

into consideration third-party observations which were submitted anonymously during the appeal proceedings.

In T 1336/09, however, the board came to the conclusion that in this **ex parte case** the anonymous character of the third-party observations did not bar them from being admitted into the procedure. The board referred to earlier decisions of the boards, which did admit such observations, without apparent misgivings in relation to their anonymous character (T 735/04, T 258/05). Unlike T 146/07, which had concerned an inter partes appeal, the case at hand here (T 1336/09) concerned ex parte proceedings, in which the appellant was the sole party and could raise new issues or submit new prior art at any time – as could the board of its own motion by virtue of Art. 114(1) EPC. Accordingly, the risk of anonymous third-party observations providing a cover for procedural abuse could largely be excluded.

2.5. Reasons for observations

R. 114(1) EPC requires, among other things, that third-party observations state the grounds on which they are based.

In T 189/92 the board held that it was the responsibility of the third party to ensure that the facts and evidence filed were not only unequivocally clear but also as complete as possible, so that they could be handled directly by the investigating instance without doubt and without further inquiry.

In T 908/95, the evidence adduced to show fulfilment of the criteria for establishing public prior use, in particular public availability, did not substantiate or prove such fulfilment to the extent that the allegation could be accepted. The board found that the additional inquiries needed to prove it, which might even include the hearing of witnesses, could only be conducted with the co-operation of the "third party", but that this was impossible where the person in question was not a party to the proceedings. The third party's observations therefore had to be disregarded (see also T 73/86).

In T 301/95 (OJ 1997, 519), the opposition division had disregarded third-party observations as to a claim of public prior use, as the alleged facts had not been proven with near certainty.

3. Third party's legal status

3.1. General issues

Art. 115, first sentence, EPC states that **any** third party may present observations. There is no requirement to state whether the third party is acting in its own name or on behalf of someone else (T 1224/09).

In T 811/90, the patentee had filed an appeal against a decision of the opposition division concerning the removal of certain documents from the public part of the file. The opponent was not a party to the impugned decision and was consequently not entitled to be a party