

EPO input for WIPO documents and webpage update

**National and regional laws on opposition systems and
other administrative revocation and invalidation
mechanisms**

Distributed on Wednesday, 20 August 2025

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CL number

Introduction/Background

Pursuant to the decision of the thirty-sixth session of the Standing Committee on the Law of Patents (SCP), which was held in Geneva from October 14 to 18, 2024, WIPO invited the EPO to send to the International Bureau of WIPO inputs for the preparation of several documents and a new webpage (C.9260).

This document provides input for updating the relevant sections on [National and regional laws on opposition systems and other administrative revocation and invalidation mechanisms](#).

1. Opposition Systems

The information on [Opposition systems at the European Patent Office](#) needs to be updated by adding at the end of the current wording the following information on acceleration of opposition proceedings:

In cases where an infringement or revocation action in respect of a European patent is pending before the Unified Patent Court or the competent authority of a contracting state, a party to the opposition proceedings may request accelerated processing. The request may be filed at any time. It must be filed in written reasoned form. In addition, the EPO will also accelerate the processing of the opposition if it is informed by the Unified Patent Court, the national court or the competent authority of a contracting state that infringement or revocation actions are pending (OJ EPO 2023, A99).

The specific acceleration measures adopted depend on when the EPO is notified of parallel court proceedings:

(i) If the EPO is notified during the opposition period: after the period expires, the proprietor will be invited to comment on the opposition within three months, the summons will be issued within two months of receipt of the proprietor's reply, summoning the parties at minimum notice (Rule 115(1) EPC);

(ii) If the EPO is notified after expiry of the opposition period but before the proprietor's reply to the opposition: the summons to oral proceedings will be issued within two months of receipt of the proprietor's reply. The parties will be summoned at minimum notice (Rule 115(1) EPC);

(iii) After the proprietor has replied but before the summons has been issued: the summons to oral proceedings will be issued within two months of receipt of the information on parallel proceedings. The parties will be summoned at minimum notice (Rule 115(1) EPC);

(iv) After the summons has been sent oral proceedings are rescheduled to the earliest possible date (provided that the time saving is significant);

(v) After the decision has been pronounced: the decision and the minutes will be issued within one month¹.

Parties with a legitimate interest may ask the boards of appeal to deal with their appeals rapidly. This option is also available to the courts and competent authorities of the contracting states (see Art. 10 Rules of Procedure of the Boards of Appeal, OJ EPO 2019, A63, as amended by OJ EPO 2021, A19). Information on the possibility of accelerating processing before the boards of appeal can be found on the EPO website².

1 Guidelines for Examination in the EPO, E-VIII, 5

2 Guidelines for Examination in the EPO, E-VIII, 6

2. Submission of information by third parties

The information on the [Submission of Information by Third parties at the EPO](#) needs to be updated along the lines below to reflect the EPO practice described in Guidelines for Examination in the EPO 2025, E-VI, 3:

In accordance with Article 115 EPC, in proceedings before the EPO, any third party may present observations concerning the patentability of the invention to which the application or patent relates, once the publication of the European patent application was made. That person may not be a party to the proceedings before the EPO.

Such observations shall be filed in writing in an official language of the EPO (English, French, German), and state the grounds on which they are based.¹ No fee is required for the submission of observations. The web interface provided by the EPO is the preferred means of filing such observations². Observations may be filed anonymously.

Documentary evidence and, in particular, publications submitted in support of the arguments may be filed in any language. However, the EPO may request that a translation into one of its official languages be filed; otherwise the evidence will be disregarded.³

Although the third party is sent acknowledgment of the receipt of his observations (if these were not filed anonymously), the EPO does not inform them of any further action it takes in response to them. However, the outcome of the evaluation by the competent division will briefly be indicated in the respective office action from the EPO (e.g. in a communication or in the intention to grant) and will thus be visible to the public.⁴

The observations, including those filed anonymously, become part of the file. They are communicated without delay to applicants or proprietors, who may comment on them⁵. If they call into question the patentability of the invention in whole or in part, the examining or opposition division will take them into account in the next office action⁶. If the observations relate to alleged prior art available other than from a document, e.g. from use, this is taken into account only if the alleged facts either are not disputed by the applicant or proprietor or can be considered as proven.

Observations by third parties received in examination after dispatch of a Rule 71(3) EPC communication but before the decision to grant has been handed over to the EPO postal service will be considered by the examining division. If they are relevant, the examining division will resume examination. Otherwise, brief substantive feedback will be provided in the file.

Observations by third parties received after the decision has been pronounced in oral proceedings (e.g. in the case of a refusal or in opposition) or issued in written proceedings and handed over to the EPO postal service (e.g. in the case of a grant decision or if, in opposition, no oral proceedings were held), will be included in the file without taking note of their content.

Observations by third parties received once proceedings are no longer pending will be neither taken into account nor made available for file inspection. They will however be made available for file inspection and considered if the proceedings before the EPO become pending again, e.g. upon the start of any opposition or limitation proceedings.

The EPO will make every effort to issue the next office action within three months of receipt of third-party observations under Art. 115 EPC by the examining division, provided the observations are substantiated and have not been filed anonymously. Where the observations are received at a time when a reply from the applicant to a communication is outstanding, this period starts from receipt of the reply at the EPO.

The EPO will generally apply the practice regarding third-party observations filed in the Euro-direct procedure mutatis mutandis to third-party observations filed during the international phase upon entry of the Euro-PCT application into the European phase.

Where a third-party observation was filed during the international phase, the EPO as designated/elected Office will consider its content upon entry into the European phase once this becomes available to it. The examining division will make every effort to issue the next office action within three months after expiry of the period under Rule 161 EPC, but only on condition that the third party has clearly expressed its wish to achieve expedited treatment in the European phase, that the observation was filed non-anonymously and that it was substantiated. A third party wishing to achieve such a result in the European phase must, therefore, make this clear in the observation or file the observation with the EPO as designated/elected Office.

1 Rule 114(1) of the Implementing Regulations under the EPC.

2 Official Journal EPO 2017, A86

3 Guidelines for Examination in the EPO, Part E-VI.3.

4 Ibid.

5 Rule 114(2) of the Implementing Regulations under the EPC.

6 Guidelines for Examination in the EPO, Part E-VI.3.

3. Re-examination Systems; Administrative revocation and invalidation mechanisms

The information on [re-examination systems](#) and [administrative revocation and invalidation mechanisms](#) is not relevant for the EPO, thus, it does not require any update.