

Annex B

Proposal to Formalise Submission of Third Party Observations

Third party observations can provide a cost-effective opportunity for a third party to highlight relevant prior art and provide comments on their relevance to a patent application (e.g. as to novelty, inventive step); as well as to submit observations on other requirements (e.g. sufficiency, clarity). They have been informally submitted to the Registrar of Patents, and conveyed to examiners for consideration during examination. We plan to formalise this for more clarity and transparency.

1 When third party observations can be filed

- 1.1 We propose to receive third party observations after publication of the patent application in question.
- 1.2 While an examiner has broad discretion whether or not to consider third party observations in general, he does not have to consider such observations filed after he has commenced drawing up his opinion or report, in particular.

2 Persons who can file third party observations

Any third party can file observations.

3 Whether the patent applicant will know

- 3.1 The patent applicant will know that third party observations have been filed because he is copied on the Registrar's letter forwarding relevant documents to the examiner.
- 3.2 Further, when third party observations are formalised, the patent applicant can also view the contents of the third party observations in IP²SG.

4 Grounds and prior art on which third party observations are based

- 4.1 The third party observations can be based on any grounds of examination.
- 4.2 Should the number of prior art documents be limited so as to focus the observations on the strongest prior art? If so, what should the limit be?

5 Contents of third party observations

If relying on prior art, the third party observations must indicate why, and state clearly which part of, the prior art is relevant in relation to a specific requirement considered in examination. The claims in issue in the application must also be specified.

6 Process

- 6.1 If the third party observations are in order, the Registrar will forward them to the examiner.
- 6.2 The examiner has the discretion to wholly or partially regard, or disregard, the third party observations. In general, third party observations which are clear and concise and well supported by prior art, can be of help to the examiner.