jurisdiction under Article 16 of the Convention, even in an appeal in cassation where the national rules of procedure limit the court's reviewal to the grounds raised by the parties.

3. The term "proceedings concerned with the registration or validity of patents" contained in Article 16 (4) of the Convention of 27 September 1968 must be regarded as an independent concept intended to have uniform application in all the Contracting States.

4. The term "proceedings concerned with the registration or validity of patents" does not include a dispute between an employee for whose invention a patent has been applied for or obtained and his employer, where the dispute relates to their respective rights in that patent arising out of the contract of employment.

In Case 288/82

REFERENCE to the Court under the Protocol of 31 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters from the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the appeal in cassation pending before that court between

FERDINAND M. J. J. DUIJNSTEE, liquidator in the winding-up of BV Schroefboutenfabriek,

and

LODEWIJK GODERBAUER,

on the interpretation of Articles 19 and 16 (4) of the Convention,

THE COURT (Fourth Chamber)

composed of: J. Mertens de Wilmars, President, T. Koopmans and K. Bahlmann, Presidents of Chambers, and A. O'Keeffe and G. Bosco, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

While in the employment of BV Schroefboutenfabriek in the Netherlands, Mr Goderbauer made an invention, namely a "mounting for a rail on a girder", for which he was granted a patent in that country. He also applied for, and in certain cases has already been granted, patents in many countries in Europe (including Belgium, France, Italy and the Federal Republic of Germany, which are parties to the Brussels Convention of 1968) and outside.

In an application for an interlocutory injunction before the Arrondissementsrechtbank [District Court], Maastricht, Mr Duijnstee, the liquidator in the winding-up of BV Schroefboutenfabriek [hereinafter referred to as "the Liquidator"], claimed, producing a decision of the Netherlands Patent Office, that that company was entitled to the Netherlands patent under Article 10 of the Octrooiwet [Patents Law], and requested that Mr Goderbauer should be ordered to transfer to the insolvent company all the patents which he had obtained and all the applications for patents which he had made in other countries.

In a writ dated 21 December 1979 Mr Goderbauer requested the same court to declare that "in so far as the patents and applications for patents referred to in the writ are the property of the insolvent company, Mr Goderbauer has a lien over them as against the Liquidator".

The Liquidator, the defendant in those proceedings, submitted in the first place that Mr Goderbauer's claim should be dismissed and further pleaded a counterclaim, contending that the court should order Mr Goderbauer to cooperate, subject to payment of a periodic penalty, in the transfer of the patents and patent applications into the name of the company.

By judgment of 24 April 1980, the Arrondissementsrechtbank dismissed both the claim and the counterclaim. The case was then brought before the Gerechtshof [Regional Court of Appeal], 's-Hertogenbosch, which on 20 May 1981 confirmed the decision of the Arrondissementsrechtbank.

The Liquidator then appealed to the Hoge Raad on the ground that there had been an error of law inasmuch as the judgment of the Gerechtshof was contrary to the Patents Law.

However, in his Opinion delivered at the sitting on 17 September 1982, the Advocate General at the Hoge Raad stressed that, before considering the grounds of appeal, it was necessary to examine whether the Netherlands courts had jurisdiction. He noted that, although the Netherlands rules of procedure (Article 419 (1) of the Wetboek van Burgerlijke Rechtsvordering [Code of Civil Procedure]) provide that "The Hoge Raad shall confine its consideration of the case to the grounds on which the appeal is based" and that court is therefore not obliged in this case to check whether it has jurisdiction, Article 19 of the 1968 Convention

nevertheless requires a court of a Contracting State to declare of its own motion that it has no jurisdiction where it "is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16". Article 16 (4) in fact provides that "in proceedings concerned with the registration or validity of patents . . . the courts of the Contracting State in which the deposit or registration has been applied for" are to have exclusive jurisdiction, which implies in this case that the courts of the other States which have acceded to the Convention have exclusive jurisdiction in relation to the patents applied for or granted on their territory. The Advocate General therefore proposed that the Hoge Raad should submit to the Court of Justice a number of questions on the interpretation of provisions of the Brussels Convention.

