

E-IX, 2.10). Such access may be allowed to the same extent as provided by the national law for access to the file of a national application.

3. Examination of observations by third parties

For details on third-party observations please refer to GL/PCT-EPO E-II.

For relevant third-party observations in Chapter II the following applies:

GL/SPE 17.69

- (a) If a negative IPER is envisaged and a second written opinion has not been sent, a WO-IPEA (Form 408) is drafted taking into account the third-party observations and the applicant's comments where available, and referring to the new prior-art documents in section V (see also GL/PCT-EPO C-IV, 2.2).
- (b) If the IPER would have been negative even without the third-party observations and a WO-IPEA has already been sent before receipt of these observations, no further written opinion is sent before establishment of the IPER.
- (c) If a WO-IPEA has already been sent before receipt of the third-party observations and the IPER would have been positive without the third-party observations, a new WO-IPEA is issued or the applicant is called, whichever course of action is considered the more expedient, in particular in the light of the deadline for issuing the IPER.

In cases (b) and (c) above, the IPER is established taking into account the third-party observations and the applicant's comments, and referring to the new documents where appropriate in Section V of the IPER.

- (d) If a positive IPER is envisaged since, even though the third-party observations may refer to more relevant documents than the ones on file, they do not prejudice novelty and inventive step, the newly cited relevant documents are dealt with in the reasons in favour of patentability in Section V on the separate sheet as appropriate.

If the documents are relevant but do not add anything to what was already available, it is left to the examiner's discretion whether they need to be quoted in the IPER. For example, if the documents are a better starting point for the problem-solution approach, the examiner may wish to review his argumentation in support of the positive assessment of inventive step.

Third-party observations which are not relevant or not sufficiently understandable (see GL/PCT-EPO E-II for observations not in an EPO official language) do not need to be dealt with substantially in the WO-IPEA and/or in the IPER. A comment is included in Section V of the WO-IPEA and/or in the IPER indicating that the third-party observations have been taken into account and found not to be relevant or that the third-party observations could not be taken into account and why.