

PART V OPPOSITION AND LIMITATION PROCEDURE

CHAPTER I OPPOSITION PROCEDURE

Opposition procedure in the EPO

The following overview is based on the streamlined opposition procedure as from 1 July 2016 [OJ 2016, A42] which aims to reduce the total time needed for a decision in straightforward cases to 15 months, calculated as from expiry of the opposition period [OJ 2016, A43].

General principles

The aim is to establish as rapidly as possible, in the interest of both the public and the parties to opposition proceedings, whether, and to what extent, a patent may be maintained on the basis of an opponent's submissions. In particular the EPO seeks to achieve this by means of an efficient and streamlined procedure. At the same time, the general principles governing the procedure before the EPO and in particular the principle of the right to be heard [Art.113(1)] must be respected.

Summary of the procedure

An opponent files an opposition at the EPO, within 9 months of the publication of the grant of the patent in the bulletin [Art.99(1)] in a written reasoned statement [R.76] and pays the opposition fee [Art.99(1)]. The opponent can be 'any person' [Art.99(1)], excluding the proprietor [G9/93] (he can use the limitation procedure of Art.105a). The opponent must be identified in the notice [R.76(2)], but it is allowed to use a strawman, under the conditions of G3/97. Multiple opponent may act jointly in one filed opposition, requiring only a single opposition fee under the conditions of G3/99. The notice must also indicate the extent of opposition (which claims are attacked) as well as the grounds for opposition, as specified in Art.100. Consequence of filing the extent is discussed in G9/91, the ground in G1091. Facts and evidence in support of the grounds must also be indicated.

Immediately after its filing, the EPO communicates the notice of opposition to the patent proprietor [R.79(1)]. The EPO examines first whether the opposition is deemed filed [D-IV 1.2.1], next whether the opposition is inadmissible involving a major deficiency, which must be remedied within the 9 month period [R.77(1)] or a minor deficiency, which may be remedied upon invitation [R.77(2)].

The opponent is invited to furnish within two months the cited documents or evidence, if not already submitted with the notice of opposition. The patent proprietor is invited to file within a specified period (usually four months) his observations (in particular on the facts, evidence and arguments submitted) and any amendments to the patent [R.79(1), R.81(3)]. The observations and any amendments filed by the patent proprietor are immediately communicated to the opponent [R.79(3)].

If the patent proprietor responds to the notice of opposition by filing amended patent documents, the communication to the opponent also invites him to comment within a specified period (normally four months D-IV, 5.4) [R.81(2)]. If the proprietor does not file amended documents, his observations are forwarded for information to the opponent.

If both the patent proprietor and the opponent request oral proceedings, the proprietor's observations – even if amendments have been made or requested – are sent to the opponent purely for information. The dossier is forwarded immediately to the opposition division, which will decide how the procedure is to continue (e.g. fixing a date for the oral proceedings or inviting the parties to file further observations).

If, during the course of the procedure, the opposition division considers it necessary to seek further clarification of the facts or to hear one party's observations on the submissions of another party, the party concerned will be invited to comment on the submissions within a specified period (normally four months) (D-VI, 3.1).

If oral proceedings are requested by one of the parties or considered expedient by the opposition division itself, a date for oral proceedings is fixed (for further information on oral proceedings, see below). If no oral proceedings are to be held and if no further clarification of the facts is necessary (i.e. the decision can be based on grounds on which the parties have had an opportunity to comment [Art.113(1)]), the opposition will be decided on immediately.

The proceedings will be concluded in every case with a decision [Art.102]. If the patent proprietor no longer wishes to maintain the patent, he can request that the patent be revoked. The patent is then revoked because no text approved by the proprietor is available [Art.113(2)]. The same applies if the proprietor informs the EPO that he surrenders (or abandons or renounces) the patent in respect of all the designated contracting states. If the opposition is withdrawn, the opposition division can terminate the proceedings by means of a decision or may continue the examination on own motion [Art.114(1)], see below.

Multiple oppositions

If several oppositions to a European patent are filed, they will be considered jointly. The notices of opposition and all further submissions made by individual parties will be communicated to all other parties.

The notice of opposition

Opponents are recommended to use Form 2300, irrespective of the chosen means of filing.

Notice of opposition may be filed in electronic form using the EPO Online Filing software (see OJ EPO 2015, A91) or using the new online filing service (CMS) provided on the EPO website (OJ EPO 2015, A27). However, it may not be filed using the EPO web-form filing service (OJ EPO 2014, A98). If documents are filed online, the EPO electronically acknowledges receipt within the submission session. [For details please refer to the notes under R.2].

Notice of opposition may also be filed by fax or by post using Form 2300, available on the EPO's website. As in the above-mentioned cases of electronic filing, no written confirmation is required. Written confirmation reproducing the contents of the fax must only be supplied at the invitation of the EPO (OJ EPO 2007, Special edition No. 3, A.3). [For details please refer to the notes under R.2].

With the notice of opposition, opponents should file all relevant documents, even those available in the EPO documentation, translations of any documents not in an EPO official language and, wherever possible, a copy of any further evidence indicated in the notice.

The notice of opposition must contain an **indication of the facts, evidence and arguments** in support of the grounds for opposition (Rule 76(2)(c) EPC). The opponent must therefore give **at least one ground** for opposition under Article 100 EPC and indicate the facts, evidence and arguments adduced in support of the ground(s). If it fails to satisfy this requirement, the opposition is rejected as **inadmissible** (Rule 77(1) EPC).

The **evidence indicated may also be submitted subsequent**. If the opposition is admissible, the opponent will be invited to supply such evidence as a rule within two months. If the documents thus requested are neither enclosed nor filed within the time limit set, the opposition division may decide not to take into account any arguments based on them (Guidelines D-IV, 1.2.2.1(v)).

- R.2 Filing of and formal requirements for documents
- R.76(1) Form of the opposition
- R.76(2) Content of the opposition
- R.77(1) Deficiencies which must be remedied before expiry of the opposition period
- R.77(2) Deficiencies to be corrected in a period to be specified by the Opposition Division
- D-IV 1.2.2.1 Deficiencies under Rule 77(1) (reproduced under R.77(1))

Reply of the proprietor

After examination for admissibility or after expiry of the time limit set by the opposition division for remedying deficiencies noted in a communication under Rule 77(2) EPC, the patent proprietor is invited to file its observations and any amendments to the patent within four months (Rules 79(1), 132 EPC). The same applies after expiry of the time limit set for furnishing cited documents or evidence not already filed with the notice of opposition.

The patent proprietor should within the specified time limit submit a full response to the opposition(s), i.e. all the facts, evidence and arguments in support of its case. If necessary, it should submit amended documents to meet the grounds for opposition.

The observations and any amendments filed by the patent proprietor are immediately communicated to the opponent (Rule 79(3) EPC) for information.

At the same time, the opposition division will prepare the next action.

If the opposition division considers it necessary, it will dispatch a communication and invite the parties to reply within a specified time limit. In most cases however the opposition division will issue summons to oral proceedings.

- R.77(2) Deficiencies to be corrected in a period to be specified by the Opposition Division
- R.79(1) Communication to the proprietor, invitation to file observations and amendments
- R.79(3) Communication to other parties of reply of proprietor
- R.132 Periods specified by the EPO

Time limits

The normal period for replying to communications from the opposition division is four months for communications raising matters of substance and two months for other communications (Guidelines E-VII, 1.2).

Extensions of time limits are granted only in exceptional cases with duly substantiated requests.

- E-VIII 1.2 Duration of the time limits to be determined by the EPO on the basis of EPC provisions (reproduced under R.132(2))

Facts and evidence not submitted in due time

The opposition division may disregard facts or evidence which are not submitted in due time by the parties concerned (Article 114(2) EPC), unless they are of prima facie relevance, i.e. they would affect the outcome of the decision to be taken.

In order for the proceedings to progress expeditiously, parties should submit all facts, evidence and requests at the beginning of the procedure. Where this is not possible, the facts, evidence or requests must be submitted at the earliest opportunity. If relevant facts or evidence are submitted by a party only at a late stage of the proceedings without very good reason and if, as a consequence, the costs of oral proceedings or taking of evidence are incurred by another party, this may be taken into account in the apportionment of costs (see below).

- Art.114(2) EPO may disregard facts/evidence not submitted in due time

Examination by the EPO of its own motion

Examination of the opposition is confined to the parts of the patent contested by the opponent(s) and the grounds put forward by them. Exceptionally, the opposition division may in accordance with Article 114(1) EPC consider other grounds for opposition which, prima facie, in whole or in part would seem to prejudice the maintenance of the European patent.

The opposition division will only undertake a more extensive examination (Article 114(1) EPC) if facts come to its attention which clearly wholly or partially prejudice the maintenance of the patent (see Guidelines D-V, 2). However, opposition is not an opportunity for the EPO to undertake a complete re-examination of the patent of its own motion.

If the patent proprietor submits amended documents, the amended parts must be checked for compliance with all the requirements of the Convention. Regarding clarity, amended claims may be examined for compliance with the requirements of Article 84 EPC only to the extent that an amendment introduces non-compliance with that article (G 3/14).

If a sole opposition or all oppositions are withdrawn, the opposition proceedings may be continued by the EPO of its own motion. This is always the case when the examination necessary for the decision has already been concluded, or can be concluded without the participation of the opponent(s), and if it appears that the patent cannot be maintained unamended (see Guidelines D-VII, 5.3). It is also the case if the proprietor has itself submitted amendments (see Article 113(2) EPC).

G 3/14 In considering whether, for the purposes of Article 101(3) EPC, a patent as amended meets the requirements of the EPC, the **claims of the patent may be examined for compliance with the requirements of Article 84 EPC only when, and then only to the extent that the amendment introduces non-compliance with Article 84 EPC.**

Art.84 The claims

Art.114(1) EPO is in examination not restricted to facts/evidence/arguments of parties

D-V 2 Extent of the examination

D-VII 5.3 Continuation after the opposition has been withdrawn

Subsequent procedure

If oral proceedings are requested by one of the parties or considered expedient by the opposition division itself, a date for oral proceedings is fixed.