By judgment of 29 October 1982, the Hoge Raad stayed the proceedings and submitted the following questions to the Court of Justice:

"1. Does the obligation imposed on the court of a Contracting State by Article 19 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters to declare of its own motion that it has no jurisdiction override a provision such as Article 419 (1) of the Netherlands Code of Civil Procedure, with the result that the court of cassation must consider whether the judgment appealed against relates to a claim covered by Article 19 and, if that question is answered in the affirmative, quash the judgment appealed against, even if the question has not been raised in the grounds of appeal?

2. Must the question whether the proceedings are 'concerned with the registration or validity of patents' within the meaning of Article 16 (4) of the said Convention be determined:

   (a) According to the law of the Contracting State whose courts are referred to in that provision;

   (b) According to the *lex fori;* or

   (c) on the basis of an independent interpretation of the said provision?

3. If Question 2 is answered in the manner suggested under (c), must a claim such as that concerned here . . . be considered to be a claim covered by Article 16 (4)?"

The order for reference was lodged at the Court Registry on 3 November 1982.

Pursuant to Article 5 of the Protocol of 3 June 1971 and in accordance with Article 20 of the Protocol on the Statute of the Court of Justice, written observations were submitted by the following: the Government of the Federal Republic of Germany, represented by Christof Böhmer, acting as Agent; the United Kingdom, represented by J. D. Howes of the Treasury Solicitor's Department, acting as Agent; and the Commission of the European Communities, represented by Erich Zimmermann, its Legal Adviser, acting as Agent, assisted by H. Stein of the Zwolle Bar.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. By order of 4 May 1983 the Court decided to assign the case to the Fourth Chamber, pursuant to Article 95 (1) and (2) of its Rules of Procedure.

II — Written observations submitted to the Court under Article 20 of the Protocol on the Statute of the Court of Justice

The *Government of the Federal Republic of Germany* takes the view, so far as the first question is concerned, that Article 19 of the Convention should be interpreted as meaning that where a court in a Contracting State has before it a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction under Article 16 of the Convention, it must declare that it has no jurisdiction, whether or not want of jurisdiction has been pleaded by the parties.

That interpretation results both from the wording of the provision and from the *travaux préparatoires* of the Convention.

The principle that the courts of the Contracting States are to apply the provisions of the Convention of their own motion, whether or not they are pleaded by the parties, is formally laid down in Articles 19 and 20 of the Convention on the examination by the courts of the Contracting States of their international jurisdiction. Furthermore, it is clear from the Jenard Report (Chapter III, Section II) that it is that very principle which inspired the authors of the Convention. If a court of a Contracting State failed to apply Article 19 of its own motion, its decision would neither be recognized nor enforced in the other Contracting States.

The principle cited above applies not only to the court of first instance, but equally to the appellate courts. That follows from the fact that exclusive jurisdiction is a matter of public policy, which governs judicial procedure in its entirety. Decisions on whether a case involving a foreign element is to be tried by a national or a foreign court affect not only the interests of the parties but also interests connected with the administration of justice. It cannot therefore be accepted that legal provisions intended to ease the burden on the upper courts and accelerate procedure should also be used to resolve the question of a court's international jurisdiction. It follows that the courts of a Contracting State cannot make the examination of their own jurisdiction dependent upon whether or not the absence of international jurisdiction has been pleaded in the course of the proceedings.

In relation to the second question, the Government of the Federal Republic of Germany considers that in order to determine whether proceedings are concerned with "the registration or validity of patents", within the meaning of Article 16 (4) of the Convention, reference must be made to the substantive law of the Contracting State whose courts acquire jurisdiction by virtue of that provision.

In principle, the purpose of the Convention, namely the unification of the systems of civil procedure of the various Member States of the EEC, is best served by an independent interpretation of the terms appearing in the Convention, so that they have the same meaning for all the courts of the Contracting States, rather than by an interpretation on the basis of national law. However, exceptions to such an independent interpretation are permissible wherever the Convention itself so provides or where special grounds dictate

accordingly. Article 16 of the Convention does not provide its own definition of the terms contained in it, the framework of a definition being outlined by the scope of Article 1 and by the text of Article 16. But, in so far as doubts exist within that framework, there is no room for an independent interpretation of the Convention. Such an interpretation might differ from the interpretation applicable in the State whose courts are to have exclusive jurisdiction, for example, in relation to the deposit or registration of a patent. The result of that would be positive and negative conflicts of jurisdiction, which would however be particularly serious since they would relate to cases of exclusive jurisdiction.

