

# **WORLD PATENT LAW AND PRACTICE**

**VOLUME 2A, PART 2**

**By**

**J. W. BAXTER**

**Author (1968-1978)**

**Consulting Author (1979)**

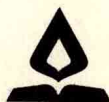
*of the Legal Department—Patents,  
Imperial Chemical Industries Limited*

**JOHN P. SINNOTT**

**Revising Author (from 1979)**

*of the Patent Department  
American Standard Inc.*

**1984**



**MATTHEW  
BENDER**

**235 E. 45TH STREET, NEW YORK, N.Y. 10017**

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### Principle Conventions

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**CONVENTION FOR THE EUROPEAN PATENT FOR THE  
COMMON MARKET****(COMMUNITY PATENT CONVENTION)****Preamble**

- PART I:** General and institutional provisions
- PART II:** Substantive patent law
- PART III:** Renewal, lapse, limitation and revocation of the  
Community patent
- PART IV:** Appeals procedure
- PART V:** Common provisions
- PART VI:** Jurisdiction and procedure in actions relating to  
Community patents
- PART VII:** Impact on national law
- PART VIII:** Transitional provisions
- PART IX:** Final provisions

**Implementing regulations to the Convention  
for the European patent for the Common Market**

- PART I:** Implementing regulations to Part I of the Convention
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Convention
- PART III:** Implementing regulations to Part III of the  
Convention
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- PART V:** Implementing regulations to Part V of the  
Convention
- PART VI:** Implementing regulations to Part VIII of the  
Convention

**FINAL ACT****Council resolution of 15 December 1975 on the Convention for  
the European patent for the Common Market**

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

**(Community Patent Convention)**

**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 fulfillment 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. CATTANEL,

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.

#### *Article 10*

### **Revocation Boards**

1. The Revocation Boards shall be responsible for the examination of appeals from the decisions of the Revocation Divisions and the Patent Administration Division and for expressing an opinion on the extent of protection of a Community patent.
2. For appeals from a decision of a Revocation Division, a Revocation Board shall consist of two legally qualified members, one of whom shall be the chairman, and three technically qualified members.
3. For appeals from a decision of the Patent Administration Division, a Revocation Board shall consist of three legally qualified members.
4. For the purposes of expressing an opinion on the extent of protection of a Community patent, a Revocation Board shall normally consist of two legally qualified members, one of whom shall be the chairman, and one technically qualified member. However, if the opinion has to be expressed in connection with an appeal from a Revocation Division or if the Revocation Board considers that the nature of the opinion so requires, the Revocation Board shall be composed as in paragraph 2.

#### *Article 11*

### **Appointment of members of the Revocation Boards**

1. The Select Committee of the Administrative Council shall appoint:
  - (a) the chairmen of the Revocation Boards on a proposal from a member of that Committee, after the President of the European Patent Office has been consulted, or on his proposal;
  - (b) the other members of the Revocation Boards on a proposal from the President of the European Patent Office.
2. The members of the boards may be reappointed by decision of

the Select Committee after the President of the European Patent Office has been consulted.

3. Subject to Article 12 (1), the Select Committee shall exercise disciplinary authority over the employees appointed in accordance with paragraph 1.

#### *Article 12*

##### **Independence of the members of the Revocation Boards**

1. The members of the Revocation Boards shall be appointed for a term of five years and may not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice of the European Communities, before which the matter shall be brought by the President of the European Patent Office, takes a decision to this effect.

2. The members of the boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or Legal Division set up under the European Patent Convention, nor of the Patent Administration Division or Revocation Divisions.

3. In their decisions the members of the boards shall not be bound by any instructions and shall comply only with the provisions of this Convention.

4. The Rules of Procedure of the Revocation Boards shall be adopted in accordance with the implementing regulations. They shall be subject to the approval of the Select Committee of the Administrative Council.

#### *Article 13*

##### **Exclusion and objection**

1. Members of the Revocation Divisions and the Revocation Boards may not take part in any proceedings if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if they have participated in the final decision on the case in the proceedings for grant or opposition proceedings. Furthermore, members of the Revocation Boards may not take part in appeal proceedings if they participated in the decision under appeal.

2. If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Revocation Division or a Revocation Board considers that he should not take part in any proceedings, he shall inform the division or board accordingly.