If the opposition division considers it necessary to seek further clarification of the facts or to hear one party's observations on another party's submissions before summoning to oral proceedings, the party concerned will be invited to comment on the submissions within a specified period (Guidelines D-VI, 3.1).

If no oral proceedings are to be held and if no further clarification of the facts is necessary, i.e. if the decision can be based on grounds on which the parties have had an opportunity to comment in writing (Article 113(1) EPC), the opposition will be decided on immediately.

Art.113(1) Right of parties to comment on grounds or evidence on which EPO decision is based

D-VI 3.1 Opposition Division's communications

Oral proceedings

The date on which the oral proceedings are to take place is specified in the summons. As a rule it will not be earlier than six months after dispatch of the summons. Requests to alter this date may only be considered in exceptional, duly substantiated cases (see notice in OJ EPO 2009, 68).

With the summons to oral proceedings, the parties also receive a communication setting out the issues which in the opposition division's view must be discussed at the oral proceedings.

The annexed communication will also contain the opposition division's provisional and non-binding opinion on the positions adopted by the parties and in particular on amendments filed by the proprietor of the patent (see Guidelines D-VI, 3.2, and E-II, 6), where applicable making suitable reference to certain parts of the file. The summons will also fix a final date for submitting observations and amendments (Rule 116 EPC). This date is normally set at two months before the oral proceedings.

The subject of the oral proceedings are the crucial issues listed in the annexed communication, but the parties are not confined to those issues alone, provided that their additional submissions are relevant.

In oral proceedings, the opposition division normally gives the floor first to the party raising an objection. Each party is given the opportunity to state its case and to reply to the other party. Where necessary, the opposition division asks the parties for clarification.

Oral proceedings are generally concluded by a decision based on the parties' final submissions and requests. To this end, the representatives of the parties should come to the oral proceedings prepared to consider possible fall-back positions and armed with the authority to take a stand on behalf of their clients on any developments which may occur in the course of the proceedings.

If new facts or evidence (e.g. a new document) are submitted for the first time at the oral proceedings, they are to be regarded as late-filed (Rule 116 EPC) and will only be considered if they are of such prima facie relevance that the opposition division, in the exercise of its discretion, admits them into the proceedings under Article 114(2) EPC. In such cases, oral proceedings should be interrupted briefly to enable the other parties to study the new submission. If it is unreasonable to expect the other parties to be able to formulate an adequate response, the proceedings must be continued in writing.

At the end of the oral proceedings, after a brief adjournment for deliberation, the chairman normally pronounces the opposition division's decision. A brief statement of grounds may also be given. The decision is notified to the parties in writing without delay (Rule 111(1) EPC).

If the opposition division's interlocutory decision was based on documents which do not comply with Rule 49(8) EPC, i.e. which contain handwritten amendments, the opposition division will invite the proprietor in the communication under Rule 82(2) EPC to file a formally compliant version of the amended text (see OJ EPO 2016, A22).

The outcome of the oral proceedings will be published in the European Patent Register.

- R.49(8) Requirement for typing/printing documents making up European patent application
- R.82(2) Continuation of the examination; invitation to pay fee for publishing new specification and to file
- R.116 Preparation of oral proceedings
- R.111(1) Decision in oral proceedings may be given orally followed by written notification, translation of amended claims
- D-VI 3.2 Summons to oral proceedings
- E-III 6 Summons to oral proceedings
- OJ 2009, 68 Oral proceedings before the EPO (reproduced under Art.116(1))
- OJ 2016, A22 Submissions in oral proceedings in opposition

Minutes of oral proceedings

The minutes of the oral proceedings, where appropriate together with the decision, are sent to all the parties as soon as possible.

Closure of proceedings

The proceedings will in every case be concluded with a decision. The opposition division may decide to revoke the European patent, to reject the opposition or to maintain the patent in amended form (Article 101 EPC).

If the patent proprietor no longer wishes to maintain the patent, it can request that the patent be revoked. The patent is then revoked because no text approved by the proprietor is available (Article 113(2) EPC).

Revocation can also be expected if the proprietor informs the EPO that it renounces the patent in respect of all the designated contracting states.

The opposition division can also terminate the proceedings by means of a formal decision if the opposition is withdrawn (Rule 84(2) EPC). Similarly, the opposition division will close the proceedings if the European patent has been surrendered or has lapsed for all the designated states and the opponent does not request continuation of the opposition proceedings within the period specified in Rule 84(1) EPC.

- Art.101 Examination of the opposition - Revocation or maintenance of the European patent
- Art.113(2) EPO considers and decides on European patent (application) in submitted or agreed text
- R.84(1) Continuation of opposition at request of opponent after surrender or fully lapsing of patent
- R.84(2) Continuation of opposition by EPO of its own motion even without participation of **heirs** (death/incapacity opponent; withdrawal opposition)

Hearing of witnesses

Witnesses offered to give testimony (Rule 117 EPC) on a contentious issue will be heard if the contested issue is relevant for a decision on the maintenance of the opposed patent. This may be the case where a prior use is claimed and the witness offered was involved.

- R.117 Decision on taking of evidence

Costs

Each party generally bears its own costs. Under Article 104(1) and Rule 88 EPC, the costs may be otherwise apportioned "for reasons of equity". Reasons of equity will require a decision on the apportionment of costs when the costs are culpably incurred as a result of irresponsible or even malicious actions. Each party may of course defend its rights or interests by any legally admissible means within the framework of the opposition proceedings; it may, for example, request oral proceedings or the taking of evidence. Therefore the patent proprietor has to bear the costs involved in replying to a notice of opposition even if the opposition subsequently proves to be wholly unfounded.

If a party has exercised delaying tactics or conducted itself unreasonably, the opposition division may decide on a different apportionment of costs. Examples in which the opposition division may decide to apportion costs are given in Guidelines D-IX, 1.4.

- Art.104(1) Apportionment of costs of parties to opposition (appeal) proceedings
- R.88 Costs
- D-IX 1.4 Principle of equity

Intervention of the assumed infringer

A third party may intervene in opposition proceedings, under the conditions stipulated in Article 105 EPC, as long as they have not been concluded (see Guidelines D-VII, 6). If the intervention is properly filed, it is treated as an opposition. This means that, regardless of the stage at which the intervener becomes a party to the proceedings, it enjoys essentially the same rights as any other party.

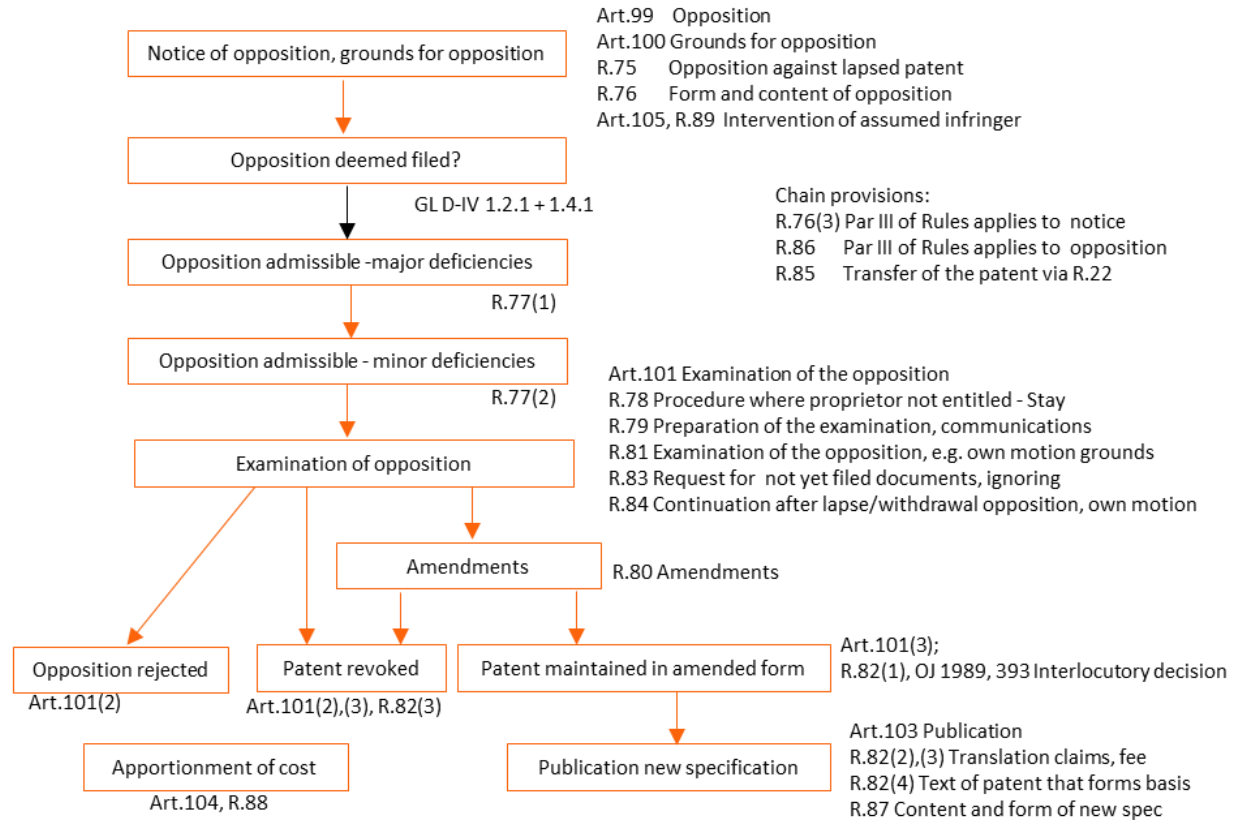
- Art.105 Intervention of the assumed infringer
- D-VII 6. Intervention of the assumed infringer

Accelerated processing of oppositions

E-VIII 5 In cases where an infringement action in respect of a European patent is pending before a national court of a Contracting State, a party to the opposition proceedings may request accelerated processing. The request may be filed at any time. It must be filed in written reasoned form. In addition, the EPO will also accelerate the processing of the opposition if it is informed by the national court or competent authority of a Contracting State that infringement actions are pending (see the Notice of the EPO dated 17 March 2008, OJ EPO 2008, 221).

