

N. Observations by third parties

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1. Introduction

Under Art. 115 EPC, any third party may present, in proceedings before the EPO, following publication of the European patent application, observations concerning the patentability of the invention to which the application or patent relates. There are no fees or deadlines for presenting such observations. The third party is not a party to the proceedings. R. 114(1) EPC requires that any such observations be filed in an official language of the EPO, while R. 114(2) EPC states that they will be communicated to the applicant or patent proprietor. Third-party observations are an integral part of the files and, as such, open to inspection under Art. 128 EPC. More information can be found in the Guidelines (see e.g. A-VII, 3.5, A-XI, 2.1, D-X, 4.5 and E-VI, 3 – March 2022 version), the decision of the President of the EPO dated 10 May 2011 (OJ 2011, 418) and the notice from the EPO dated 5 July 2017 concerning the filing and processing of third-party observations (OJ 2017, A86).

Observations must be restricted to the substantive requirements of the EPC (Art. 52 to 57 EPC). Most observations concern lack of novelty and/or lack of inventive step. In the proceedings for petition for review R.18/11 third-party observations were filed. The Enlarged Board considered the observations to be inadmissible, because according to Art. 115 EPC such submissions had to concern patentability, and patentability issues could not be the subject of review proceedings.