Recommendation 23 (1949)

European Patents Office

Parliamentary Assembly

(Doc. 110)

The Consultative Assembly,

Approving the decisions of the Committee on Economic Questions,

1. Submits to the Committee of Ministers the project for the creation of a European Patents Office, which has been studied by this Committee, together with an opinion upon it furnished by the Committee on Legal and Administrative Questions;

2. Requests the Committee of Ministers to inform the Standing Committee at the earliest possible date, through the President of the Assembly, of any objections which it may have to make to the implementation of the project;

3. Instructs the Committee on Economic Questions to submit to it, in the course of its next Session, a final draft, together with the opinion thereon of the Committee on Legal and Administrative Questions.

STUDY FOR DRAFT PROPOSAL OF A CONVENTION ON THE CREATION OF A EUROPEAN PATENTS OFFICE

The Governments of.....,

Considering that the fulfilment of closer union between Members of the Council by means of agreements and common action, particularly in the economic and administrative fields, is one of the principal aims of the Council of Europe;

Considering that the effective and inexpensive safeguarding of the rights of European inventors calls for the creation of a European public organisation responsible for the granting, in accordance with common regulations, of industrial rights, the final validity of which would depend on the respective national legislations;

Considering that the effective and inexpensive safeguarding of the rights of European inventors calls for the creation of a European public organisation responsible for the granting, in accordance with common regulations, of industrial rights, the final validity of which would depend on the respective national legislations;

Considering that the effective and inexpensive safeguarding of the rights of European inventors calls for the creation of a European public organisation responsible for the granting, in accordance with common regulations, of industrial rights, the final validity of which would depend on the respective national legislations;

Considering that in the waiting period before unification of national legislations and of local industrial rights' offices, the creation of a European Patents Office would be an immediate and definite step in that direction;

Considering that technical progress and development of inventions make increasingly imperative the pooling of the means and resources of each of the Member States of the Council for the protection of the inventor and of national industries which benefit from his activities;

Considering Article 15 of the International Convention for the protection of industrial rights signed in Paris on 20th March, 1883, revised in Brussels on 14th December, 1900, in Washington on 2nd June, 1911, at The Hague on 6th November, 1925, and in London on 2nd June, 1934, together with the resolutions of the International Congress of Vienna in 1873 and of the Parliamentary Economic Conference of 1916;

Considering that by Recommendations of... and of..., the Consultative Assembly and the Committee of Ministers of the Council of Europe have respectively adopted the Proposals set out below,

Agree that :

Art. 1. - A European Patents Office shall be set up responsible for the issuing of a "European Inventors' Certificate" to inventors who apply for it through their respective national services for the protection of industrial rights.

Such certificates shall not entitle to any final industrial rights unless the conditions laid down in the respective national legislations are fulfilled. Nevertheless, the decision of the European Office concerning the establishment of novelty of the invention will count, for the national service called upon to issue the Patent, as the final fulfilment of one of the conditions.

Art. 2. - The procedure for the issuing of the European Inventors' Certificate shall be as follows :

Any person, or group of persons, may apply for a patent to one of the national services for the protection of industrial rights in a Member State and at the same time request a European invention certificate.

Within a fortnight of receipt of such application, the service concerned shall refer it to the European Patents Office which will then proceed to an examination, by cross-questioning if necessary, with a view to ascertaining whether novelty and patentability of the invention can be established, in accordance with rules which the specialised section mentioned below will have laid down in accordance with the legislation and precedents of the Member States.

If the application is rejected, the person concerned shall be entitled, during a period of 3 months, to make a claim before the specialised section of the office.

If the application is upheld, a communication shall be sent within a fortnight from the date of decision to the national service for the protection of industrial rights in the Member States so that any opposition by third parties may be declared within two months.

At the expiration of this period, the Office shall take a final decision, against which a claim by the applicant or by third parties may be laid before the specialised section during a period of two months from the date of posting of the communication of this decision to the national service.

On expiration of the time limit for laying of claims, or after the decision of the specialised section regarding any claim, the European Office shall communicate its decision and the national service to whom the application for a patent was made shall proceed to the granting of the patent on the conditions laid down in Article 1.

The other services shall do likewise in the case of any request made to them later by the applicant.

Art. 3. - The national patent obtained by registration of the European certificate shall be subject to the conditions, particularly those affecting validity and forfeiture, laid down in the national legislation.

Art. 4. - The European Office shall receive from the Governments, Members of the Council of Europe, the originals, or certified true copies, in the form of photocopies or micro-photo copies of any documentation which they possess, or which they may constitute or acquire in regard to these matters, in particular the facsimiles of patents granted, or applications for patents filed with their respective national services. These shall be communicated to the Governments as early as possible.

Art. 5. - A Board of Directors, consisting of eight governmental representatives, nominated by the Committee of Ministers, will be responsible for the functioning of the European Office. The Board will appoint the Director of the Office, approve the Budget, and supervise the work of the Director.

The Director will make appointments to fill the administrative posts provided for in the establishment of the Office. The members of the specialised section, consisting of ten European experts of high standing in the sphere of industrial property will, however, be appointed on the proposal of the Board by the Committee of Ministers of the Council of Europe.

Art. 6. - The Office will be a public institution of the Council of Europe, and as such it will be attached to the Secretariat General of the Council. In that capacity it will enjoy the privileges and immunities prescribed in the General Agreement of 2nd September, 1949. The officials of the Office will have the status of officials of the Council of Europe. The Committee of Ministers, the Consultative Assembly and the Secretariat General of the Council of Europe will have a deciding voice in regard to the activities and the management of the Office.

Art.7. - The internal, financial and administrative regulations of the Office shall be subject to approval by the Secretariat-General of the Council of Europe. The latter will, in this respect, have a dual responsibility to the Committee of Ministers and to the Consultative Assembly.

Art. 8. - The financial resources of the Office will be provided :

a. (a) By charges and fees contributed by those who make use of the services of the Office;

b. (b) By a subsidy, granted by the Council of Europe, out of the budget of the Secretariat-General.

The details regarding these charges and fees will be settled by the Board of Directors, subject to the approval of the Committee of Ministers.

Art. 9. - The present Convention, which is concluded for a specified period, may be amended by the Committee of Ministers, on a recommendation to that effect by the Consultative Assembly. Amendments will come into force as from the date of a Minute, drawn up by the Secretary-General, placing on record the decision of the Committee of Ministers.

Art. 10. - The present Convention shall be ratified by the respective legislative authorities and will come into force as soon as eight instruments of ratification have been deposited with the Secretary-General.

Done at Strasbourg this..... in French and in English, both texts being authentic, in a single copy which will be retained in the Archives of the Council of Europe. The Secretariat-General will communicate certified true copies to all the signatories.

OPINION OF THE COMMITTEE ON LEGAL AND ADMINISTRATIVE QUESTIONS

Letter of the Chairman of the Committee :

" The Legal and Administrative Committee have taken into consideration the report of M. Longchambon and the action which our Committee proposes to take.

I have the honour to inform you that the Committee of which I am Chairman can see no legal objection to your suggested course of action. "