- OJ 2008, 221 Accelerated processing of oppositions – infringement action

Opposition – legal overview



Opposition – acts and remedies if missed

OPPOSITION	SPECIFIC REMEDY	ART.121	ART.122
Filing notice of opposition A99(1) – 9 m after mention of the grant in bulletin - Pay opposition fee Art.99(1) - written reasoned statement R.76(1) - particulars of the opponent R.76(2)(a) - number of opposed patent R.76(2)(b) - name of the proprietor R.76(2)(b) - title of the invention R.76(2)(b) - extent of opposition R.76(2)(c) - grounds of opposition R.76(2)(c) - indication of facts and evidence R.76(2)(c) - particulars representative if appointed R.76(2)(d) - General requirements, see above (e.g. signature)	See below for deemed not filed and inadmissible Grounds: - Art.100(a): - not new (Art. 54, 55), - not inventive (Art. 56), - not industrially applicable(Art. Art. 57), - not an invention under Art. 52(2),(3), or - not patentable under Art. 53 - Art.100(b): insufficient disclosure - Art.100(c): - extends beyond application as filed, or - also: if divisional or filed under Art.61, beyond the earlier application as filed.	No for opposition A121(1)	No for opponents A122(1)
Opposition fee Rfees.2(1).10, A99(1) – same time Intervention: R.89(2)	No	No for opposition A121(1)	No for opponents A122(1)
Opposition deemed not filed D-IV 1.2.1 - opposition fee not paid (or insufficient) Art.99(1) - not signed R.50(3), R.76(3) - inferior quality fax and not confirmed R.2(1),R.76(3) - notice was filed using non-allowed means, such as telex or telegram R.2(1),R.76(3) - missing authorisation representative or employee where required R.152(6) - not in official EPO language of R.3(1), or, if Art.14(4) applies, the translation (of the essential elements of R.76(2)(c)) is not submitted in R.6(2) period (G6/91, T 193/87). If not met, deemed not filed Art.14(4)	The opposition fee will be refunded, no legal basis for fee payment D-IV 1.4.1. - Overlooking small amount lacking Rfees.8 - Yes: invitation +10d+period (normally 2 m E-VIII 1.2) (R.50(3), R.76(3)) - Yes: invitation+10d+2m for confirmation copy (R.2(1),R.76(3) OJ 2019, A18) - Yes: R152(2), (3) OJ 2007, SE3, L.1), invitation+10d+period - No, within R6(2)	No for opposition A121(1)	No for opponents A122(1)

OPPOSITION	SPECIFIC REMEDY	ART.121	ART.122
<p>Inadmissible - major R77(1), D-IV 1.2.2.1:</p> <ul style="list-style-type: none"> - Art.99(1): not in writing with EPO - Art.99(1) not within 9 m, e.g. too late - R.77(1): not sufficient identification of the patent (EPO is unable to identify the patent), Normally OK: number; wrong title is no problem. Proprietor's name OK if he possesses only one patent or possesses several patents, and only one fits the title. - R.76(2)(c): no statement of the extent - R.76(2)(c) no statement of grounds, for non-patentability at least implicitly which conditions for patentability (Art. 52 to 57); no national prior right - Art.99(1), R.76(2)(c): no indication of facts, evidence and arguments. Evidence itself may be produced after the expiry of the opposition period. - Art.99(1), R.76(2)(a) no indication beyond any doubt of identity of opponent 	<p>Must be completed with 9 m. period; If possible: invitation to correct in 9 m. period (D-IV 1.3.3)</p> <p>The opposition fee is not refunded for an inadmissible opposition</p>	No for opposition A121(1)	No for opponents A122(1)
<p>Inadmissible - minor R77(2), D-IV 1.2.2.2.:</p> <ul style="list-style-type: none"> - R.76(2)(a): incomplete name/ address of opponent and State - R.76(2)(b): number, or name of proprietor or title not indicated (but patent could be identified). - R.76(2)(d): name or address representative (if appointed) not indicated correctly - Opponent outside Contracting State (Art. 133(2)) has not appointed representative (Art. 134). EPO asks to arrange signature or approval of notice by representative - R.86: fails further formal requirements 	<p>Yes, R77(2) invitation+10d+period</p> <p>The opposition fee is not refunded for an inadmissible opposition</p>	No for opposition A121(1)	No for opponents A122(1)
<p>Late filed additional ground</p> <ul style="list-style-type: none"> - D-III 5 Art.100(a) covers the following grounds: - is not new (Art. 52(1), 54, 55), - does not involve an inventive step (Art. 52(1), 56), - is not susceptible of industrial application (Art. 52(1), Art. 57), - is not regarded as an invention under Art. 52(1)-(3), - is not patentable under Art. 53 	<p>G 10/91 2 Only properly submitted and substantiated grounds of opposition must be considered; exceptionally prima facie relevant grounds under Art.114(1)</p> <p>T 182/89 II. 2 Alleged but unsupported grounds of opposition are rejected</p> <p>T 274/95 I Not maintained ground may be disregarded, unless likely prejudicial</p> <p>G 1/95 Novelty, inventive step and Art.52(2) unpatentability are separate grounds</p> <p>G 1/95 r.4.3 Art.52 to 57 define separate grounds for opposition "invention", "novelty", "inventive step" and "industrial application"</p> <p>G 7/95 Ground lack of inventive step allows assessment of novelty in view of closest prior art</p>		
<p>Late change in extent of opposition</p>	<p>G 9/91 Opposition limited by extent indicated in notice of opposition; Independent claim not attacked in notice is not part of opposition and may not be examined Claim dependent on fallen independent claim covered by the notice may be examined if validity prima facie in doubt</p>		
<p>New matter, late filed documents</p>	<p>T 1002/92 1 New matter in opposition exceptionally admitted if prima facie prejudicial</p> <p>T 198/88 1 Document used in grant not automatically examined</p> <p>T 536/88 I Documents cited in the contested patent not automatically examined</p> <p>T 536/88 II But forms part of the opposition or opposition appeal proceedings even if not expressly cited within the opposition period if indicated in the patent as closest or important prior art for the purposes of elucidating the technical problem</p> <p>T 387/89 1 Documents cited in search report not automatically examined on own motion</p> <p>T 387/89 2 But, EPO may introduce such documents even if not so relied upon by the opponent, if they have strong reasons that such documents support a ground of opposition such that it could affect the outcome of the opposition proceedings</p> <p>T 502/98 r.1.5 OK if it occurs in accordance with the principle of procedural economy and the filing party has observed a fair degree of procedural vigilance e.g. certain facts or evidence become relevant only after a party has submitted an unforeseeable amendment of the claims or a new experimental test report or has challenged for the first time the existence of common general knowledge undisputed up to that moment</p>		
<p>Proprietor: file observation/amend A101(1), R.79(1) – invitation +10d+period</p>	No	No for opposition A121(1)	No, no loss (E-VIII 3.1.1)
<p>Opponent: reply A101(1), R.79(3) invitation +10d+period</p>	No	No for opposition A121(1)	No, no loss (E-VIII 3.1.1)
<p>Translation of amended claims R.82(2) – 3 m. after expiry of R.82(1) period [normally not used] or moment when interlocutory decision becomes final [D-VI 7.2.3]</p>	<p>Yes, surcharge required R.82(3) invitation+10d+2m</p>	No for opposition A121(1)	No for missing 2 m of R.82(2): no loss Yes for missing R.82(3)

OPPOSITION	SPECIFIC REMEDY	ART.121	ART.122
Fee for publishing new specification Rfees.2(1).8, R82(2) – same time limit as for translation	Yes, surcharge required R.82(3) invitation+10d+2m	No for opposition A121(1)	No for missing 2 m of R.82(2): no loss Yes for missing R.82(3) E-VIII 3.1.1
Fee for late performance of R.82(2) acts Rfees.2(1), Item 9, R82(3) – invitation+10d+2m	No	No for opposition A121(1)	Yes
Withdrawing opposition – no time limit Opposition continued R.84 - proprietor has submitted amendments (T 560/90) - stage reached in proceedings make limitation or revocation likely without further assistance from opponent(s) and without Opposition Division having to undertake extensive investigations (T 197/88) Appeal terminated if sole appellant/opponent withdraws opposition (G 8/93)			

Art.99 Opposition

Transitional provision

OJ 2007, SE1, 197 Art. 2 of "Administrative Council decision on the transitional provisions under Art.7 of the revision Act": Articles 65, 99, 101, 103, 104, 105, 105a-c and 138 shall apply to European patents already granted at the time of their entry into force, i.e. 13-12-2007, and to European patents granted in respect of European patent applications pending at that time

References

Art.2	European patent
Art.19	Opposition Divisions
Art.68	Effect of revocation or limitation of the European patent
R.112	Noting of loss of rights
R.142	Interruption of proceedings
R.143	Entries in the European Patent Register
OJ 2001, 148	Opposition procedure in the EPO

Art.99(1) Entitlement to oppose; form, and period; consequence of non-payment of opposition fee

Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent, in accordance with the Implementing Regulations. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid.

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 - 4.2 Erroneous conclusion of EPO that no opposition filed within 9 months
- 5 Person entitled to oppose, self-opposition
- 6 Joint opposition
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1 Related law

Art.14(4)	Filing of further documents in language of Contracting State
Art.97(3)	Effective date of grant of European patent
Art.105	Intervention of the assumed infringer
R.89	Intervention of the assumed infringer
R.3(1)	In written proceedings party may use any official EPO-language
R.6(2)	Time limit for filing translation of Art.14(4), Art.105a
R.6(3)	Language reduction
R.14	Stay of proceedings
R.73	Content and form of the specification
R.73(1)	Content of the specification
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R.73(3)	Indication of designated states
R.76	Form and content of the opposition
R.76(2)	Content of the opposition
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R.77	Rejection of the opposition as inadmissible
R.78	Procedure where the proprietor of the patent is not entitled
R.84	Continuation of the opposition proceedings by the European Patent Office of its own motion
R.85	Transfer of the European patent
R.86	Documents in opposition proceedings
Rfees.2(1), Item 10	Opposition fee

2 The meaning of opposition

D-I 1 The public may oppose a granted European patent on the basis of one or more of the grounds mentioned in Art. 100. The grounds on which the opposition is based may arise for example from circumstances of which the EPO was not aware when the patent was granted (e.g. prior use or a publication which was not contained or not found among the material available to the EPO). Opposition is therefore a means by which any person may obtain the limitation or revocation of a wrongly granted patent.

