

Learning path for patent administrators

Opposition procedure: EPAC – intermediate level

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Introduction

This publication, "Opposition procedure: EPAC – intermediate level", is part of the "Learning path for patent administrators" series is edited and published by the European Patent Academy. The series is intended for patent administrators who are taking part in training and certifications organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include: general aspects of the patent system; the European patent system and the European patent granting procedure; the International Patent System (PCT) and the PCT procedure; European and international publications; filing a European patent application and filing an international application; the formalities during the European and during the international search; the formalities during the European examination and during the international preliminary examination; the formalities during the appeal procedure after refusal (EPC), during the opposition procedure (EPC); national validation (EPC); entry into national/regional phases and entry into the European phase (PCT).

Each chapter focuses on one topic at entry, intermediate or advanced level, as appropriate. The series will be revised annually to ensure it remains up to date.

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All references to natural persons are to be understood as applying to all genders.

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1. Learning objectives

Participants in this course will learn about:

- the opposition procedure
- time limit, fees and basic requirements
- who may file an opposition
- deficiencies in notices of opposition
- acceleration of opposition proceedings
- oral proceedings in opposition
- withdrawal of opposition
- possible outcomes of opposition proceedings

2. The opposition procedure

The opposition procedure before the EPO is an independent post-grant procedure which may be initiated by any natural or legal person. It is a contentious procedure between the proprietor and at least one opponent. The opposition division of the EPO is responsible for the examination of the opposition against any European patent. It consists of three technically qualified examiners, and in some cases where the nature of the decision so requires, it may be enlarged by the addition of a legally qualified examiner.

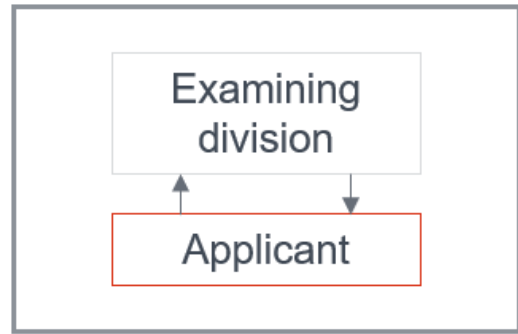
The opposition procedure is *inter partes* and the EPO must guarantee impartiality and the equal treatment of all parties. The opposition division considers the opponent's arguments and gives the proprietor the opportunity to defend their patent. All parties must be given the right to be heard and all must have an equal opportunity to react. To guarantee the impartiality of the proceedings, the opposition division is not allowed to have direct contact with any of the parties.

The opposition procedure allows proprietors to obtain justified protection for their invention and opponents to have an unjustified scope of protection changed. Oppositions may also provide further information that was not available to the EPO at the time of grant. In this way, a well-functioning opposition procedure increases confidence in the legal certainty of European patents.

Procedure up to grant



Ex parte

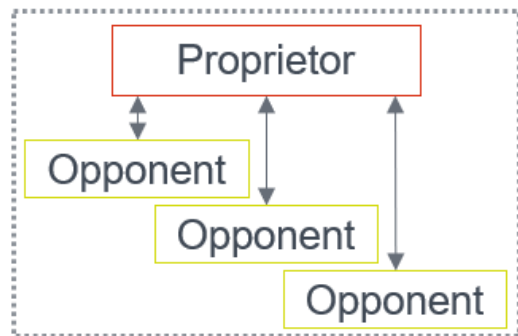


Opposition



Code of conduct:
Impartiality

Inter partes



Legal references:

[Article 19 EPC](#); [Article 99 EPC](#); [Article 101 EPC](#); [Article 113 EPC](#)

GL D I.4; GL E-XI

3. Time limit to file an opposition

A notice of opposition must be filed within nine months of the mention of the grant in the European Patent Bulletin. Within this period, an opposition fee must also be paid. The window for filing an opposition closes after nine months for reasons of legal certainty and fairness. No extensions to the deadline for filing an opposition are possible. If the time limit is missed, the opposition is deemed not to have been filed. Re-establishment of rights is not possible where an opposition has been filed late.

Legal references:

[Article 99\(1\) EPC](#)

GL D III.1

4. Who may file a notice of opposition?

Any person except the patent proprietor can file an opposition against a granted European patent. Proprietors cannot oppose their own patent but may request revocation or limitation ([Article 105a EPC](#)).