A definition according to the *lex fori* would be subject to the same objections.

In order to maintain the link between the substantive law applicable and its procedural implementation, preference must therefore be given to the definition applicable in the place in which the courts are to have exclusive jurisdiction. That would make it possible to have a uniform appraisal in all the Contracting States, thus avoiding conflicts of jurisdiction. Moreover, such a definition would be consistent with the purpose of Article 16; indeed, the considerations which justify conferring exclusive jurisdiction on the courts of a given Contracting State also justify settling questions of definition according to the law of that State.

The reply given to the second question renders an examination of the third question otiose.

The *United Kingdom* asks first whether the dispute should be classed as relating to bankruptcy, which is outside the scope of the Convention, but itself answers that question in the negative, noting that the Court has already held (cf. judgment of 22 February 1979 in Case 133/78, *Gourdain* v *Nadler*, [1979] ECR 733) that in order to be excluded from the scope of the Convention decisions relating to the winding-up of insolvent companies "must derive directly from the bankruptcy or winding-up", which is not the case here.

In relation to the question whether the Hoge Raad must regard itself as bound by Article 419 (1) of the Netherlands Code of Civil Procedure or by Article 19 of the Convention, the United Kingdom submits that, where a national court is faced with a conflict between its own procedural rules and the provisions of Article 19, the latter provisions are mandatory and must prevail. It notes that, if the case is concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, Article 19 states in the most explicit terms that the national court is to decline jurisdiction of its own motion. Moreover, a court which failed to decline jurisdiction would find that its judgment was not recognized in other Contracting States, pursuant to the first paragraph of Article 28.

As regards the interpretation of the term "proceedings concerned with the registration or validity of patents", the United Kingdom sets out from the consideration that the question whether or not the national courts have jurisdiction in a particular case must always be a matter for the *lex fori*. But, in each of the Contracting States, the *lex fori* is, in cases governed by the 1968

Convention, that Convention. This is a Community instrument and as such must receive the same interpretation in each of the relevant Contracting States. Hence, Article 16 (4) must be given a Community interpretation.

The United Kingdom therefore turns to the question what that Community interpretation should be. In its view, it is in reality solely a matter of laying down the criteria to be used in order to decide whether proceedings are "concerned with the *registration* ... of patents", since it has nowhere been suggested that the case pending before the Hoge Raad is concerned with the *validity* of patents.

An entry in a patent register is a matter within the exclusive jurisdiction of the national patent authorities and ultimately of the national courts. However, it does not follow that any proceedings which will have as an incidental consequence of their outcome an alteration in a patent register must fall within the exclusive jurisdiction of the courts of the State in which that register is situated. Proceedings which are in essence concerned with the making, alteration or deletion of an entry in a patent register are "concerned with the registration ... of patents", but proceedings such as the present which are in essence a dispute between an inventor and the liquidator of the company which formerly employed him are not primarily concerned with the registration of patents. The outcome of the case might possibly lead to a change in the name of the owner of the patents in the appropriate registers, but the United Kingdom considers, as is stated at page 34 of the Jenard Report, that "the matters referred to in [Article 16] will normally be the subject of exclusive jurisdiction only if they constitute the principal subject-matter of the proceedings of which the court is to be seised".

This interpretation is also supported by a further consideration. Since these are proceedings *in personam*, the order of the Netherlands court will not be enforceable in the other Contracting States against the authorities responsible in those States for the register of patents and, if one of the incidental consequences of the outcome of the case is that amendments should be made in the patent registers of other Contracting States, applications to that effect will have to be made in each of those States.

The United Kingdom further points out that the Court has already considered a similar question on the interpretation of Article 16 (1) of the Convention (cf. judgment of 14 December 1977 in Case 73/77, *Sanders* v *van der Putte* [1977] ECR 2383) and held that the purpose of Article 16 is to give jurisdiction to the courts which clearly are best placed to deal with the disputes referred to therein, but those considerations do not apply where the principal aim of an agreement is of a different nature from that envisaged in that article.