3 The text to oppose

In practice, opponents oppose the text of the patent specification as published under Art 98, the B1 publication. The following two situations should also be considered:

1. The **publication is not the same as the text on which the decision to grant** was based [set out in Legal Advice 17/90]

In this situation it should be borne in mind that **the text on which the decision to grant the patent is based is authentic** and not the published patent specification. It can happen that, owing to error during production, the specification of a European patent contains misprints and so diverges from the text on which the decision to grant was based. The text of a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State (Art. 70(1) EPC). The text in which the European patent is granted is finally determined in the decision to grant and expressly set out there (Art. 97(1) and Rule 71(11)). This is done by referring to the documents which have been communicated to the applicant and approved by him. Art.98 prescribes only that the EPO has to publish a specification of the European patent, without attaching any legal effects thereto. The text of the patent specification thus has no binding character; its function is confined to facilitating public access to the content of the granted patent, particularly the nature and scope of the industrial property right. If the specification diverges from that text it may be corrected by the Office at any time. If necessary, the Office may arrange for correction to be made public as soon as any mistake in a specification is discovered. This is done by means of a note in the European Patent Bulletin and publication of a corrigendum, the sole purpose being to bring the specification into line with the content of the decision to grant.

Art.14(3)	Language of proceedings
Art.70(1)	Text in language of proceedings is authentic text of European Patent (Application)
Art.97(1)	Grant of European patent
Art.98	Publication of a specification of the European patent
R.71a(1)	Indication of text which forms the basis of the text

2. A **request for limitation** has been filed under Art.105a.

In this situation it needs to be checked (e.g. through file inspection under Art.128) whether the limitation procedure has resulted in an amended specification of the patent under Art.105c (a B3 publication). This specification has retroactive effect under Art.68 and thus replaces the B1 publication.

If the limitation procedure has not yet been completed, filing of the opposition will terminate the limitation procedure under R.93(2) and thus the B1 publication should be opposed and not the pending limited claims.

Art.105a	Request for limitation or revocation
Art.105c	Publication of the amended specification of the European patent
R.93(2)	Filing of opposition during pending limitation procedure

4 Period for filing the notice of opposition, too early filing, where to file, how to file

OPPOSITION	BASIS	TIME LIMIT	CONSEQUENCE	A121	A122
Filing notice of opposition	A99(1)	within 9 m. after publication of the mention of the grant of European patent	A99(1) Opposition deemed not to have been filed	No, not for opposition A121(1)	No, not for opponents A122(1)

D-III 1. Within nine months from the publication of the mention of the grant of the European patent, notice of opposition has to be given to the EPO in Munich, The Hague or Berlin.

Editor's note: the opposition must be in writing, filed in any form allowed under R.2 (paper, fax, electronically). The time limit cannot be extended on request under R.132(2) [the period is not specified by the EPO but in the EPC]. The extension possibilities under R.134 do apply (e.g. that the EPO is not open on the day on which a time limit expires, or that there is a general disruption in the postal facilities between the EPO and a Contracting State). Further processing under Art.121 is not possible if the time limit is missed [only applicable to patent applications]. Re-establishment of rights under Art.122(1) in respect of unobserved time limits for opposition is also not possible [only for applicant or proprietors, not for an opponent filing a notice of opposition, only exceptional for filing the grounds of appeal having timely filed the notice of appeal].

D-IV 1.1 If a notice of opposition is received prior to the publication of the mention of the grant of the European patent, the formalities officer informs the opponent that his document cannot be treated as an opposition. This document becomes part of the file and, as such, is also available for inspection under Art. 128(4), and is brought to the attention of the applicant for or the proprietor of the patent as an observation by a third party in accordance with Art. 115. If an opposition fee has been paid, it will in this case be refunded.

Continuation of the opposition proceedings in the case of surrendering/lapsing of the patent or death/incapacity of the opponent or withdrawal of the opposition is dealt with in R.84.

T 438/87 Time limits run from mention of grant in Bulletin, irrespective of publication of the specification

T 702/89 No re-establishment for opponent in time limit of Art.99(1)

4.1 Time limit for filing of opposition after decision on limitation

D-X 7.2 On rare occasions it may happen that the limitation procedure is finished before an opposition is filed within the nine-month period and the decision to limit has already been published in the European Patent Bulletin. In such cases the opponent does not benefit from a new nine-month period, since the opposition period runs only once from publication of the mention of the grant of the patent. Accordingly the opponent will not have a full nine-month period to formulate the opposition for the patent as limited.

4.2 Erroneous conclusion of EPO that no opposition was filed within 9 months

C-V 13 If no notice of opposition is recorded in the dossier of the European patent within nine months of publication of the mention of grant, the patent proprietor is informed and an appropriate entry is published in the European Patent Bulletin (point 1, Art. 1, Decision of the President of the EPO dated 14 October 2009, OJ EPO 2009, 598). If, subsequently, it emerges that an opposition was filed in time, the proprietor is again informed and a correction is published in the Bulletin.

5 Person entitled to oppose, self-opposition

D-I 4 "Any person" may give notice of opposition without specifying any particular interest. "Any person" is to be construed in line with Art. 58 as meaning **any natural person (private individual, self-employed persons, etc.), any legal person or anybody assimilated to a legal person** under the law governing it. "Any person" does **not include the patent proprietor** (G 9/93, reversing G 1/84).

Editor's note: under EPC2000, a proprietor can perform a form of a self-opposition by simply requesting a limitation (or revocation) under Art.105a.

G 9/93 r.1. In G9/91 and G 10/91 - in contrast to G 1/84 - the Enlarged Board held that in view of their special post-grant character, **opposition proceedings under the EPC are in principle to be considered as contentious proceedings between parties normally representing opposing interests**. In other words, they are inter partes proceedings. Obviously, this concept does not fit with the idea expressed in G 1/84 that opposition proceedings can be initiated by a single party (ex parte proceedings).

G 9/93 r.3. It is clear from the G 1/84 that the Enlarged Board of Appeal then took the view that "any person" ("jedermann", "toute personne") in Art.99(1) did not exclude the patent proprietor, who accordingly was entitled to oppose his own patent in accordance with the provisions of Art.99. The present Board does not share this interpretation. Out of context, the words "any person" do of course mean anyone at all. However, to interpret their meaning in a legal text such as the EPC, they have to be considered in the context of the EPC as a whole and in the light of its object and purpose.

Thus considered, and having regard in particular to the nature and purpose of the opposition procedure as provided for in Part V of the EPC, the words "any person" in Article 99(1) EPC can in the present Board's opinion only be reasonably interpreted as referring to the public at large which is being given the opportunity to challenge the

validity of the patent in question. To include the patent proprietor in this concept appears artificial.

Thus the present Board - in contrast to the decision in G 1/84 - holds that the patent proprietor is not covered by the term "any person" in Article 99(1) EPC and is therefore not entitled to oppose his own patent under that provision. The ruling in G 1/84 can thus no longer be followed.

- Art.58 Entitlement to file a European patent application
Art.105a Request for limitation or revocation
G 9/93 Self-opposition not allowed (G 1/84 overruled)
T 3/06 r.2.4 The **patent proprietor** and the **opposing inventor** are different persons. Although the opposing inventor is a shareholder of the patent proprietor, he is not an executive of this company and it was not submitted that he had any substantial influence on commercial and judicial decisions concerning the business of the patent proprietor. Moreover, the conduct of the opposition and appeal proceedings by both parties demonstrates that the present proceedings are clearly contentious. Thus, the conditions laid down by the Enlarged Board of Appeal for an admissible opposition by "any person" are met.

6 Joint opposition

D-I 4 Notice of opposition may also be filed **jointly by more than one of the persons** mentioned above. In order to safeguard the rights of the patent proprietor and in the interests of procedural efficiency, it has to be clear throughout the procedure who belongs to the group of common opponents. If a common opponent (including the common representative) intends to withdraw from the proceedings, the EPO must be notified accordingly by the common representative or by a new common representative determined under R.151(1) in order for the withdrawal to take effect (G 3/99).

- G 3/99 I An opposition filed by jointly two or more persons is admissible if only one fee has been paid
G 3/99 III It has to be clear throughout the procedure who belongs to the group of common opponents or common appellants. If either a common opponent or appellant (including the common representative) intends to withdraw from the proceedings, the EPO shall be notified accordingly by the common representative or by a new common representative determined under R.151(1) [R.100(1) EPC1973] in order for the withdrawal to take effect.

- R.151(1) Person considered to be common representative
R.152(1) Filing of an authorisation by representative
R.152(2) Invitation to file authorisation
R.152(3) Period for appointment and authorisation

D-I 5 Under certain conditions (see D-VII, 6) any third party who proves that proceedings for infringement of the opposed patent have been instituted against him or that the patent proprietor has requested him to cease alleged infringement of the patent and that he has instituted proceedings for a court ruling that he is not infringing the patent may, after the opposition period has expired, intervene in the opposition proceedings. If the notice of intervention is filed in good time and in due form, the intervention is to be treated as an opposition (see D-IV, 5.6; Art.105]. For accelerated processing of oppositions on request, see E-VIII, 5.

- Art.105 Intervention of the assumed infringer
R.89 Intervention of the assumed infringer

7 Strawman, hiding identity of opponent

Companies may use a '**strawman**' to hide their identity in opposition, for example not to alert the proprietor to a possible infringement.

G 3/97 (identical to G 4/97) r. 2.1 The **status of opponent is a procedural status** and the basis on which it is obtained is a matter of procedural law. The EPC addresses this in Art.99(1) in conjunction with Art.100, R.76 and 77(1) EPC. On this basis, the opponent is the person who fulfils the requirements of the EPC for filing an opposition; in particular, the person must be identifiable (see R.76(2)(a) EPC). The EPC does not specify any further formal requirements to be met by the opponent. A person who fulfils the said requirements becomes a party to the opposition proceedings (Art.99(4)). In these proceedings, only his acts are relevant. A third party (the "principal") who has incited the opponent to file the opposition cannot perform any procedural acts. The question whether the opponent's acts accord with the intentions or instructions of the principal is relevant only to the internal relationship between the latter and the opponent, and has no bearing on the opposition proceedings.

