

EPO departments have discretion under Art. 114(1) EPC to admit third-party observations of their own motion, in particular where they consider them to have some bearing on the outcome of the proceedings (T 1216/12). Observations that contain legal or technical information relevant for the decision in hand will generally be considered (T 866/91).

Art. 115 EPC helps to ensure that no legally invalid patents are granted or maintained. The public must be able to rely as far as possible on the legal validity of a patent granted by the EPO (T 156/84, OJ 1988, 372; T 60/91, OJ 1993, 551; T 1495/09). The provision protects the public interest in ensuring that no European patent is granted which does not meet the EPC requirements and, to that end, permits third parties to act as, so to speak, the public's "mouthpiece" by providing additional information to support the expertise within the EPO (G 2/19, OJ 2020, A87).

2. Formal requirements

2.1. Language of the documents

Under R. 114(1) EPC, any observations by a third party must be filed **in writing** in an official language of the EPO, i.e. English, French or German; otherwise, they are deemed not to have been received. Observations not filed in an official language and so deemed not to have been received are nevertheless added to the file and so accessible to the public under Art. 128(4) EPC. Third-party observations will be communicated to the applicant or patent proprietor even if they have not been filed in one of the prescribed official languages (Art. 14(4), R. 114(1) EPC).

R. 114(1) EPC also explicitly provides for applicability of R. 3(3) EPC, which states that **documentary evidence** and, in particular, publications substantiating an argument may be filed in any language. The EPO may, however, require that a translation in one of its official languages be filed, within a period to be specified. If a translation is not filed in due time, the EPO may disregard the document in question.

2.2. When can third-party observations be filed?

Art. 115 EPC specifies that observations cannot be filed until after publication of the European patent application but sets no upper time limit for their presentation by persons wishing to make adverse observations concerning the patentability of inventions claimed in patent applications/patents. This means that observations can also be filed during opposition proceedings, even after expiry of the opposition period, and during appeal proceedings (T 390/90, G 9/91, OJ 1993, 408, T 1756/11). Art. 115 EPC explicitly covers all proceedings before the EPO and so applies, in principle, to revocation and limitation proceedings too.

2.3. Pending proceedings

The provision of Art. 115(1), second sentence, EPC that a third party shall not be "a party to proceedings before the European Patent Office" assumed that proceedings were pending before the EPO.