3. Members of a Revocation Division or of a Revocation Board may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of members.

4. The Revocation Divisions and the Revocation Boards shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.

#### *Article 14*

#### **Languages for proceedings and publications**

1. The official languages of the European Patent Office shall also be the official languages of the special departments.

2. Throughout the proceedings before the special departments, a translation filed in accordance with the second sentence of Article 14 (2) of the European Patent Convention may be brought into conformity with the original text of the European patent application.

3. The official language of the European Patent Office in which the Community patent is granted shall be used as the language of the proceedings in all proceedings before the special departments concerning the Community patent, unless otherwise provided in the implementing regulations.

4. However, natural or legal persons having their residence or principal place of business within the territory of a Contracting State having a language other than one of the official languages of the European Patent Office as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of the Contracting State concerned. They must however file a translation in the language of the proceedings within the time limit prescribed in the

implementing regulations; in the cases provided for in the implementing regulations, they may file a translation in a different official language of the European Patent Office.

5. If any document is not filed in the language prescribed by this Convention, or if any translation required by virtue of this Convention is not filed in due time, the document shall be deemed not to have been received.

6. New specifications of Community patents published following limitation or revocation proceedings shall be published in the language of the proceedings; they shall include a translation of the amended claims in one of the official languages of each of the Contracting States which do not have as an official language the language of the proceedings.

7. The Community Patent Bulletin shall be published in the three official languages of the European Patent Office.

8. Entries in the Register of Community Patents shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.

9. No Contracting State may avail itself of the authorizations given in Articles 65, 67 (3) and 70 (3) of the European Patent Convention.

### CHAPTER III

## The Select Committee Of The Administrative Council

### *Article 15*

#### Membership

1. The Select Committee of the Administrative Council shall be composed of the representatives of the Contracting States, the representative of the Commission of the European Communities and their alternate representatives. Each Contracting State and the Commission shall be entitled to appoint one representative and one alternate representative to the Select Committee. The same members shall represent the Contracting States on the Administrative Council and on the Select Committee.

2. The members of the Select Committee may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

#### *Article 16*

### **Chairmanship**

1. The Select Committee of the Administrative Council shall elect a chairman and a deputy chairman from among the representatives and alternate representatives of the Contracting States. The deputy chairman shall *ex officio* replace the chairman in the event of his being prevented from attending to his duties.
2. The duration of the terms of office of the chairman and the deputy chairman shall be three years. The terms of office shall be renewable.

#### *Article 17*

### **Board**

1. The Select Committee of the Administrative Council may set up a board composed of five of its members.
2. The chairman and the deputy chairman of the Select Committee shall be members of the board *ex officio*; the other three members shall be elected by the Select Committee.
3. The term of office of the members elected by the Select Committee shall be three years. This term of office shall not be renewable.
4. The board shall perform the duties given to it by the Select Committee in accordance with the Rules of Procedure.

#### *Article 18*

### **Meetings**

1. Meetings of the Select Committee of the Administrative Council shall be convened by its chairman.
2. The President of the European Patent Office shall take part in the deliberations of the Select Committee.
3. The Select Committee shall hold an ordinary meeting once each



year. In addition, it shall meet on the initiative of its chairman or at the request of one-third of the Contracting States.

4. The deliberations of the Select Committee shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.
5. The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.

### *Article 19*

#### **Languages of the Select Committee**

1. The languages in use in the deliberations of the Select Committee of the Administrative Council shall be English, French and German.
2. Documents submitted to the Select Committee, and the minutes of its deliberations, shall be drawn up in the three languages mentioned in paragraph 1.

### *Article 20*

#### **Competence of the Select Committee in certain cases**

1. The Select Committee of the Administrative Council shall be competent to amend the following provisions of this Convention:
  - (a) the time limits laid down in this Convention which are to be observed *vis-à-vis* the European Patent Office;
  - (b) the implementing regulations.
2. The Select Committee shall be competent, in conformity with this Convention, to adopt or amend the following provisions:
  - (a) the financial regulations;
  - (b) the rules relating to fees;
  - (c) its Rules of Procedure.

### *Article 21*

#### **Voting rights**

1. The right to vote in the Select Committee of the Administrative Council shall be restricted to the Contracting States.
2. Each Contracting State shall have one vote, subject to the application of the provisions of Article 23.