G 3/97 r.2.2 The **opponent does not have a right of disposition over his status as a party**. If he has met the requirements for an admissible opposition, he is an opponent and remains such until the end of the proceedings or of his involvement in them. He cannot offload his status onto a third party. Thus there cannot be another "true" opponent apart from the formally authorised opponent. From this it follows that it is not only on the basis of a presumption that the person meeting the requirements for admissibility in his own name is treated as the opponent.

G 3/97 r.3. Accordingly, an opposition on behalf of a third party complies with the provisions on filing oppositions and **there would have to be special reasons for investigating**, with a view to assessing the admissibility of the opposition, the question **whether or not the person** who has filed the opposition in accordance with those provisions **is acting as a straw man**.

G3/97 r.3.1 Such a special reason is briefly mentioned in G 1/84 (Opposition by proprietor/MOBIL OIL). Taking the hypothetical case of a patent proprietor who was barred from filing the opposition himself, the Enlarged Board

assumed that the patent proprietor would, if necessary, be induced to employ a straw man as the putative opponent. Since the connection between **patent proprietor and straw man** was not apparent, there was a risk that the opposition procedure could be abused for ulterior purposes. This was clearly seen as an example showing that a straw man can be used to secure a successful result which is out of keeping with the legal system. Such an abuse of process does not have to be tolerated.

G 3/97 3.2 However, **acting on behalf of a third party cannot be seen as a circumvention of the law unless further circumstances are involved**. The purpose of opposition proceedings alone does not offer sufficient grounds for regarding an opposition on behalf of another person as an abuse of the procedural provisions.

G 3/97 r. 3.2.1 The respondents have argued that the patent proprietor, the EPO and the public had an interest in knowing the identity of the person at whose instigation the opposition had been filed. Though the patent proprietor may have an economic interest in finding out who is trying to attack his patent, such an interest is not legally protected by the legislative arrangements for the opposition procedure.

Some of the EPC contracting states require, as a precondition for instituting revocation proceedings, that the plaintiff must have an interest in the invalidation of the patent. Taking a different approach, the EPC legislator explicitly designed the opposition procedure as a legal remedy in the public interest which, according to Art.99(1), is open to "any person". It would be incompatible with this to require that the opponent show an interest, of whatever kind, in invalidating the patent.

G 3/97 r.3.2.2 If, therefore, **it cannot be required that the opponent have an interest in the revocation** of the patent, then logically this can only mean that the opponent's motives are of no consequence for the EPO, at least as long as no conduct involving an abuse of process arises from additional circumstances. As a matter of principle, therefore, the patent proprietor cannot expect the EPO to compel the opponent to disclose his motives in order to exclude the possibility that he may be acting in the interest of a third party.

This also applies where the opponent is in fact acting in the interest of a third party. By filing the opposition, he himself has assumed the procedural status of an opponent. Therefore, in relation to the patent proprietor and the EPO, he is the only person who matters. If, for the purpose of opposition, the opponent does not need to show an interest in the invalidation of the patent, then no harm is done if a third party has an interest in the invalidation of the patent. The question of **the internal legal relationship between the opponent and any third parties has, as a matter of principle, no legal significance** for external purposes, ie vis -à-vis the EPO and the patent proprietor. At all events, as long as the legal system has no objection to the filing of an opposition by the principal himself, no objection can be made to his inciting a straw man to file an opposition (this principle has even been applied to revocation proceedings; see BGH GRUR 1963, 253 - Bürovorsteher). Furthermore, the opponent and his principal may have differing degrees of interest in opposing a patent. This interest may also change or be eliminated in the course of the proceedings, so that cases of doubt may arise which are difficult to assess. Finally, the question would remain of when an interest of the opponent would be regarded as relevant for the opposition. The appellants have pointed out that an interest of the opponent in the outcome of the opposition proceedings could arise from the division of responsibilities between different, legally independent companies within the framework of a large group, from some form of quid pro quo offered by the principal, or even from the wish to avoid an order for the reimbursement of costs under Art.104.

G 3/97 r. 3.3.2 In the view of the respondents, the possibility of opposition on behalf of a third party could induce a licensee to infringe an existing **no-challenge agreement**. However, a person bound by a no-challenge obligation would have good reason not to infringe it by means involving the use of a straw man. If the patent proprietor has concrete grounds for suspecting such infringement, he can bring a civil action against the other party to the agreement, who is therefore put at considerable financial risk. By contrast, the EPO - in this case, as in others - has almost no procedural means of compulsorily eliciting the truth of the actual circumstances from an opponent who deliberately sets out to conceal the existence and identity of a principal.

G 3/97 r.4. Since there is no general objection to the opponent's acting on behalf of a third party, it remains to be established in what circumstances the action of a straw man is to be regarded as a circumvention of the law by abuse of process, with the consequence that the straw man's opposition is inadmissible.

G 3/97 r.4.1 Attention has already been drawn to the decision in G 9/93 (above, point 3.1). Here, it was decided that the patent proprietor is not entitled to oppose his own patent, since opposition proceedings are contentious and the opponent must therefore be a person other than the patent proprietor. This in itself requires no further comment. However, if the patent proprietor employs a straw man, then the latter, too, is representing the patent proprietor's interests. The identification of the straw man as opponent according to R.76(2)(a) EPC does nothing to alter the fact that the person who is formally a party to the proceedings is on the patent proprietor's side. From this it follows that in this situation, too, the proceedings are not contentious. The employment of the straw man merely serves to conceal this circumstance and to circumvent the legal consequences arising from it. **The action of the opponent on behalf of the patent proprietor therefore renders the opposition inadmissible**.

G 3/97 r.4.2 Referral T 301/95 identifies a risk that the provisions on representation could be circumvented by the use of a straw man.

G 3/97 r.4.2.1 This fear is justified if persons are acting in a professional capacity before the EPO without possessing the necessary qualifications for doing so. Under Art.134(1) and (7), professional representation in proceedings before the EPO may only be undertaken by persons whose names appear on the list of professional representatives, or by legal practitioners who have their place of business in one of the contracting states and are qualified to act as professional representatives in patent matters. Therefore, for example, a patent attorney qualified only under the national law of a contracting state is not entitled to act as a professional representative before the

EPO. The purpose of this arrangement is to create a corpus of professional representatives who possess the necessary qualifications for their work. This is designed to protect the parties that have to rely on the services of a professional representative, and to ensure the efficient conduct of proceedings before the EPO. This legislative purpose would be contradicted by applying the procedural provisions in such a way as to allow a person who was not entitled to act as a professional representative to carry out the functions reserved for professional representatives. However, this would be the case if the person not entitled to act as a professional representative were acting on a client's behalf and carrying out all the activities typically carried out by professional representatives, while himself assuming the role of a party in order to circumvent the prohibition on his acting as a professional representative. Taking on the additional party role of an opponent does nothing to alter the fact that the activities as a whole fall within the sphere of professional representation. The idea of a corpus of professional opponents is foreign to the EPC. Allowing such professional opposition would undermine, for an important part of the proceedings before the EPO, the monopoly status of the professional representatives. **If a person not entitled to act as a professional representative before the EPO files an opposition in his own name on behalf of a client, in the context of activities which, taken as a whole, are typically associated with professional representatives, that opposition is therefore inadmissible.**

G 3/97 r.4.2.2 However, such misgivings **do not arise if a professional representative files an opposition in his own name on behalf of a client.** Here, too, as in the previous case, the existence of a client is not disclosed. However, no attempt is being made to achieve a result which is fundamentally at odds with the EPC. The problem of action by a person not entitled to act does not arise. In other respects, too, the Convention contains no principles that would be contravened by the case of a professional representative acting on behalf of a third party in his own name.

G 3/97 r.4.2.3 There are equally few misgivings in the case of an **opponent, with either a residence or principal place of business in one of the contracting states, acting on behalf of a principal who does not meet these requirements.** In this case, admittedly, the representation requirement which the principal would have to fulfil under Article 133(2) EPC cannot be applied. But this is merely the consequence of the fact that the opponent has admissibly become a party. In so far as procedural issues depend on the opponent's identity, the sole determining aspect consists in the personal circumstances of the person formally identified in accordance with Rule 55(a) EPC. Here, there is no reason to apply a standard different from that which has to be met by the applicant. In the case of the latter, no investigation is carried out to ascertain whether he is merely acting as an applicant in order to circumvent the representation requirement for a possible principal.

G 3/97 r.5. Since opposition in a person's own name and on behalf of a third party is inadmissible in case of a circumvention of the law by abuse of process (see point 4 above), the question arises of **how and under what circumstances the possibility must be investigated that such an opposition has been filed.**

Regarding the issues of evidence, it must be emphasized that proceedings before the EPO follow the principle of the free evaluation of evidence. This also applies to the problems under consideration here. The principle of free evaluation would be contradicted by laying down firm rules of evidence defining the extent to which certain types of evidence were, or were not, convincing. Instead, the question whether a fact can be regarded as proven has to be assessed on the basis of all the relevant evidence.

In apportioning the burden of proof, general principles also apply. **The burden of proof for a straw man objection is to be borne by the person raising the issue,** ie the patent proprietor or, in the case of an objection by the Office of its own motion, the relevant EPO department.

Regarding the standard to be applied in assessing evidence, it must be remembered that any person is entitled to file an opposition. Withholding this legal entitlement from anyone requires a particular justification, which cannot be based on a mere balance of probabilities. Instead, before considering an opposition to be inadmissible, the deciding body has to be satisfied, on the basis of clear and convincing evidence, that the law has indeed been circumvented in an abusive manner by the employment of a straw man.

