

Submission of Information by Third Parties

European Patent Office (EPO)

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 observations². The web interface provided by the EPO is the preferred means of filing such observations. 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 the 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.

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.

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.