

## Notes to the notice of opposition (EPO Form 2300)

Although the opposition form is **not mandatory** for the purpose of filing a notice of opposition, it specifies all the information required for such a notice to be admissible and hence facilitates the formulation and processing of the opposition. In stating and explaining the **grounds for opposition**, the opponent is free to comment as he wishes.

Explanatory notes to the various sections:

### I. Patent opposed

Under **Patent No.** the number of the European patent against which opposition is filed (Rule 76(2)(b) EPC) must be given.

If known, the **application number and the date on which the Patent Bulletin mentions the grant** (Art. 97(3) EPC) should also be given. The latter makes it easier to monitor compliance with the opposition period.

The **title of the invention** must be given (Rule 76(2)(b) EPC); it should be indicated as **shown on the cover page of the printed patent specification** under item 54.

### II. Proprietor of the patent

Where there are **several** patent proprietors, it is sufficient for the proprietor first named in the patent specification (under item 73) to be given.

### III. Opponent

The **name, address and nationality** of the opponent and the **state** in which his residence or principal place of business is located must be given, in accordance with Rule 41(2)(c) EPC (Rule 76(2)(a) EPC). If the identity of the opponent has not been established by expiry of the opposition period, such deficiency can no longer be remedied (decision of the Technical Board of Appeal T 25/85, OJ EPO 1986, 81). An opponent may give an address for correspondence (see OJ EPO 2014, A99).

### IV. Authorisation

If the opponent has appointed a **representative**, his name and the address of his place of business must be given, in accordance with Rule 41(2)(c) EPC (Rule 76(2)(d) EPC). If **several** professional representatives are appointed, only one representative to whom notification is to be made

should be named. Any further representatives must be named in an annex (please put a cross in the appropriate box). In the case of an association of representatives, only the name and address of the association must be entered (see Rule 143(1)(h)).

An opponent who has neither a residence nor his principal place of business within the territory of one of the EPC contracting states must be represented and act through his representative (Art. 133(2) EPC). Professional representation before the EPO may only be undertaken by professional representatives (Art. 134(1) EPC) or legal practitioners entitled to act as professional representatives (Art. 134(8) EPC).

Natural or legal persons having their residence or principal place of business within the territory of one of the EPC Contracting States may also be represented in opposition proceedings by an **employee**, who must, however, be authorised (Art. 133(3), first sentence, EPC). In this case notification will be made to the opponent (not the employee) unless a professional representative has also been authorised.

To avoid delaying the proceedings, any authorisation which has to be filed should if possible be enclosed with the opposition. Under Rule 152(1) EPC in conjunction with the decision of the President of the EPO dated 12 July 2007, listed professional representatives identifying themselves as such normally no longer need to file signed authorisations (cf. Special edition No. 3, OJ EPO 2007, L.1.). These are, however, required from legal practitioners and employees who are not professional representatives and are acting for the opponent under Articles 134(8) and 133(3), first sentence, EPC respectively. If they do not file an authorisation, the EPO will ask them to do so within a specified period. Failure to comply will result in any procedural steps performed by the practitioner or employee being deemed not to have been taken (Rule 152(6) EPC) – which means that the notice of opposition will be considered not to have been filed.

### V. Statement of the extent to which the patent is opposed

The notice of opposition must contain a statement of the extent to which the European patent is opposed (Rule 76(2)(c) EPC). If the opposition is

not filed against the patent as a whole (place a cross in the appropriate box), the number(s) of the claims (as in the patent specification) which the opponent considers to be affected by one or more of the grounds for opposition must be given.

## VI. Grounds for opposition

The alleged grounds for opposition (Art. 100 EPC) must be indicated by a cross in the appropriate box(es).

Under the heading of non-patentability (Art. 100(a) EPC) the most frequently cited grounds for opposition are lack of novelty and lack of inventive step, for which separate boxes are provided. The form otherwise gives the opponent ample scope for indicating other possible grounds for opposition. Under the heading "other grounds" the following Articles may be cited in the box provided: 52(1) and 57; 52(2); 53(a); 53(b); 53(c) EPC.

A full list of grounds for opposition is given in Article 100 EPC. The following in particular are not admissible grounds: lack of unity of invention (Art. 82 EPC), lack of clarity in the claims (Art. 84 EPC) and prior national rights (Art. 139(2) EPC).