G 3/97 r.5.1.2 If the question arises whether someone is acting as an opponent before the EPO **on behalf of a client without being qualified as a professional representative,** then here too, it has to be remembered in the first place that any person is allowed to file an opposition. That an opponent is acting as a straw man cannot therefore be inferred purely from the fact of belonging to a particular group of professional persons. However, if a person offers his services to advise and represent clients in patent matters on a professional basis, and if that person regularly acts as an opponent before the EPO in his own name, then he himself creates the impression that these activities in opposition proceedings are to be seen as part of his normal professional activities. This would justify investigating the question of his entitlement to act as an opponent. In the case, for example, of a patent attorney who is not authorised to act as a professional representative under Article 134 EPC and who is subject to some form of disciplinary supervision, the issue of entitlement could be clarified by requiring a statement to the effect that the opposition in question was not filed on behalf of a client.

G 3/97 r.6 **A circumvention of the law** in an abusive manner by the use of a straw man, which can be challenged as indicated in point 4, **is not to be accepted at the appeal stage,** even if no objection has been raised by the department of first instance.

- G 4/97 1(a) Opposition is not inadmissible purely because opponent acts on behalf of a third party
- G 4/97 1(b) Opposition is inadmissible if the involvement of the opponent is to be regarded as circumventing the law by abuse of process

- G 4/97 1(c) Circumvention of the law arises, in particular, if:
- the opponent acts on behalf of the patent proprietor;
- the opponent acts on behalf of a client which he actually represents without being qualified
- G 4/97 1(d) Circumvention of the law does not arise purely because:
- a professional representative is acting in his own name on behalf of a client;
- an opponent with either a residence or principal place of business in one of the EPC contracting states is acts on behalf of a third party who does not meet this requirement
- G 4/97 2 Burden of proof of circumvention of the law by abuse of process on the person alleging that the opposition is inadmissible. Clear and convincing evidence required
- G 4/97 3 Admissibility of an opposition on grounds relating to the identity of an opponent may be challenged during appeal, even if not challenged during opposition
- T 149/85 Language of actual party and not of the representative is decisive for Art.14(2), (4)
- T 798/93 I Opponent's personal circumstances or motives for acting not relevant for Art.99(1)
- T 798/93 II The presumption of Art.99(1) only set aside if proof is furnished that a third party has claimed to be the real opponent. Then "opponent" may be asked to assist in dispelling the doubt (T 635/88)

8 Filing multiple oppositions

- T 9/00 **A (legal) person can acquire party status only once** (even if two valid notices are filed).
The later opposition is inadmissible for lack of a general legitimate interest. Legitimate interest cannot be inferred from the fact that the later opposition is assigned to a part of a company that is being transferred. If the subject of an opposition is assigned to two different parts of a company, the status of opponent can pass to a third party only if both parts or the entire company are transferred to it

9 Transfer/assignment/inheritance of opposition

D-I 4 Oppositions are not assignable but may be **inherited or succeeded to as part of an overall succession in law**, e.g. in the event of the **merger** of legal persons. **Acquiring companies** may also take over oppositions filed by acquired companies. However, a legal person who was a subsidiary of the opponent when the opposition was filed and who carries on the business to which the opposed patent relates cannot acquire the status as opponent if all its shares are assigned to another company (G 2/04).

The European Patent Office has to examine, ex officio, the validity of any purported transfer of opponent status to a new party at all stages of the proceedings (see T 1178/04).

G 2/04 r.2.1.2 The situations of the proprietor and the opponent are different. In the case of the proprietor, the industrial property right may be transferred and such transfer may have effect vis-à-vis the EPO if it is registered in accordance with R.85 in conjunction with R.22. This allows the new proprietor to defend his patent in opposition proceedings before the EPO. Hence, the procedural status of the proprietor cannot be transferred without the substantive title. **In the case of the opponent there is no substantive title.** Therefore, the question whether the procedural status may change with the ownership does not arise and both situations are fundamentally different. according to general principles of procedural law, it is not within the discretion of a party to court proceedings to transfer its party status to another person. Whereas the EPC has made provision for the requirements under which the status of the applicant or proprietor in the proceedings before the EPO may change, there are no corresponding provisions for the opponent. As an exception, the situation of the heir as universal successor is addressed in R.84(2) EPC. Apparently the legislator did not want to provide for cases of transfer apart from **universal succession**.

G 2/04 r.2.1.4 Opposition proceedings are conceived as a simple, speedily conducted procedure. On the one hand, relevant objections should be given appropriate consideration, on the other hand a decision should be reached as quickly as possible. This serves not only the interests of both parties but also the interest of the public at large in having clarified as soon as possible the question of whether an exclusive right has to be respected. For that reason, opposition is subject to a time limit, and third party participation is restricted in Art.105. It would be contrary to this concept to allow a third party who has failed to oppose within due time to take over the procedural position of an opponent who has lost interest, thereby lengthening proceedings which would otherwise be finished (see also T 298/97).

G 2/04 r.2.2 A **difference exists between a legal person** and a part of its business carried out by a simple **department without legal personality** (T 9/00). The sale of a subsidiary does not change the status of the companies involved, whereas the sale of a mere department entails a splitting of the company selling a part of its business.

G 2/04 r.2.2.1 G 4/88 dealt with a situation in which it was for legal reasons not from the outset possible to attribute the procedural status of opponent to the business in whose interest the opposition was filed, whereas the referral is concerned with a situation in which the holding company did not want to attribute the procedural status of opponent to the entity in whose interest the opposition was filed. Choosing the legal forms in which parties organise their legal relations, in particular in taking part in legal proceedings, means balancing the advantages and disadvantages of the available possibilities.

There are certainly good reasons why it may be preferable to centralise all industrial property matters of a group of affiliated companies within a central unit of the holding company. These reasons have to be balanced against possible disadvantages. The evident consequence of a centralisation is that legal rights are gathered by the holding

company. The disadvantage may arise therefrom that a transfer of legal rights may often be costly and sometimes not be possible at all, as the present case shows.

However, the opponent could easily have made provision for a future eventuality that its subsidiary should take over the responsibility for the opposition. **If the holding company and subsidiary had filed the opposition as common opponents, the holding company could have withdrawn from the opposition at any time, leaving the subsidiary as the sole opponent (G 3/99).** This shows that the available possibilities for organising industrial property matters within a group of affiliated companies entail different legal consequences and different possibilities as to how to safeguard a party's interests. Such differences alone, however, are no reason deliberately to ignore the legal consequences of the specific course of action chosen. Rather, there should be convincing reasons why such consequences might be not acceptable in a specific situation.

- G 4/88 A pending opposition may be transferred or assigned as part of the opponent's business assets together with **the assets in the interests of which the opposition was filed**
- T 563/99 r.1.1 The **right to lodge an appeal may also be transferred** to a third party, based on the same reasons as developed in G 4/88
- G 3/97 r.2.2 The **opponent does not have a right of disposition over his status as a party**. If he has met the requirements for an admissible opposition, he is an opponent and remains such until the end of the proceedings or of his involvement in them. He cannot offload his status onto a third party.
- G 2/04 I.(a) The status as an opponent **cannot be freely transferred**.
- G 2/04 I.(b) A legal person who was a **subsidiary of the opponent** when the opposition was filed and who carries on the business to which the opposed patent relates cannot acquire the status as opponent if all its shares are assigned to another company.
- G 2/04 II If, when filing an appeal, there is a justifiable legal uncertainty as to how the law is to be interpreted in respect of the question of who the correct party to the proceedings is, it is legitimate that the appeal is filed in the name of the person whom the person acting considers, according to his interpretation, to be the correct party, and at the same time, as an auxiliary request, in the name of a different person who might, according to another possible interpretation, also be considered the correct party to the proceedings.
- T 870/92 r.3.1 A **change of party** in the proceedings is only **effective** when the successor has been established by the EPO. Only then is the change effective (R.22(3), R.85). The consent of the other party to change is not required. As long as the evidence of the transfer is not provided, the current party is entitled and obligated to participate in the proceedings.
- T 670/95 The **mere statement of the legal successor** of the original opponent, that she is the legal successor of the original opponent, is not enough to justify a transfer of opponent and to be a party in appeal proceedings
- T 428/08 r.4 The conclusive evidence of a transfer leads only to a change of party status with "ex nunc" effect and has no retroactive effect in relation to earlier steps already taken
- T 428/08 r.7 It is not the task of the Board of Appeal to consult the relevant commercial registers for missing evidence of a transfer
- T 298/97 III Commercial interest in revocation is not a requirement for opposition. **Commercial interest** is not sufficient to allow transfer of opposition (must be transfer of related business assets)
- T 298/97 IV Transfer of business assets to two separate persons can only give one and only one the right to take over the opposition, upon providing of evidence
- T 711/99 I The opponent does not have the right to dispose freely of his status as a party, following the general principle of law whereby legal actions are not transferable by way of singular succession but only by way of **universal succession** (point 2.1.5(b)). Once he has filed an opposition and met the requirements for an admissible opposition, he is an opponent and remains so until the end of the proceedings or of his involvement in them
- T 711/99 II Opponent status may be transferred to a singular successor when a commercial department is sold (exception to the general principle)
- T 711/99 III This exception should be a narrowly interpreted: an opponent parent company cannot transfer its opponent status if it sells a subsidiary that has always been entitled itself to file oppositions. The notion of legitimate interest in the proceeding is irrelevant
- T 9/00 A (legal) person can acquire party status only once (even if two valid notices are filed). The later opposition is inadmissible for lack of a general legitimate interest. Legitimate interest cannot be inferred from the fact that the later opposition is assigned to a part of a company that is being transferred. If the subject of an opposition is assigned to two different parts of a company, the status of opponent can pass to a third party only if both parts or the entire company are transferred to it
- T 1421/05 1 Where the business assets in relation to which an opposition was filed have been transferred and at the same time the transferor has contractually agreed to transfer the opposition to the transferee, **the status of opponent remains with the transferor in the absence of** there being filed with the Office
(a) evidence sufficiently evidencing the transfer and
(b) a request to recognise the transfer of opponent status

T 1421/05 2. Where in such a case the transferor subsequently ceases to exist but has a universal successor, the status of opponent is capable of passing to that successor

10 Inheritance of opposition

D-I 4 Oppositions are not assignable but may be **inherited** or succeeded to as part of an overall succession in law, e.g. in the event of the merger of legal persons.