Most oppositions are filed by competitors for economic reasons or in reaction to a patent infringement. Oppositions can also be filed for ethical reasons by interested persons or organisations (e.g. NGOs).

It is not unusual for a patent to be opposed by multiple opponents. There is no limit to the number of opponents.

Joint opponents

Opponents may file their oppositions together as joint opponents. This means payment of a single opposition fee. Each joint opponent cannot act separately or without the consent of the other joint opponent(s). The joint opponents act as one party and have one common representative.

Straw man

A straw man is a person who files the opposition in their own name but is acting on behalf of another, unnamed person. Sometimes opponents have reasons for hiding their identity, for example if they have business relationships with the proprietor.

The use of a straw man is permitted by the EPO unless proved to be an abuse of process. A case of abuse arises if, for example, the straw man acts in the patentee's interest.

Interveners

A third party may intervene after expiry of the opposition period in pending opposition proceedings or opposition appeal proceedings if that third party proves that they are involved in infringement proceedings with the proprietor relating to the opposed patent. The notice of intervention must be filed within three months of the date on which the infringement proceedings were instituted. An intervention found validly filed and admissible will be treated as an opposition. All general requirements for the valid filing and admissibility of an opposition also apply to an intervention.

Representation

If opponents have neither a residence nor a place of business in an EPC contracting state, they must appoint a professional representative (European patent attorney) or any legal practitioner entitled to act as one in an EPC contracting state. One representative may represent several opponents.

To avoid conflicts of interest, the proprietor and the opponent cannot be represented by the same professional representative.

Third-party observations in opposition

Any third party (except the proprietor or an opponent) may present observations concerning the patentability of the invention during pending opposition proceedings. However, a third party cannot become a party to the proceedings. Third-party observations may be anonymous

Legal references:

[Article 99 EPC](#); [Article 105 EPC](#); [Article 105a EPC](#); [Article 115 EPC](#); [Article 133 EPC](#)
[Rule 89 EPC](#); [Rule 114 EPC](#); [Rule 151\(1\) EPC](#)
GL D-I 5; GL D-VII 6;
[T 798/93](#)

5. Opposition: what, where and how to file?

A new opposition has to be filed in writing at one of the EPO's filing offices in Munich, The Hague or Berlin. Preferably, EPO Form 2300 should be used. However, the use of EPO Form 2300 is not mandatory. The opposition can be filed online, by post or delivered in person.

Basic requirements

The basic requirements for an opposition are the payment of the opposition fee and the filing of reasons (grounds on which the opposition is based) and evidence (cited documents). Without the evidence or reasons why the evidence is prejudicial, there is no opposition case.

Oppositions may only be filed on the following grounds:

- The subject-matter of the patent is not patentable under [Article 52-57 EPC](#)
 - patentable inventions ([Article 52 EPC](#))
 - exceptions to patentability ([Article 53 EPC](#))
 - novelty ([Article 54 EPC](#))
 - inventive step ([Article 56 EPC](#))
 - industrial applicability ([Article 57 EPC](#))
- The subject-matter of the patent extends beyond the content of the application as filed ([Article 123\(2\) EPC](#))
- The patent does not disclose the invention in a manner that is sufficiently clear and complete ([Article 83 EPC](#))

A notice of opposition should contain all documents to which an opponent refers. The opponent is given the opportunity to submit any missing documents within a specified time limit.

Normally, all documents filed during the opposition procedure are public. However, at the request of a party, documents may be excluded from file inspection.

Legal references:

[Article 52-57 EPC](#); [Article 83 EPC](#); [Article 99\(1\) EPC](#); [Article 123\(2\) EPC](#)
[Rule 2 EPC](#); [Rule 76 EPC](#); [Rule 144\(d\) EPC](#)
OJ EPO 2024, A42

6. Opposition fee and costs

The opposition fee amount is specified in the EPC Rules relating to Fees. The fee must be paid before expiry of the time limit for opposition.

If the opposition fee, or a sufficient part thereof, has not been paid within the opposition period, the opposition is deemed not to have been filed. However, if the opposition fee, apart from a small

amount (e.g. deducted as bank charges), has been paid within the opposition period, the formalities officer examines whether the amount lacking can be overlooked where this is justified. If the formalities officer concludes that the amount lacking can be overlooked, the opposition fee is deemed to have been paid.