For general information on grounds for opposition see Guidelines for Examination in the EPO, D-III, 5.

## VII. Facts and arguments presented in support of the opposition

The notice of opposition must contain an indication of the facts and evidence presented in support of the opposition (Rule 76(2)(c) EPC) and, where documents are cited, an indication of the relevant part(s) (Guidelines D-IV, 1.2.2.1).

The **facts**, with the relevant arguments and evidence, in support of the opposition must be presented on a **separate sheet** enclosed as an annex to the Form (indicated by a pre-printed cross in the box).

The fact that the **evidence** is listed separately in Section IX does not anticipate the presentation of facts, evidence and arguments but merely makes for greater clarity and simplifies processing of the dossier. Section IX of the Form (Evidence presented) may of course always be referred to in this presentation.

Where documents **are cited** in shortened form, the rules set out in the Guidelines B-X, 9.1 should be followed.

## VIII. Other requests

This section may be used for example to request oral proceedings or a file inspection.

## IX. Evidence

**Published documents** cited as evidence (e.g. patent specifications) must be entered under "Publications" in the spaces provided – preferably in order of importance. They should be cited in the manner described in Guidelines B-X, 9.1.

Opponents should also indicate the **parts** of the document on which the opposition is based (this information has to be given anyway in the statement of facts and arguments – see notes to Section VII above).

Other **evidence** (e.g. witnesses, affidavits, company brochures, test or expert reports) must be cited under "Other evidence" (for public prior use: place, time, nature – see Guidelines G-IV, 7.2; D-IV, 1.2.2.1(v); for witnesses: first name and last name, full address, relationship to opponent, etc.). If there is not enough room, the evidence can simply be listed, with an indication of where in the statement of grounds the relevant particulars appear (e.g. "Witness ..., page 5").

Opponents are also requested to indicate which pieces of evidence contain content in colour.

Documents cited by a party to opposition proceedings must be filed (including publications already cited in the European patent specification) with the notice of opposition or other written submission. This will avoid an invitation from the EPO for subsequent filing thereof. If they are neither enclosed nor filed in due time on invitation, the EPO may ignore any arguments based on them (Rule 83 EPC).

## X. Payment of opposition fee

The opposition fee can be paid in a number of different ways, i.e. by debiting a deposit account, by credit card or by bank transfer. For more information, see "[Making payments](#)" on the EPO website.

### Debiting a deposit account

The procedure for paying by debiting a deposit account is set out in detail in the Arrangements for deposit accounts (ADA) published in the supplementary publication to the EPO's Official Journal.

Careful attention should be paid to the conditions applicable to the filing of debit orders.

### Payment by credit card

Payment by credit card must be made via the EPO's credit card fee payment service available on the EPO website, using a credit card accepted by the EPO (as at December 2017: Master Card and VISA). The procedure is set out in detail in the Notice from the European Patent Office concerning the payment of fees by credit card published in the EPO's Official Journal.

### Bank transfers

Payment by bank transfer should be made to the following account with the Commerzbank in Germany:

Account No. 3 338 800 00 / Sort code 700 800 00

IBAN DE20 7008 0000 0333 8800 00

BIC DRESDEFF700

Commerzbank AG  
Leopoldstrasse 230  
80807 Munich  
Germany

For the fee amount, see the publication "Schedule of fees and expenses" or the "Interactive schedule of fees" available on the EPO website "[European \(EPC\) fees](#)".

## XI. List of documents enclosed

Please indicate which documents are enclosed by crossing the relevant box.

## XII. Signature

If the opponent is a legal person and the notice of opposition is not signed by the representative, it must be signed:

- (a) either by a person entitled to sign under the law or the opponent's statute, articles of association or the like, with an **indication of the capacity of the person doing so**, e.g. Geschäftsführer, Prokurist, Handlungsbevollmächtigter; chairman, director, company secretary; directeur, fondé de pouvoir (Art. 133(1) EPC), in which case no authorisation need be filed;
- (b) or by another employee of the opponent, provided the latter's principal place of business is in a contracting state (Art. 133(3), first sentence; Rule 152(1) EPC), in which case an authorisation must be filed.