G 4/88 r.4 The **transmission of the opposition to the opponent's heirs is acknowledged implicitly** in Rule 84(2) EPC which stipulates that the opposition proceedings may be continued even without the participation of the deceased opponent's heirs.

R.84(2) Continuation of opposition by EPO of its own motion even without participation of **heirs** (death/incapacity opponent; withdrawal opposition)

T 74/00 r.3 An opposition may pass from a deceased opponent to his or her **heirs without any requirement that it be accompanied by any particular assets of the deceased.**

T 74/00 r.4 As with transfers of business assets, such transfers to heirs can only be governed by the **applicable national laws** (cf. G 4/88) - there is no "EPC law of succession". Accordingly a deceased opponent's heir or heirs can only be ascertained by reference to the particular national laws of succession applicable to the estate of the deceased opponent and it follows that the person or persons seeking to establish that they have the right to succeed to an opposition must produce satisfactory evidence that he, she or they have done so under the relevant national law. As is the generally accepted procedure in most European countries (cf. Article 125 EPC) and beyond, laws of other jurisdictions than the one before which proceedings are pending must be proved as a matter of evidence, for example by filing as documents adequate copies (in translation if necessary) of such laws and/or as appropriate by filing as expert evidence the opinions of a suitably qualified lawyer in the relevant jurisdiction. This is no more than the equivalent of what is required in the case of a business assets transfer, namely that sufficient evidence of the transfer must be produced (cf. T 659/92; T 298/97).

T 74/00 r.5 An opponent's **heirs can succeed to the right to appeal against a decision in opposition proceedings** or to an appeal commenced by an opponent before he or she dies. The case-law recognises both such possibilities in the case of business assets transfers and it would be illogical not to allow the same possibilities as between natural persons and their heirs.

T 74/00 r.6 If **more than one heir** of the deceased opponent is established, the question which then arises is, must all the heirs become party to the opposition proceedings? In the Board's view, this question has a two part answer. First, the relevant national law may be decisive. Thus if, for example, the evidence shows that under the relevant national law a deceased opponent has left different assets to different persons, such that only one or more specified persons out of a larger number are identifiable as inheriting the opposition, then logically only that person or those persons can be the heir or heirs for the purpose of the opposition.

T 74/00 r.7 Second, whether or not the opposition can be seen to have devolved in such a manner to a specific person or persons, if **two or more persons are identifiable as heirs** inheriting the opposition then, as with other multiple opponents, all the persons constituting the opponent must at all times be ascertainable and act through a **common representative**, and the EPO must be informed if any of them cease for any reason to be a member of the multiple opponent (see G 3/99). This is a natural corollary of the principle that the patentee and, as the case may be, the Opposition Division or the Board of Appeal must know who is opposing a patent.

T 74/00 r.8 The final question of law which arises is, what happens if either **no heir or heirs can be ascertained** or, if ascertained, none are willing to conduct the proceedings further? As regards opposition proceedings, the position is governed by Rule 84 EPC. As regards appeal proceedings, the answer must depend on the relative dates of the death of the opponent and the filing of the Notice of Appeal. If an opponent who is a natural person entitled to appeal against a first instance decision dies before a Notice of Appeal is filed and no heir or heirs are subsequently established, then there is no-one who can be named in the Notice of Appeal and the appeal is inadmissible. If however the original opponent is still alive when the Notice of Appeal is filed but dies thereafter and no heir or heirs are established, then the appeal comes to an end and, if that opponent was the only appellant, the appeal proceedings as a whole come to an end since the only appellant has ceased to exist. In this latter case, the result is the same as if a legal person which is the sole appellant ceases to exist (cf. T 353/95).

11 Examining validity of a transfer of opposition

D I-4 The European Patent Office has to examine, ex officio, the validity of any purported transfer of opponent status to a new party at all stages of the proceedings (T 1178/04).

T 1178/04 The EPO must examine, ex officio, the status of the opponent at all stages including the validity of any purported transfer of the status of opponent. The doctrine of no reformatio in peius does not apply

12 Language of opposition

A notice of opposition may be filed in an official language of the EPO [Art.14(1)] or in an admissible non-EPO language under the conditions of Art.14(4) and a translation is filed within the time limit of R.6(2).

A-VII 4.2 If a notice of opposition is not filed in one of the prescribed languages or, where the applicant avails himself of Art. 14(4), the required translation is not filed in due time, it is deemed not to have been received. The person who has filed the document must be notified accordingly by the EPO.

According to Art. 115, following the publication of the European patent application, any person may file

observations in writing concerning the patentability of the invention in respect of which the application has been filed. These written observations must be filed in English, French or German. Otherwise, they are deemed not to have been received.

Even though deemed not to have been received, the document not filed in the prescribed language will become part of the file and therefore accessible to the public according to Art. 128(4). Observations by third parties and notices of oppositions will be communicated to the applicant or the patent proprietor, respectively, even if they have not been filed in the prescribed language and are therefore deemed not to have been filed (see Art. 14(4) and Rule 3(1) regarding the notice of opposition or Art. 14(4) and Rule 114(1) regarding third party observations)

D-IV 1.2.1 (v) An opposition submitted within the opposition period is deemed not to have been filed under Art.14(4) if it was not submitted in an official language of the EPO, as specified in R.3(1), or if Art. 14(4) applies to the opponent, the translation of the elements referred to in Rule 76(2)(c) is not submitted within the opposition period (see also A-VIII, 2, G 6/91 and T 193/87). This period is extended where the one-month period as required under R.6(2) expires later. This deficiency is present if the opposition is not filed in English, French or German or if, for example, an opponent from Belgium files his opposition in time in Dutch but fails to file the translation of the essential elements into English, French or German within the above-mentioned time limits.

- T 149/85 Language of actual party and not of the representative is decisive for Art.14(2), (4)
- T 193/87 Notice of opposition is deemed not filed if translation under Art.14(4) is not filed in time; opposition fee refunded
- T 323/87 r.5 Restitutio in integrum under Art.122 in respect of the time limit for filing the translation is normally available only to patent proprietors and applicants, and not to opponents except in respect of the time limit for filing the statement of grounds for appeal where an admissible appeal has been filed (see G 1/86)
- Art.14(2) Languages for filing European patent application, translation
- Art.14(4) Filing of further documents in language of Contracting State
- Art.105(2) Equivalence of intervention to opposition
- R.3(1) In written proceedings party may use any official EPO-language
- R.6(2) Time limit for filing translation of Art.14(4), Art.105a
- R.89(2) Form and content of intervention

13 Opposition fee

FEE	TIME LIMIT	SPECIAL REMEDY	REFUND (A-X 10) REDUCTION (A-X 9)	CONSEQUENCE IF NOT PAID IN TIME	A121	A122
Opposition fee A99(1) Intervention: R.89(2)	9 m. after publication of the mention of the grant A99(1) 3 m. after institution of infringement proceedings R89(1)	No	Until 1-4-2014: 20% reduction if an admissible non-EPO language is used A14(4), R6(3), R14(1), G6/91	Notice of opposition or intervention deemed not to have been filed A99(1), R89(2)	No: no application	No: not for opponents

D-III 2 The amount of the opposition fee specified in the Rfees.2 item 10 must be paid before expiry of the time limit for opposition. An opposition filed in **common by two or more persons**, which otherwise meets the requirements of Art. 99 and Rules 3 and 76, is admissible on payment of only one opposition fee (see G 3/99).

D-IV 1.2.1 (i) If the opposition fee or a sufficient amount of the fee has not been paid within the opposition period, the opposition is **deemed not to have been filed** (Art. 99(1)). 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 (Rfees.7, Rfees.8). If the formalities officer concludes that the amount lacking can be overlooked, the opposition fee is deemed to have been paid and there is no deficiency in the present sense.

D-IV 1.4.1 If the formalities officer establishes that the deficiencies referred to in IV, 1.2.1, have not been remedied within the time limits laid down in the EPC or by the EPO, he will inform the opponent in accordance with Art. 119 that the notice of opposition is deemed not to have been filed and that a decision may be applied for under Rule 112(2) (see E-VIII, 1.9.3). If no such application is made within the prescribed period of two months after notification of this communication, and if there is no other valid opposition pending, the proceedings are closed and the parties informed accordingly. Any opposition fees which have been paid are refunded. Documents submitted with a notice of opposition which is deemed not to have been filed will form part of the file and will thus be available for inspection in accordance with Art. 128(4). They will be regarded as observations by third parties under Art. 115 (see in this connection V, 2, and E-VI, 3). If a further admissible opposition is pending, the proceedings are continued in respect of it.

Reduction in the opposition fee applies until 1-4-2014 if the essential item of the notice of opposition (G6/91) is filed in an admissible non-EPO language and a translation in the language of proceedings is also filed (A-X 9.2.1). For opposition the essential item is the R.76(c) part of notice of opposition, i.e. extent of opposition, grounds, indication of facts, evidence and arguments (T 290/90)

Remedy for too late payment: none; further processing of Art.121 and re-establishment of rights of Art.122 do not apply to opponents.

- A-X 9.2.1 Conditions (reproduced under R.6(3); Rfees.14(1))

E-VII 3	Stay of proceedings when a referral to the Enlarged Board of Appeal is pending (reproduced under Art.112(1))
E-VIII 1.9.3	Decision on loss of rights (reproduced under R.112(2))
R.6(3)	Language reduction
Rfees.14(1)	Reduction of fees laid down in R.6(3)
G 6/91 1	To be entitled to fee reduction, the essential item must be in admitted non-EPO language; translation may not be supplied earlier than simultaneous
G 3/99 I	An opposition filed by jointly two or more persons is admissible if only one fee has been paid
T 170/83	EPO file may be used to establish intended particulars of debit order in wrong language (Dutch debit form used, correct patent number)
T 290/90 3	Language reduction if at least R.76(2)(c) (R.55(c) EPC1973) part of notice of opposition is in non-official EPO language
T 702/89	A request for re-establishment of rights by an opponent who has failed to observe the time limit under Art.99(1) for filing the notice of opposition and paying the appropriate fee must be rejected as inadmissible
T 161/96 II	Underpayment of the opposition fee, solely within the responsibility of the opponent, may give rise to an obligation by the EPO to warn, if within the opposition period: (i) the formalities officer receives a payment sheet, (ii) the payment of the lacking amount on the initiative of the opponent must objectively be excluded, and (iii) the opponent can still pay the lacking amount
A-X 9.2	Reduction under the language arrangements

14 Notice of opposition

See notes under R.76(2)

15 Representation by a professional representative

D-I 7 As regards the requirements relating to representation of opponents and patent proprietors, reference is made to A-VIII, 1. Deficiencies in the representation of an opponent when filing the opposition and their remedy are dealt with in D-IV, 1.2.1(ii) and 1.2.2.2(iv).

