for the more specific problem mentioned by the WIPO delegation, the Norwegian delegation thought it was correct that if a PCT international application designated the European Patent Office and a European State which had only accepted Chapter I of the PCT the translation of the international application would have to be submitted within twenty months, in order to obtain a European patent for that State. However, if the applicant submitted the translation of his application four months afterwards, he could nevertheless obtain a European patent in respect of the other States which had accepted both Chapter I and Chapter II of the PCT.

900. The delegation of the Federal Republic of Germany considered that this problem was rather theoretical and wished the existing wording to be maintained. Bearing in mind the fact that Chapter II was designed to facilitate the work of the offices in the elected States, by making provision for a preliminary international examination, it was hardly likely that the European Patent Office or a number of European States would forgo the advantages conferred upon them by Chapter II. The German delegation was of the opinion that even if a State availed itself of the reservation under Article 64, paragraph 2, this would not have any effect either upon the other States or the European Patent Office since a reservation under Article 64, paragraph 2, merely implied that the national office was not obliged to wait before proceeding with the examination of the international application; it did not mean that the national office of an elected State was obliged to start examination straight away.

901. The United Kingdom delegation shared the point of view of the delegation of the Federal Republic of Germany. The new paragraph proposed by the Norwegian delegation was not acceptable, in that it was not advisable to lay down a provision the effect of which would be that translations of an international application would be sent at two different times. If, in order to take account of the fact that certain States had acceded to Chapter II of the PCT, examination of international applications had to be postponed until expiry of the twenty-five month period, examination should also be deferred in the case