Finally, the United Kingdom points out that according to Article 4 of the Protocol on Jurisdiction and Recognition of Decisions in respect of the Right to the Grant of a European Patent, which is annexed to the Convention on the Grant of European Patents, to which all the Member States of the Community are parties, if the subject-matter of a

European patent application is the invention of an employee, the courts of the State where he is mainly employed are to have exclusive jurisdiction over proceedings between the employee and the employer, unless they have agreed otherwise. Since the place in which the person is mainly employed will in most cases be the place in which he is domiciled, the courts of the State in which the employee is domiciled will normally have jurisdiction to hear claims concerning the European patent. According to the interpretation proposed by the United Kingdom, those courts would also, pursuant to Article 2 of the 1968 Convention, have jurisdiction to hear claims by an employer concerning the ownership of national patents and national patent applications. The consistency of the result thus achieved is a further reason for giving a restrictive interpretation to Article 16 (4) of the 1968 Convention.

In view of the considerations set out above, the United Kingdom concludes that the reply to the third question should be that proceedings are "concerned with the registration . . . of patents" within the meaning of Article 16 (4) of the 1968 Convention only if they are primarily concerned with the making, amendment or deletion of an entry in a register of patents, and not if the making, amendment or deletion of such an entry is an incidental consequence of the outcome of the proceedings.

The *Commission of the European Communities* proposes that the first question should be answered in the affirmative. It observes that Article 19 of the 1968 Convention imposes a direct obligation on all courts of a Contracting State and does not exempt courts of cassation. The application of that obligation may result in the replacement of national procedural law by provisions of the Convention. However, such a consequence follows from the very nature of Community law — of which the 1968 Convention also forms part — which, as a superior legal order, takes precedence over national procedural law. The achievement of the Convention's aim of guaranteeing an "expeditious procedure" is thereby promoted, inasmuch as the examination as to jurisdiction, which is in any event mandatory at the stage of recognition or enforcement under the first paragraph of Article 28 of the Convention, can be undertaken earlier under Article 19 in the course of the original proceedings. The application of Article 19 further offers the advantage of sparing the parties needless expense and delay.

As to the second question, the Commission considers that a detailed examination of the legal basis of Article 16 (4) makes clear the need for an independent interpretation of the terms contained therein.

That provision can be applied satisfactorily only by means of a uniform interpretation which applies in all the Contracting States. It demands a uniform interpretation consistent with the Community legal order.

An independent interpretation is further required by the need to ensure proper legal protection. In cases such as this, in which several Contracting States are concerned with the same invention, recourse to the law of the State in which

the patent has been deposited or applied for would give rise to complications. It is true that application of the *lex fori* would make it possible to avoid those complications, but it would be inadvisable on other grounds, namely because it would not take account of the fact that the 1968 Convention is a Community agreement and because it might encourage the undesirable practice of "forum shopping", in particular in the cases — admittedly limited — in which Articles 5 and 6 of the Convention give the plaintiff a choice of jurisdictions.

In relation to the third question, the Commission observes first that the fact that Mr Goderbauer made his invention while he was employed by the company later declared insolvent is of no importance for the purposes of the reply to be given to that question. Even if Mr Goderbauer had made his invention outside his employment but had undertaken by contract to assign the patents and applications for patents and had later failed to fulfil that obligation, it would in fact be necessary to examine whether there was jurisdiction under Article 16 (4) or whether Article 5 of the Convention, which determines jurisdiction in matters relating to a contract, must be applied.

Instead, the decisive factor appears to be that not every claim in some way relating to the registration of patents is covered by Article 16 (4).

Before an application for a patent is made, it is for example necessary to establish who is entitled to the grant of the patent. A dispute in that regard could also arise outside the scope of an action concerning "the registration or validity of patents".

If the inventor made his invention in the course of his employment, it would be for the court which had jurisdiction in disputes arising out of such employment to adjudicate upon that question.

That delimitation of jurisdiction seems appropriate in all cases in which preliminary issues arise in relation to the main dispute.

