

Submission of Information by Third Parties

European Patent Office (EPO)

In accordance with EPC Article 115, 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 will not be a party to the proceedings before the EPO. No fee is required for the submission of observations.

Such observations shall be filed in writing in an official language of the EPO, and state the grounds on which they are based.¹ 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.²

The observations made by a third party will be communicated to the applicant (or the patentee), who may comment on them.³ If they call into question the patentability of the invention in whole or in part, they must be taken into account in any proceedings pending before a department of the EPO until such proceedings have been terminated, i.e. they must be admitted to the proceedings.⁴ If the observations relate to alleged prior art available other than from a document, e.g. from use, this should be taken into account only if the alleged facts either are not disputed by the applicant (or the patentee) or are established beyond reasonable doubt. Observations received after the conclusion of the proceedings will simply be added to the file. Although the third party is sent acknowledgment of the receipt of his observations, the EPO does not inform him of any further action it takes in response to them.⁵

In order to facilitate the filing of third party observations, as of August 1, 2011, such observations can be filed by filling out an online form on the EPO website. The traditional means of filing (e.g. by letter or fax) will continue to be accepted.

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

² EPO Examination Guidelines, Part E, VI.3.

³ Rule 114(2) of the Implementing Regulations under the EPC.

⁴ EPO Examination Guidelines, Part E, VI.3.

⁵ *Ibid.*