

Chapter II – Observations by third parties

Third parties may, anonymously if so desired, file observations under the PCT which, unlike observations under the EPC, should exclusively refer to prior art relevant to the novelty and/or inventive step of the invention claimed in the international application.

AI 801-805
GL/ISPE 15.68, 16.57
and 17.69

The observations are to be submitted electronically to the IB using the online tool provided by WIPO between the date of international publication and 28 months from the priority date of the international application. They may be filed in any language of publication; the cited prior art may be in any language. For more details, see the guide entitled "ePCT Third Party Observations" published by WIPO.

Rule 48.3

The applicant is notified by the International Bureau (IB) of any such observations and may file comments within 30 months from the priority date.

The IB will promptly communicate any third-party observation and any comment by the applicant to the ISA, the SISA and the IPEA, unless the (supplementary) international search report or the international preliminary examination report (IPER) has already been received by the IB.

Promptly after the expiration of 30 months from the priority date, the third-party observation(s) and the applicant's comment(s) will be sent to all designated Offices and elected Offices. The EPO as designated/elected Office will consider a third-party observation filed during the international phase after entry into the European phase as to its contents once that observation becomes available to it. However, the EPO will only make every effort to issue the next office action within three months of expiry of the period under Rule 161 EPC on condition that the third party has clearly expressed its wish that such action be taken, and that the observation was substantiated and not filed anonymously. A third party wishing to achieve the above-mentioned result in the European phase should, therefore, make this clear in the observation or else file the observation with the EPO as designated/elected Office (see also GL/EPO E-VI, 3, last paragraph).

Any third-party observations/comments thereto will be made available for public inspection.

If the third-party observations and/or prior art are not in an official EPO language, the formalities officer at the EPO will invite the third party to submit a translation of the observations and/or the prior art in line with the European procedure (GL/EPO E-VI, 3), but setting a shorter time limit within the boundaries of the required strict PCT deadlines. No invitation is issued if these deadlines cannot be respected or if the third-party observations were filed anonymously.

Art. 14(1) EPC

If the third-party observations and/or prior art are not in an official EPO language and a translation is not or cannot be filed, the examiner should nevertheless take them into account to the extent that this is feasible, in particular when they seem to be *prima facie* relevant (e.g. from the