



## Recommendation 384 (1964)<sup>1</sup>

# European patent law

Parliamentary Assembly

The Assembly,

Having regard to [Recommendation 23](#) of 8th September 1949 in which it proposed the drafting of a Convention on the creation of a European Patent Office, responsible for the issuing of a European inventors' certificate, which would be recognised in the Contracting States ;

Considering that the policy advocated by the Committee of Governmental Experts, founded on [Recommendation 23 \(1949\)](#), was that the immediate task of the Council of Europe in the field of patents was to work out such measures as could be put into effect in the immediate future, and that these measures constituted the preparatory stage leading to the ultimate establishment of a European patent system, and that this policy was followed by the Committee of Ministers ;

Having regard to the fact that two European Conventions in the field of patents are at present in force, namely the European Convention on the formalities required for patent applications and the European Convention on the establishment of a uniform system of classification of patents for invention, that the European Convention on the unification of certain parts of substantive law of patent for invention is open for signature, and that a European Convention to facilitate the filing and examination of patent applications in a number of States is in preparation ;

Considering that a preliminary draft Convention for a European patent law has been prepared within the framework of the European Economic Community ;

Noting with satisfaction that the work undertaken in the field of patents within the framework of the European Economic Community generally corresponds to the wishes expressed by the Assembly in its above-mentioned [Recommendation 23](#) of 1949 ;

Considering that there are two aspects of the preliminary draft Convention for a European patent law which deserve the attention of the Assembly and that these concern :

*the question of who is entitled to apply for a European patent, and*

*the question of the possibility of third States acceding to the Convention for a European patent law, and under what conditions ;*

As regards the question of who is entitled to apply for a European patent :

*Considering that the preliminary draft Convention sets forth two alternatives, one of which makes a European patent available to any person wishing to obtain protection for his invention for the whole of the territory of the Contracting States, the other restricting the category of persons entitled to apply for a European patent to those individuals or corporate bodies who possess the nationality of one of the Contracting States ;*

*Considering that the establishment of a truly international patent system requires that there should be no distinction as to the nationality of the applicant for a European patent ;*

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1. Assembly debate on 17th January 1964 (24th Sitting) (see [Doc. 1708](#), [Doc. 1708](#), report of the Legal Committee). Text adopted by the Assembly on 17th January 1964 (24th Sitting).



As regards the question of the possibility of third States acceding to the Convention for a European patent law ; and under what conditions :

*Considering that Article 211 of the preliminary draft Convention provides that third countries may accede to the Convention if they are members of the Paris Union, but that such accession would require the unanimous consent of the Contracting Parties to the Convention ;*

*Considering that the possibility of third States acceding to the Convention will be seriously diminished if the principle of the unanimous consent of the original Contracting Parties is maintained ;*

*Considering that it is desirable that a less rigid rule should be found and that one of the following solutions should be taken into consideration :*

*Any State should be allowed to accede to the Convention if it is a member of the Paris Union, without the unanimous consent of the countries already party to the Convention being required ;*

*Any European State, member of the Paris Union, should be allowed to accede, without the unanimous consent of the countries already party to the Convention being required ;*

*Any State, member of the Paris Union, which has ratified the European Convention on the unification of certain points of substantive law on patents for invention, prepared within the framework of the Council of Europe, and signed on 25th October 1963, should be allowed to accede, without the unanimous consent of the countries already party to the Convention being required ;*

Having regard to the report of the Legal Committee (Doc. 1708),

Recommends that the Committee of Ministers should advise member Governments which have participated in the preparation of the preliminary draft Convention for a European patent law to submit that draft and the said report to the Committee of Experts of the Council of Europe for examination, and to take into consideration for the final drafting the comments made within the framework of this Committee of Experts by the representatives of the countries which have not taken part in the preparatory work of the preliminary draft Convention.