A-VIII 1.1. An opponent (natural or legal person) who has neither his residence nor principal place of business in a Contracting State must be represented by a professional representative; the party must act through a professional representative in all parts of the opposition proceedings (see Art.133(1), (2)). Should an opponent who is party to the proceedings fail to meet the requirement set out under Art. 133(2) in the course of the opposition procedure (e.g. the representative withdraws from the opposition case or the appointed representative is deleted from the list of professional representatives), he is requested to appoint a new representative. Irrespective of whether he does so, he should nevertheless be informed of the date and location of any oral proceedings. However, it has to be drawn to his attention that if he appears only by himself he is not entitled to act before the Division.

Art.133(1) No professional representation required unless prescribed by Art.133(2)

Art.133(2) Conditions for representation by a professional representative

16 Representation by an employee

A-VIII 1.2 Parties having their residence or principal place of business in a Contracting State are not obliged to be represented by a professional representative in proceedings before the EPO. They may, irrespective of whether they are legal or natural persons, be represented by an employee, who need not be a professional representative but who must be authorized (see Art.133(3)). However, where such parties wish to be represented professionally before the EPO, such representation may only be by a professional representative. **The parties themselves may also act directly before the EPO**, even if they are represented by an employee or a professional representative. When conflicting instructions are received from the party and his representative, each should be advised of the other's action.

Art.133(3) Conditions for representation by an employee

17 Common representative

A-VIII 1.3 Joint proprietors of patents and more than one person giving joint notice of opposition or intervention may act only through a common representative. If the notice of opposition (or notice of intervention) does not name a common representative, the party first named in the relevant document will be considered to be the common representative. This representative can thus be a legal person. For details see R.151. If the European patent application is transferred to more than one person, and such persons have not appointed a common representative, the preceding provisions will apply. If such application is not possible, the EPO will require such persons to appoint a common representative within a period to be specified. If this request is not complied with, the EPO will appoint the common representative. For R.151 to apply, each party or his duly authorised representative must have signed the notice of opposition giving rise to his participation. Otherwise the party cannot take part in the proceedings, nor therefore be represented by a common representative.

R.151 Appointment of a common representative

18 Information to the public

D-I 8 As soon as an opposition has been received, the date of filing of the opposition is entered in the Register of

European Patents and published in the European Patent Bulletin. The same applies to the date on which opposition proceedings are concluded and to the outcome of the proceedings (see also A-XI, 4)

19 Consolidation of proceedings – refer Art.94(1)

20 Guidelines

- D-I 4. Entitlement to oppose
- D-III 1. Time allowed for filing notice of opposition
- D-III 2. Opposition fee
- D-III 3.1 Form of the opposition
- D-III 5 Grounds for opposition (reproduced under Art.100)
- D-IV 1.2.1 Deficiencies which, if not remedied, lead to the opposition being deemed not to have been filed
- D-IV 1.2.2.1 Deficiencies under Rule 77(1)
- E-VIII 1.1 Determination of time limits

Art.99(2) Opposition applies for all Contracting States in which patent has effect

The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.

Territorial effect of the opposition

D-I 3 The opposition applies to the European patent in all the Contracting States in which that patent has effect. Thus the opposition has, in principle, to be in respect of all the designated States. If an opposition is filed in respect of only some of the designated States it will be treated as if it were in respect of all the designated States. Nevertheless, the effect of an opposition may differ as between Contracting States. This may arise where the patent contains different claims for different Contracting States in accordance with R.18(2) (see C-IX 2.4, or where the claims must take account of different art under the provisions of Art. 54(3) and (4) EPC 1973 ((see D-VII, 8). Amendments may also be occasioned by national rights of earlier date within the meaning of Art. 139(2) and Art. 140 (see H-II, 3.3, and H-III, 4.4). Thus the patent may be differently amended in respect of different Contracting States and may be revoked in respect of one or more Contracting States and not in respect of others.

An opposition also covers designated Extensions States (Art.5, Extension Ordinance)

- Art.54(3) State of the art comprises European prior rights
- Art.54(4) EPC1973 Art.54(3) applicable to overlapping states
- Art.118 Unity of the European patent application or European patent; multiple applicants regarded as joint applicants
- R.18(2) Different claims, description, drawings in application for Contracting States
- OJ 1994, 75 Extension Ordinance
- D-I 3. Territorial effect of the opposition

Art.99(3) Parties to proceeding: opponents and patent proprietor

Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent

Parties to opposition proceedings

D-I 6 The patent proprietor, the opponent and, where applicable, the intervener will be parties to the opposition proceedings. However, an opponent who has withdrawn notice of opposition or whose opposition has been rejected as inadmissible will remain a party to the proceedings only until the date of such withdrawal or the date on which the decision on rejection has become final. The same will apply in the case of interveners. Third parties who have presented observations concerning the patentability of the invention in respect of which an application has been filed are not parties to opposition proceedings (see Art115).

Where the patent proprietors are not the same in respect of different designated Contracting States, they are to be regarded as joint patent proprietors for the purposes of opposition proceedings (see Art.118 concerning the unity of the European patent).

Where a person provides evidence that in a contracting state, following a final decision, he has been entered in the patent register of that state instead of the previous patent proprietor, he is entitled on request to replace the previous patent proprietor in respect of that state. In this event, by derogation from Art. 118, the previous patent proprietor and the person making the request are not deemed to be joint patent proprietors unless both so request. The aim of this provision is to afford the new patent proprietor the opportunity of defending himself against the opposition as he sees fit (see D-VII, 3.2, as regards the conduct of the opposition proceedings in such cases).

D-I 6 The Legal Division is responsible for decisions in respect of entries in the Register of European Patents (see the Decision of the President of the EPO dated 21 November 2013, OJ EPO 2013, 600).

It is to be noted that a person who files two different notices of opposition to the same granted patent acquires party status as opponent only once (T 9/00). Two filings by the same opponent within the opposition period that individually are not admissible but taken together comply with Art. 99(1) and Rule 76 are considered as one admissible opposition (T 774/05; for a joint opposition, see D-I, 4).

Multiple oppositions are dealt with in a single set of proceedings (see E-III, 6). When there are multiple opponents and/or proprietors as parties to a single opposition proceedings, it is normally appropriate to deal with all relevant

issues (including e.g. admissibility of one of the oppositions, see D-IV, 5.5) when taking the final decision, e.g. during one oral proceedings (also see E-III, 6). The legal framework is defined by the sum of the statements of the extent to which the patent is opposed and by the grounds for opposition submitted and substantiated in the notices of opposition provided by each opponent. If one of the oppositions is admissible, but is later withdrawn, prejudicial grounds put forward in said opposition are generally examined by the opposition division of its own motion. If one of the oppositions is inadmissible, and provided at least one admissible opposition has been filed, the opposition division will consider of its own motion any prima facie relevant art cited in the inadmissible opposition (see D-V, 2.2).

The Legal Division is responsible for decisions in respect of entries in the Register of European Patents (see the Decision of the President of the EPO dated 21 November 2013, OJ EPO 2013, 600).

It is to be noted that multiple oppositions which are not jointly filed by one or more persons initiate a single opposition proceedings (T 774/05; for joint oppositions, see D-I, 4).

When there are multiple opponents and/or proprietors as parties to a single opposition proceedings, it is normally appropriate to deal with all relevant issues (including e.g. admissibility of one of the oppositions, see D-IV, 5.5) when taking the final decision, e.g. during one oral proceedings (also see E-III, 6).

Art.105(2)	Equivalence of intervention to opposition
R.89(2)	Form and content of intervention
Art.115	Observations by third parties
R.114(1)	Form and content of third party observation
Art.118	Unity of the European patent application or European patent

Art.99(4) New patent proprietor may replace previous proprietor; not joint proprietors

Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.

D-I 6 The aim of this provision is to afford the new proprietor the opportunity of defending himself against the opposition as he sees fit.

Unity of the European patent

D-VII 3.1 If the proprietors of the patent are not the same for different designated Contracting States, the unity of the European patent in opposition proceedings will not be affected, since such persons are to be regarded as joint proprietors (see D-I, 6, second and third paragraphs).

In particular, the text of the European patent will be uniform for all designated Contracting States unless otherwise provided for in the EPC (see D-VII, 3.2 and H-III, 4).

D-VII 3.2 The unity of the European patent in opposition proceedings will be affected if the previous proprietor of the patent and the person replacing him pursuant to Art. 99(4) in respect of a particular Contracting State are not deemed to be joint proprietors (see D-I, 6). In this event, the opposition proceedings involving the different proprietors must be conducted separately. Since different requests may be submitted by the two proprietors (e.g. as regards amendments to the claims), the two sets of opposition proceedings may lead to different conclusions, e.g. as regards the text of the European patent or the scope of protection.

Art.118	Unity of the European patent application or European patent; multiple applicants regarded as joint applicants
R.78(1)	Staying of the opposition proceedings
R.78(2)	Replacement of previous owner
D-I 6.	Parties to opposition proceedings
D-VII 3.2	Factors affecting the unity of the European patent
H-III 4.3.2	Transfer of the patent in respect of certain designated states during opposition

Art.100 Grounds for opposition

Opposition may only be filed on the grounds that:

- (a) the subject-matter of the European patent is not patentable under Articles 52 to 57;**
- (b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;**
- (c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed.**

Related law

Art.2	European patent
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