

COMPENDIUM OF  
**EC**  
INTELLECTUAL  
PROPERTY  
LAW



**EUROPEAN  
INFORMATION  
SERVICES**



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**EC Intellectual  
Property Law**

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**Compendium of  
EC Intellectual Property Law**

## PUBLISHERS NOTE

The Compendium of EC Intellectual Property Law is the fourth in a new series of books produced by Butterworths European Information Services encapsulating the core legislative, judicial and other official Community materials relating to specialist areas of European Community law.

The aim of the work is to provide the busy practitioner, adviser and student with a single comprehensive reference source relating to the intellectual property policy of the European Communities.

The book is divided into four parts providing relevant primary Community legislation, enacted and proposed European Community secondary legislation and headnotes of cases before the European Court of Justice.

This book states the law as at 25 June 1990.

Any queries on the content or scope of this work should be directed to the Managing Editor, Butterworths European Information Services, at 88 Kingsway, London WC2B 6AB.

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## TREATY PROVISIONS





## EEC TREATY

### Article 30

Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

### Article 36

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

### Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development, or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or promoting technical or economic progress while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

#### **Article 86**

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### **Article 222**

This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.

## **SECONDARY LEGISLATION**



**COUNCIL CONVENTION 76/76/EEC**

**FOR THE EUROPEAN PATENT FOR THE COMMON MARKET**

**(Community Patent Convention)<sup>1</sup>**

**PREAMBLE**

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

DESIRING to give unitary and autonomous effect to European patents granted in respect of their territories under the Convention on the grant of European patents of 5 October 1973,

ANXIOUS to establish a Community patent system which contributes to the attainment of the objectives of the Treaty establishing the European Economic Community, and in particular to the elimination within the Community of the distortion of competition which may result from the territorial aspect of national protection rights,

CONSIDERING that one of the fundamental objectives of the Treaty establishing the European Economic Community is the abolition of obstacles to the free movement of goods,

CONSIDERING that one of the most suitable means of ensuring that this objective will be achieved, as regards the free movement of goods protected by patents, is the creation of a Community patent system,

CONSIDERING that the creation of such a Community patent system is therefore inseparable from the attainment of the objectives of the Treaty and thus linked with the Community legal order,

CONSIDERING that it is necessary for these purposes for the High Contracting Parties to conclude a Convention which constitutes a special agreement within the meaning of Article 142 of the Convention on the grant of European patents, a Regional Patent Treaty within the meaning of Article 45 (1) of the Patent Cooperation Treaty of 19 June 1970, and a special agreement within the meaning of Article 19 of the Convention for the protection of industrial property, signed in Paris on 20 March 1883 and last revised on 14 July 1967,

CONSIDERING that it is essential that this Convention be interpreted in

a uniform manner so that the rights and obligations flowing from a Community patent be identical throughout the Community and that therefore jurisdiction be conferred on the Court of Justice of the European Communities,

CONVINCED therefore that the conclusion of this Convention is necessary to facilitate the achievement of the tasks of the European Economic Community and that therefore it is an appropriate measure to be taken by the Member States, subject to national ratification procedures, to ensure fulfilment of Community obligations,

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

— HIS MAJESTY THE KING OF THE BELGIANS:

Mr J. DESCHAMPS, Belgian Ambassador to Luxembourg;

— HER MAJESTY THE QUEEN OF DENMARK:

Mr. K. V. SKJØDT, Director, Danish Patent Office;

— THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr. Peter HERMES, State Secretary, Federal Ministry of Foreign Affairs;

— THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Emile CAZIMAJOU, Minister Plenipotentiary, Deputy Permanent Representative;

— THE PRESIDENT OF IRELAND:

Mr John BRUTON, Parliamentary Secretary, Ministry for Industry and Commerce;

— THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr F. CATTANEI, State Secretary, Ministry of Foreign Affairs;

— HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Marcel MART, Minister for Economic Affairs, Small Firms and of Tourism;

— HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr Th. M. HAZEKAMP, State Secretary, Ministry of Economic Affairs;

— HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

The Rt. Hon. Lord GORONWY-ROBERTS,

Minister of State, Foreign and Commonwealth Office, Deputy Leader of the House of Lords;

WHO, meeting in the Council of the European Communities, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

## PART I

### GENERAL AND INSTITUTIONAL PROVISIONS

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Common system of law for patents

1. A system of law, common to the Contracting States, concerning patents for invention is hereby established.
2. The common system of law shall govern the European patents granted for the Contracting States in accordance with the Convention on the grant of European patents, hereinafter referred to as 'the European Patent Convention', and the European patent applications in which such States are designated.

##### Article 2

##### Community patent

1. European patents granted for the Contracting States shall be called Community patents.
2. Community patents shall have a unitary character. They shall have equal effect throughout the territories to which this Convention applies and may only be granted, transferred, revoked or allowed to

lapse in respect of the whole of such territories. The same shall apply *mutatis mutandis* to applications for European patents in which the Contracting States are designated.

3. Community patents shall have an autonomous character. They shall be subject only to the provisions of this Convention and those provisions of the European Patent Convention which are binding upon every European patent and which shall consequently be deemed to be provisions of this Convention.

### **Article 3**

#### **Joint designation**

Designation of the States parties to this Convention in accordance with Article 79 of the European Patent Convention shall be effected jointly. Designation of one or some only of these States shall be deemed to be designation of all of these States.

### **Article 4**

#### **Setting up of special departments**

For implementing the procedures laid down in this Convention, special departments common to the Contracting States shall be set up within the European Patent Office. The work of these departments shall be supervised by a Select Committee of the Administrative Council of the European Patent Organization.

### **Article 5**

#### **Jurisdiction of the Court of Justice of the European Communities**

1. The Court of Justice of the European Communities shall in respect of this Convention have the jurisdiction conferred on it by this Convention. The Protocol on the Statute of the Court of Justice of the European Economic Community and the Rules of Procedure of the Court of Justice shall apply.
2. The Rules of Procedure shall be adapted and supplemented, as necessary, in conformity with Article 188 of the Treaty establishing the European Economic Community.

### **Article 6**

#### **National patents**

This Convention shall be without prejudice to the right of the Contracting States to grant national patents.



## **CHAPTER II**

### **SPECIAL DEPARTMENTS OF EUROPEAN PATENT OFFICE**

#### **Article 7**

The special departments The special departments shall be as follows:

- (a) a Patent Administration Division;
- (b) one or more Revocation Divisions;
- (c) one or more Revocation Boards.

#### **Article 8**

##### **Patent Administration Division**

1. The Patent Administration Division shall be responsible for all acts of the European Patent Office relating to Community patents, in so far as these acts are not the responsibility of other departments of the office. It shall in particular be responsible for decisions in respect of entries in the Register of Community Patents.
2. Decisions of the Patent Administration Division shall be taken by one legally qualified member.
3. The members of the Patent Administration Division may not be members of the Boards of Appeal or the Enlarged Board of Appeal set up under the European Patent Convention, nor of the Revocation Boards.

#### **Article 9**

##### **Revocation Divisions**

1. The Revocation Divisions shall be responsible for the examination of requests for the limitation of and applications for the revocation of Community patents, and for determining compensation under Article 44 (5).
2. A Revocation Division shall consist of one legally qualified member who shall be the chairman, and two technically qualified members. Prior to the taking of a final decision on the request or application, the Revocation Division may entrust the examination of the request or application to one of its members. Oral proceedings shall be before the Revocation Division itself.