Each party to the proceedings must bear its own costs incurred during the opposition proceedings. However, the opposition division may decide, for reasons of equity, to dispense with this principle and order a different apportionment of such costs. This can be the case when costs arise for one party in whole or in part as a result of the conduct of another party; in other words, when the costs are culpably incurred as a result of irresponsible or even malicious actions. The opposition division can decide to issue a decision on apportionment of costs at a party's request. There is no basis for deciding on a different apportionment of costs if the party which would benefit from the decision did not request apportionment. Proceedings concerning the apportionment of costs are initiated only in very exceptional cases.

Legal references:

[Article 99\(1\) EPC](#); [Article 104 EPC](#)

[Rule 88 EPC](#)

[Article 2 Rules relating to Fees](#)

GL D-III, 2; GL D-IX

7. Deficiencies in notices of opposition

It is important to distinguish between deficiencies which result in the notice of opposition being deemed not to have been filed and deficiencies which result in the notice of opposition being deemed inadmissible. Some deficiencies in notices of opposition can be remedied within a time limit set by the EPO, while others can only be remedied within the opposition period.

Important requirements that must be fulfilled for an opposition **to be deemed to have been filed**:

Requirements to be fulfilled within opposition period:

- full payment of the opposition fee ([Article 99\(1\) EPC](#))

Requirements that may be fulfilled within a time limit set by the EPO:

- correct signature on the notice of opposition ([Rule 50\(3\) EPC](#))
- filing of an authorisation, if required ([Rule 152 EPC](#))
- appointment of a professional representative where the opponent does not have their residence or principal place of business in an EPC contracting state ([Article 133\(2\) EPC](#))

A complete list of deficiencies which lead to the opposition being deemed not to have been filed can be found in GL D-IV 1.2.1.

Important requirements that must be fulfilled for an opposition **to be admissible**:

Requirements to be fulfilled within opposition period:

- sufficient identification of the opposed patent ([Rule 77\(1\) EPC](#))

- filing of statement as to what extent the patent is opposed ([Rule 76\(2\)\(c\) EPC](#))
- indication of facts, evidence and arguments ([Rule 76\(2\)\(c\) EPC](#))

Requirements that may be fulfilled within a time limit set by the EPO:

- indication of name, address and nationality of opponent ([Rule 76\(2\)\(a\) EPC](#))
- indication of patent number, title and proprietor's name ([Rule 76\(2\)\(b\) EPC](#))
- indication of name and address of representative ([Rule 76\(2\)\(d\) EPC](#))

A complete list of deficiencies which lead to the opposition being rejected as inadmissible can be found in GL D-IV 1.2.2.

Legal references:

[Article 99\(1\) EPC](#); [Article 133\(2\) EPC](#)

[Rule 50\(3\) EPC](#); [Rule 76 EPC](#); [Rule 77 EPC](#); [Rule 152 EPC](#)

GL D-IV 1.2.1; GL D-IV 1.2.2

8. Communication under Rule 79 EPC

The proprietor must be given the opportunity to comment on the opposition(s). To this end, after the formal examination of the opposition(s), the proprietor is invited to file observations within a time limit of four months. The proprietor may respond by presenting their arguments and submitting requests and may also file amended patent claims and various auxiliary requests. The proprietor may also decide not to defend the patent and allow the time limit to elapse without submitting a response. In this case, the patent proprietor is not threatened with a loss of rights. If no response is filed within the time limit, the opposition division will start examining the opposition(s) after the time limit has expired.

At the same time as the proprietor is invited to file observations, opponents are informed of any other notices of opposition.

Legal references:

[Rule 79 EPC](#)

9. Acceleration of opposition proceedings

The EPO accelerates opposition proceedings if it is informed of parallel infringement proceedings or revocation actions relating to the opposed patent before the Unified Patent Court (UPC) or before a national court/authority. The EPO may be informed by the UPC, a national court/authority or by a party to the opposition proceedings. In such cases the EPO endeavours to conclude the opposition proceedings swiftly in order to provide legal certainty in the interests of the parties, the authorities and courts involved and the public. Depending on the stage of the opposition proceedings, the opposition division applies different acceleration measures.