Moreover, solutions similar to those proposed by the Commission follow both from the European Patent Convention signed in Munich on 5 October 1973 and the Community Patent Convention signed in Luxembourg on 15 December 1975.

Under Article 60 (1) of the Munich Convention, in relation to inventions made in the course of employment, it is the law of the State in which the employee is employed which determines whether the right to a European patent is to belong to the employee or to the employer. According to Article 4 of the Protocol on Recognition, the courts of that State have exclusive jurisdiction over proceedings between the employer and employee. If that Convention had been applicable in this case, the preliminary issue concerning the entitlement to the patent could have been, and might have had to be, determined by the courts of the Netherlands.

Similarly, Article 69 (4) (b) of the Luxembourg Convention provides that the courts of the State in which the employee is employed are to have exclusive jurisdicton "in actions relating to the right to a patent in which an employer and employee are in dispute".

The purpose of the counterclaim pleaded by the Liquidator is to obtain from the Arrondissementsrechtbank, Maastricht, a binding declaratory judgment on the question who is entitled to the patent. Understood in that way, the action is intended to obtain a declaratory ruling by which the courts referred to in Article 16 (4) may be guided in subsequent rulings on "the registration or validity" of patent applications or patents granted.

The Commission therefore considers that a claim such as the one pursued in this case — described in the judgment of the Hoge Raad of 29 October 1982 — is covered not by Article 16 (4) but by Article 5 of the 1968 Convention.

III — Oral procedure

At the sitting on 8 July 1983 oral argument was presented for the Commission of the European Communities by Mr Zimmermann, Legal Adviser of the Commission, acting as Agent, assisted by Mr Stein of the Zwolle Bar.

The Advocate General delivered her opinion at the sitting on 5 October 1983.

Decision

1 By a judgment of 29 October 1982, which was received at the Court Registry on 3 November 1982, the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] referred to the Court, for a preliminary ruling under the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "the Convention"), three questions on the interpretation of Articles 16 (4) and 19 of the Convention.

2 Those questions arose in an appeal in cassation by Ferdinand M. J. J. Duijnstee against a judgment delivered on 20 May 1981 by the Gerechtshof [Regional Court of Appeal], 's-Hertogenbosch, confirming a judgment of the Arrondissementsrechtbank [District Court], Maastricht.

3 On 28 November 1979, Mr Duijnstee had, in his capacity as the liquidator in the winding-up of BV Schroefboutenfabriek, applied to the Arrondissementsrechtbank, Maastricht, for an interlocutory injunction requiring Lodewijk Goderbauer, the former manager of that company, to transfer to it

the patents applied for or granted in 22 countries, including some which have acceded to the Convention, in respect of an invention which Mr Goderbauer had made while employed by that company. Mr Duijnstee's claim, which was based on the fact that the Netherlands Patent Office had decided that BV Schroefboutenfabriek was entitled to the Netherlands patent for Mr Goderbauer's invention, was dismissed on 19 December 1979.

4 On 21 December 1979, Mr Goderbauer in turn brought an action against the liquidator in the Arrondissementsrechtbank, Maastricht, claiming that, if and in so far as the patents and applications for patents referred to in the writ were the property of the insolvent company, Mr Goderbauer had a lien over them as against the liquidator. Mr Duijnstee then pleaded a counterclaim in the same terms as his application for an interlocutory injunction of 28 November 1979.

5 By judgment of 24 April 1980, the Arrondissementsrechtbank, Maastricht, dismissed both Mr Goderbauer's claim and Mr Duijnstee's counterclaim. That judgment was confirmed on appeal by the Gerechtshof, 's-Hertogenbosch, by judgment of 20 May 1981.

6 Mr Duijnstee appealed against that judgment to the Hoge Raad on the ground that it was contrary to the Octrooiwet [Netherlands Patents Law].

7 Although the only ground of appeal was the alleged infringement of the Netherlands Patents Law, the Hoge Raad none the less expressed doubt over its own jurisdiction on the ground that certain factors involving the law of other States might, by virtue of Article 16 (4) of the Convention, mean that the courts of other Contracting States had exclusive jurisdiction.

