

On the alignment of the European Patent Convention and the Patent Cooperation Treaty with requirements of the Patent Law Treaty

Citation for published version (APA):

Mulder, C. A. M. (2011). *On the alignment of the European Patent Convention and the Patent Cooperation Treaty with requirements of the Patent Law Treaty*. [Doctoral Thesis, Maastricht University]. Helze BV Publisher. <https://doi.org/10.26481/dis.20111219cm>

Document status and date:

Published: 01/01/2011

DOI:

[10.26481/dis.20111219cm](https://doi.org/10.26481/dis.20111219cm)

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

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Propositions accompanying the thesis
On the Alignment of the European Patent Convention and the Patent Cooperation Treaty with Requirements of the Patent Law Treaty
by
Dr. C.A.M. Mulder

– 1 –

The setting of a condition in Rule 36(1)(b) of the European Patent Convention in relation to the objection of the Examining Division of the European Patent Office that the European patent application does not meet the requirement of unity of invention is a violation of Article 4G(1) of the Paris Convention.

– 2 –

Allowing an applicant of a European patent application to add a priority claim to an earlier filed application when filing missing parts under Rule 56(3) of the European Patent Convention as allowed according to the *Guidelines for Examination in the European Patent Office* (Part A, Chapter II, § 5.4.1) is a violation of Article 5(6)(b) of the Patent Law Treaty and may give rise to an extension of subject-matter of the European patent application, which is contrary to the provision in Article 123(2) of the European Patent Convention.

This thesis, Chapter II

– 3 –

The Regulations under the Patent Cooperation Treaty should be renumbered.

– 4 –

If the aim of the Patent Law Treaty is to “harmonize and streamline” formal procedures relating to national and regional patent applications and maintenance of patents, then it is strange to observe that many provisions of the Patent Law Treaty contain compulsory as well as optional requirements leaving it up to the Contracting Parties to decide which of the optional requirements are made compulsory in their national law.

This thesis, Chapter I

– 5 –

It is contrary to the aim of the Patent Law Treaty to “harmonize and streamline” formal procedures relating to national and regional patent applications and maintenance of patents that the alignment of the European Patent Convention and of the Patent Cooperation Treaty with the requirements of the Patent Law Treaty has resulted in more divergent requirements for an applicant filing a European patent application or an international application at the European Patent Office as receiving Office than before the alignment of these treaties with the Patent Law Treaty.

This thesis

– 6 –

In view of the intimate relationship between the PLT and the PCT, a better alignment of the PCT with the principle requirements of the PLT is compulsory.

This thesis, Chapter IV

– 7 –

The use and value of international preliminary examination under Chapter II of the Patent Cooperation Treaty should be enhanced by re-introducing that the International Preliminary Examining Authority is obliged to issue at least one Written Opinion of its own apart from recycling the Written Opinion established by the International Searching Authority and directly proceeding to the issuance of the International Preliminary Examination Report.

– 8 –

The formulation of the duration of time limits as "*reasonable under the circumstances*" in relation to notifications sent to the applicant, as can be found in a plurality of Rules of the Patent Cooperation Treaty, should be replaced by a specified minimum duration of at least one month, preferably, two months.

This thesis, Chapter VII

– 9 –

In its opinion G 3/08 the Enlarged Board of Appeal implicitly criticizes the Administrative Council of the European Patent Organisation for taking too much liberty when amending the Implementing Regulations of the European Patent Convention.

G 3/08, Reason 7.2.1

– 10 –

It is strange that Rule 66.2(d) of the Patent Cooperation Treaty in relation to the time limit for filing a response to the Written Opinion of the International Preliminary Examining Authority, apart from the formulation "*shall be reasonable under the circumstances*", specifies at least four different durations of the time limit and is rarely used. In addition, it is the only time limit in the Patent Cooperation Treaty which contains the formulation "*may be extended if the applicant so requests before its expiration*", which is compliant with Article 11(1)(i) of the Patent Law Treaty in relation to relief in respect of time limits.

This thesis, Chapter VII

– 11 –

It would be interesting to observe what would happen if the verdict of a Dutch judge, which argues that it is not allowed to remove a wrongly parked bicycle until after duly warning the owner (24 hours), were applied to wrongly parked cars.

– 12 –

Writing a second PhD thesis should best be done thirty years after completing the first one, because by then the candidate has forgotten the loneliness concomitant with doing research.

– 13 –

Exercises involving conscious connected breathing are more effective if the emotions touched upon during deep intense breathing are contained instead of the body being allowed to express itself.