The "Communication of notices of opposition" to the proprietor is sent with a shortened time limit of three months instead of four if the EPO is informed before the communication is dispatched. The opposition division will then make every effort to issue summons to attend oral proceedings within three months of receipt of the proprietor's reply. If the information on parallel proceedings is received after the proprietor's reply, the opposition division will make every effort to issue summons to attend

oral proceedings within three months of receipt of the information. In addition, the parties will be summoned at minimum notice (Rule 115(1) EPC). Where the EPO is informed only after dispatch of the summons, the oral proceedings are rescheduled to the earliest possible date provided that the time saving is significant. After a decision has been pronounced during oral proceedings the decision and the minutes should be issued within one month.

Legal references:

Rule 115(1) EPC
GL E-VIII, 5
OJ EPO 2023, A99

10. Request to extend time limits

In opposition proceedings, an extension of the time limit for reply to the communication under Rule 79 EPC or to any other communication of the opposition division with a time limit will be granted only in exceptional cases. Such extensions are restricted and only allowable for serious reasons. In GL E-VIII, 1.6.1, illness, change of representative and the need to perform experiments are listed as serious reasons. In the exceptional case that a time extension is granted to one of the parties, the extension automatically applies to all parties to the proceedings. Non-substantiated requests or requests filed after the relevant deadline will be rejected immediately.

Legal references:

Rule 79 EPC; Rule 132 EPC
GL E-VIII, 1.6.1

11. Oral proceedings in opposition

Oral proceedings in opposition take place either at the instance of the EPO or at the request of any party to the proceedings. Oral proceedings in the opposition procedure are public.

Since a decision of the EPO may only be based on arguments, grounds or evidence on which the parties have had an opportunity to present their comments, oral proceedings have to take place before a decision can be taken if the parties likely to be adversely affected by that decision have requested such proceedings.

The opposition division issues the summons to oral proceedings together with its preliminary opinion on the case and sets a final date under Rule 116 EPC for the parties to make submissions or file amendments (usually two months before the date of the oral proceedings). The date set under Rule 116 EPC is not extendable. The opposition division is not obliged to consider written submissions filed after this date. However, the opposition division will normally consider late-filed facts and evidence if it considers them relevant.

The EPO is obliged to forward submissions of a party to all other parties in the proceedings. As of 1 May 2022, the EPO stopped transmitting any annexed documents (e.g. cited documents, main- and auxiliary requests). The EPO has taken measures to ensure that all parties are informed in good time of each other's submissions filed shortly before oral proceedings.

At least two months` notice of the summons must be given unless the parties agree to a shorter period ([Rule 115\(1\) EPC](#)).

Any summoned party may request postponement of oral proceedings by submitting a well-reasoned request. Reasons for postponing the date of the oral proceedings may, for instance, include holidays which have already been firmly booked before notification of the summons to oral proceedings or serious illness. A previously notified summons to oral proceedings of the same party in other proceedings before the EPO, the UPC or a national court or patent office for the same date or for the preceding or following day will also justify a postponement of the oral proceedings.

During oral proceedings the parties may use any official EPO language (English, German or French). If necessary, the EPO will provide interpreters. According to Rule 4(1) EPC, the parties must indicate the language they will use at least one month before the date of the oral proceedings. At the same time, the parties should indicate from which language they need interpretation.

With effect from 1 January 2023, oral proceedings before the opposition division are to be held by videoconference by default (OJ EPO 2022, A103).

Legal references:

Article 113 EPC; Article 116 EPC

Rule 4(1) EPC; [Rule 115 EPC](#)

[GL D-VI, 3.2](#); [GL E-III 6](#); [GL E-III, 7.1.1](#)

OJ EPO 2022, A103

12. Revocation upon request

The proprietor can file a request for the patent to be revoked at any time during pending opposition proceedings. This request does not have to be reasoned and is not subject to a fee. The request must be clear and unambiguous. As an alternative to the request for revocation, the proprietor can state that the text in which the patent was granted is no longer approved. This statement is considered a valid equivalent to a revocation request. However, where amended patent documents (claims, description, drawings) have already been filed, the proprietor must also state that the amended documents are no longer approved. The EPO has no provisions allowing the proprietor to terminate the opposition proceedings by means of a declaration. Therefore, if the proprietor requests revocation of the patent, the decision to revoke the European patent is taken by the EPO (Article 101(3)(b) EPC).