8 In the first place, the Hoge Raad raised the question whether, on the assumption that the courts of another Contracting State had exclusive jurisdiction, that jurisdiction should be recognized even though the point had not been pleaded by any of the parties. Article 419 (1) of the Netherlands Code of Civil Procedure provides that the Hoge Raad is to confine its consideration of the case "to the grounds on which the appeal is based",

whereas Article 19 of the Convention provides that "where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction".

9 In its first question, the Hoge Raad therefore asks the Court whether the obligation imposed by Article 19 on the court of a Contracting State to declare of its own motion that it has no jurisdiction implies that a provision such as Article 419 (1) of the Netherlands Code of Civil Procedure has no effect, inasmuch as a court of cassation must include in its consideration of the case the question covered by Article 19 and, if that question is answered in the affirmative, must quash the judgment appealed against, even if the question has not been raised in the grounds of appeal.

10 In order to reply to that question, it is necessary to consider the aims of the Convention.

11 According to the preamble to the Convention, the Contracting States, anxious to "strengthen in the Community the legal protection of persons therein established", considered that it was necessary for that purpose "to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements".

12 Both the provisions on jurisdiction and those on the recognition and enforcement of judgments are therefore aimed at strengthening the legal protection of persons established in the Community.

13 The principle of legal certainty in the Community legal order and the aims pursued by the Convention in accordance with Article 220 of the Treaty, on which it is based, require that the equality and uniformity of rights and

obligations arising from the Convention for the Contracting States and the persons concerned must be ensured, regardless of the rules laid down in that regard in the laws of those States.

14 It must be concluded that the Convention, which seeks to determine the jurisdiction of the courts of the Contracting States in civil matters, must override national provisions which are incompatible with it.

15 The reply to the first question must therefore be that Article 19 of the Convention requires the national court to declare of its own motion that it has no jurisdiction whenever it finds that a court of another Contracting State has exclusive jurisdiction under Article 16 of the Convention, even in an appeal in cassation where the national rules of procedure limit the court's reviewal to the grounds raised by the parties.

16 In its second question the Hoge Raad asks whether the concept of proceedings "concerned with the registration or validity of patents" within the meaning of Article 16 (4) of the Convention, which attributes exclusive jurisdiction to the courts of the Contracting State competent to grant the patent, must be defined on the basis of the law of the Contracting State whose courts are referred to in that provision, or according to the *lex fori*, or on the basis of an independent interpretation of the said provision.

17 The Court has several times had occasion to consider the criteria to be used for the definition of the concepts appearing in the Convention. Thus, in its judgment of 22 February 1979 in Case 133/78 *(Gourdain* v *Nadler* [1979] ECR 743), it stated that "in order to ensure, as far as possible, that the rights and obligations which derive from [the Convention] for the Contracting States and the persons to whom it applies are equal and uniform", it is necessary that the terms of Article 1 of the Convention should not be interpreted "as a mere reference to the internal law of one or other of the States concerned", and "the concepts used in Article 1 must be regarded as independent concepts which must be interpreted by reference, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems". The Court also stressed the need for an independent interpretation in its

judgment of 21 June 1978 in Case 150/77 *(Bertrand* v *Ott* [1978] ECR 1432), in relation to the terms used in Article 13 and in the second paragraph of Article 14 of the Convention, and in its judgment of 22 March 1983 in Case 34/82 *(Martin Peters Bauunternehmung* v *Zuid Nederlandse Aannemers Vereniging* [1983] ECR 987), in relation to the terms used in Article 5 (1) of the Convention.

18 In the present case, both an interpretation according to the law of the Contracting State whose courts have jurisdiction under Article 16 (4) and an interpretation according to the *lex fori* would be liable to produce divergent solutions, which would be prejudicial to the principle that the rights and obligations which the persons concerned derive from the Convention should be equal and uniform.

19 Thus the term "proceedings concerned with the registration or validity of patents" contained in Article 16 (4) must be regarded as an independent concept intended to have uniform application in all the Contracting States.

20 This reply to the second question compels the Court to define the term "proceedings concerned with the registration or validity of patents", since the Hoge Raad has asked in its third question whether that concept may cover a dispute such as that concerned in the main action.

