

In T 580/89 (OJ 1993, 218), observations submitted by a third party were not added to the file until after the decision had been taken and therefore not considered.

In T 690/98 the question arose of whether observations filed by a third party could give rise to a reassessment by the Office of its own motion, under Art. 114(1) EPC 1973, of the patentability of the subject-matter of the contested patent, even if the appeal proved to be inadmissible. In the board's view, the answer was no, since the admissibility of an appeal, according to Art. 110(1) EPC 1973, was a prerequisite for examination of the appeal. The substance of the contested decision could only be examined when admissibility was established. Therefore, objections by third parties lodged at the appeal stage were not to be examined by the Office of its own motion as there no appeal proceedings were pending.

2.4. Anonymously filed observations

As stated in the EPO notice dated 5 July 2017 concerning the filing and processing of third-party observations (OJ 2017...A86), third-party observations may be filed anonymously.

In the inter partes proceedings T 735/04, document D6, a patent application by one of the patent proprietors, was cited in anonymous third party observations. Since D6 was highly relevant for the patentability of the claimed subject-matter and could cause the patent to be revoked, it was introduced into the proceedings.

In T 146/07 anonymous third-party observations were received by the board at a very late stage. According to R. 114(1) EPC, any observations by a third party must be filed in writing. The board stated that this requirement implied that the observations have to be signed (see R. 50(3) and 86 EPC) in order to allow an identification of the third party. Identification is particularly important in the context of opposition proceedings in order to allow the competent organ of the EPO to verify whether the observations have indeed been filed by a third-party rather than by a party to the proceedings. Otherwise, a party might be tempted to submit late observations and/or documents by means of anonymous third party observations in order to avoid negative procedural consequences such as apportionment of costs. The board was aware that anonymously filed third-party observations might nevertheless be adopted by a party to the proceedings as its own or may even trigger objections by the competent organ of the EPO of its own motion (see above T 735/04). In the absence of such a further procedural act, anonymous third-party observations are to be disregarded altogether. This view is in line with the decisions G 1/03 and G 2/03 (OJ 2004, 413 and 448) in which the Enlarged Board of Appeal refused to take into account an anonymously filed third-party statement. In T 1439/09 and T 1635/15 the board agreed with this line of reasoning. Therefore, the anonymous observations filed under Art. 115 EPC were deemed not to have been filed and were disregarded by the board.

In view of these decisions, the board in T 1756/11 held that anonymous third-party observations made at a very late stage in the opposition appeal proceedings should be disregarded on formal grounds, in order to preclude covert abuse of procedure by parties to the proceedings. Likewise in T 1181/12, T 379/13 and T 345/15 the board did not take