Revocation may be requested because the proprietor has lost interest in the patent for economic reasons (the patent is no longer meaningful or does not bring any benefits) or they may have signed a contract with the opponent to sell their patent or their company.

If no opposition proceedings are pending, the proprietor may only request revocation according to Article 105a EPC, which is subject to the payment of a fee.

Legal references:

Article 101(3)(b) EPC; Article 105a EPC; Article 105b EPC

GL D-X.1;

T 2405/12

13. Withdrawal of opposition

An opposition may be withdrawn by the opponent at any stage of the proceedings from the filing of the notice of opposition until the expiry of the time limit for filing an appeal after a decision has been delivered. The request must be clear, unambiguous and unconditional. The statement is binding and irrevocable unless retracted on the same day. From the date of receipt of the withdrawal the opponent will no longer be a party to the proceedings. After the sole or last opponent has withdrawn the opposition, the opposition division will decide whether or not to continue the opposition proceedings (Rule 84(2) EPC). The opposition division should continue the opposition proceedings of its own motion if it is likely that limitation or revocation of the European patent would be the result.

Legal references:

Rule 84(2) EPC

GL D-VII.5.3

14. Outcome of the opposition procedure

The opposition division will analyse the grounds and evidence brought forward by the opponents and the patent proprietor's counter-arguments in accordance with the criteria laid down in Article 100 EPC.

Decisions may only be based on grounds or evidence on which the parties concerned have had the opportunity to comment. After all parties have had sufficient opportunity to present their arguments, the opposition division will decide on the fate of the patent. Decisions are taken by the opposition division jointly in a majority vote. In the event of parity of votes, the vote of the chairperson is decisive.

EPO decisions are binding. This means that they cannot be cancelled or declared invalid as soon as they are announced during oral proceedings or handed over to the internal EPO mail service in written proceedings. From that date, no further substantive observations of the parties will be taken into account. However, decisions are open to appeal for a party adversely affected. If an admissible appeal is filed, the decision of the opposition division is suspended until the final decision of the board of appeal. The decision of the opposition division becomes final, and opposition proceedings are closed, if no appeal is filed within the two-month time limit. The outcome of the opposition procedure before the EPO has effect for all national patents based on the European patent in the EPC contracting states.

There are three types of decision following substantive examination by the opposition division:

1. revocation of patent: Article 101(2) EPC or Article 101(3)(b) EPC
→ European patent is revoked with retroactive effect
2. interlocutory decision: Article 101(3) EPC
→ European patent is maintained in amended form
3. rejection of opposition: Article 101(2) EPC
→ European patent is maintained unamended

Further decisions in opposition proceedings which concern the fate of a patent:

- revocation of the patent at the proprietor's request
- revocation of the patent under Rule 82(2) and (3) EPC
- rejection of the only opposition as deemed not to have been filed

- rejection of the only opposition as inadmissible
- discontinuation after withdrawal of the only opponent or last opponent
- discontinuation after lapse of all national patents

The opposition procedure is terminated after a decision to revoke the patent or after a decision to reject the opposition has become final. Revocation of the patent results in the patent being deemed never to have existed *ex tunc*. Rejection of the opposition results in maintenance of the non-amended patent.

The interlocutory decision to maintain the patent in amended form only terminates the substantive examination phase but does not terminate the opposition proceedings. If no appeal is filed, the interlocutory decision to maintain the patent in amended becomes final. However, before the final decision to maintain the patent in amended form can be delivered, the proprietor must file a translation of the claims as well as clean copies of the application documents with handwritten amendments, if applicable. Until 1 April 2024, an additional publication fee had to be paid. However, this was abolished with the amendment of the second sentence in Rule 82(2) EPC (OJ EPO 2024, A3 Article 1, point 5)

Legal references:

Article 100 EPC; Article 101 EPC; Article 106 EPC; Article 113 EPC

Rule 81 EPC; Rule 82 EPC

GL D-II.6; GL D-V; GL D-VI.7.2.3; GL D-VIII.1.1; GL D-VIII.1.2; GL D-VIII.1.3; GL D-VIII.1.4

OJ EPO 2024, A3 Article 1, point 5

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