21 In order to reply to the third question, reference must again be made to the objectives and scheme of the Convention.

22 In that regard, it must be noted that the exclusive jurisdiction in proceedings concerned with the registration or validity of patents conferred upon the courts of the Contracting State in which the deposit or registration has been applied for is justified by the fact that those courts are best placed to adjudicate upon cases in which the dispute itself concerns the validity of the patent or the existence of the deposit or registration.

23 On the other hand, as is expressly stated in the report on the Convention (Official Journal 1979, C 59, p. 1, at p. 36), "other actions, including those for infringement of patents, are governed by the general rules of the Convention". That statement confirms the restrictive nature of the provision contained in Article 16 (4).

24 It follows that proceedings "concerned with the registration or validity of patents" must be regarded as proceedings in which the conferring of exclusive jurisdiction on the courts of the place in which the patent was granted is justified in the light of the factors mentioned above, such as proceedings relating to the validity, existence or lapse of a patent or an alleged right of priority by reason of an earlier deposit.

25 If, on the other hand, the dispute does not itself concern the validity of the patent or the existence of the deposit or registration, there is no special reason to confer exclusive jurisdiction on the courts of the Contracting State in which the patent was applied for or granted and consequently such a dispute is not covered by Article 16 (4).

26 In a case such as the present, neither the validity of the patents nor the legality of their registration in the various countries is disputed by the parties to the main action. The outcome of the case in fact depends exclusively on the question whether Mr Goderbauer or the insolvent company BV Schroefboutenfabriek is entitled to the patent, which must be determined on the basis of the legal relationship which existed between the parties concerned. Therefore the special jurisdiction rule contained in Article 16 (4) should not be applied.

27 In that regard, it should be pointed out that a very clear distinction between jurisdiction in disputes concerning the right to the patent, especially where the patent concerns the invention of an employee, and jurisdiction in disputes concerning the registration or validity of a patent was made both in the European Patent Convention signed in Munich on 5 October 1973 and in the Community Patent Convention signed in Luxembourg on 15 December

1975 (Official Journal 1976, L 17), which has not yet entered into force. Although those two Conventions are not applicable in this case, the fact that they expressly accept such a distinction confirms the interpretation given by the Court to the corresponding provisions of the Brussels Convention.

28 The reply to the third question should therefore be that the term "proceedings concerned with the registration or validity of patents" does not include a dispute between an employee for whose invention a patent has been applied for or obtained and his employer, where the dispute relates to their respective rights in that patent arising out of the contract of employment.

Costs

29 The costs incurred by the Governments of the Federal Republic of Germany and the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions submitted to it by the Hoge Raad der Nederlanden by judgment of 29 October 1982, hereby rules:

1. **Article 19 of the Convention requires the national court to declare of its own motion that it has no jurisdiction whenever it finds that a court of another Contracting State has exclusive jurisdiction under Article 16 of the Convention, even in an appeal in cassation where the national rules of procedure limit the court's reviewal to the grounds raised by the parties.**

2. **The term "proceedings concerned with the registration or validity of patents" contained in Article 16 (4) must be regarded as an independent concept intended to have uniform application in all the Contracting States.**

3. **The term "proceedings concerned with the registration or validity of patents" does not include a dispute between an employee for whose invention a patent has been applied for or obtained and his employer, where the dispute relates to their respective rights in that patent arising out of the contract of employment.**

Mertens de Wilmars Koopmans

Bahlmann O'Keeffe Bosco

Delivered in open court in Luxembourg on 15 November 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 5 OCTOBER 1983 [1]

Mr President,
Members of the Court,

A request for a preliminary ruling has been submitted to the Court by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] in a dispute between F. M. J. J. Duijnstee, the liquidator in the winding-up of BV Schroefboutenfabriek, and Lodewijk Goderbauer, a former employee of that company who made a patented invention.

I — The facts are as follows:

Lodewijk Goderbauer, of Schaesberg (Netherlands), the manager of a bolts factory owned by BV Schroefboutenfabriek [hereinafter referred to as "the Company"], whose registered office is in Heerlen (Netherlands), had made an invention consisting in the mounting of a

1 — Translated from the French.