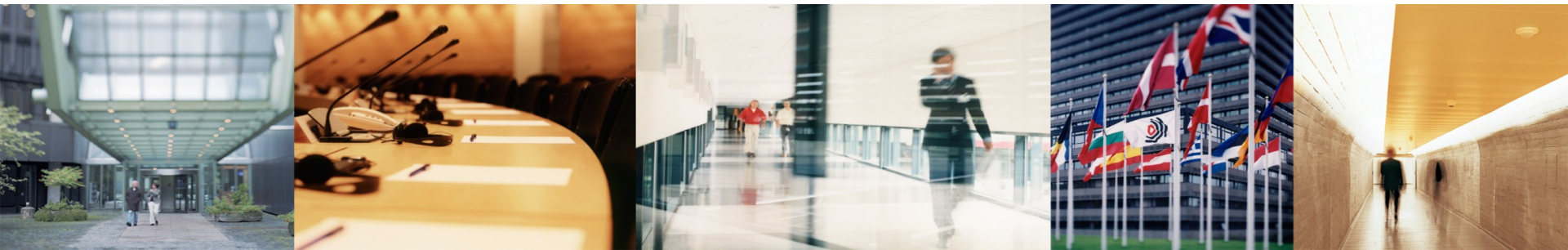


Observations by third parties under Article 115 EPC

Closa Daniel
Beaucé Gaëtan

26-30/11/2012



Legal basis - Article 115 EPC

Article 115 Observations by third parties

In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present **observations concerning the patentability** of the invention to which the **application or patent** relates. That person shall not be a party to the proceedings.

- *Enables third parties to present observations concerning the patentability of the invention to which a European patent application or patent relates.*
- *Further improves the quality of granted European patents.*
- *No fees payable.*
- *Observations relating to formal issues are not considered.*

Legal basis - Rule 114 EPC

- Rule 114 EPC Observations by third parties
 - (1) Any observations by a third party shall be filed in writing in an **official language** of the European Patent Office and state the **grounds** on which they are based. [Rule 3, paragraph 3](#) shall apply.
 - (2) Any such observations shall be **communicated** to the applicant for or proprietor of the patent, who may **comment** on them.

Formal requirements (1)

- [Article 115 EPC](#) applies only to **published** European patent applications and patents for which **proceedings are pending** before the EPO.
- Observations should be filed in an **official language** of the EPO (English, French or German) and include a statement of the grounds on which they are based.
- Supporting documents, e.g. prior art citations, can be written in any language. However, the EPO may require the party that submitted them to file a **translation into an official language**.


Formal requirements (2)

- Observations may be filed anonymously ([EPO OJ2011, 420](#)). Any offensive language will be removed before the submission is added to the file and forwarded to the applicant/proprietor.
- Observations may not relate to formal aspects, but should be restricted to the **substantive requirements** of the EPC, e.g. [Articles 52-57 EPC](#) (see form for observations).

Filing of observations

- Pilot scheme, available to third parties since 1 August 2011, under which an **online form** can be used to file observations (tpo.epo.org or [printable version](#)).
- While the use of the online form is **recommended**, existing mechanisms for filing documents with the EPO may continue to be used. Filing by e-mail is not allowed.
- Observations received after the conclusion of the proceedings will not be taken into account and will be simply added to the file.

Filing of observations - online



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Third-party observations

Third-party observations may be submitted using an online form which has been designed to help you formulate your observations in a structured and concise manner.

The form is also accessible via the [European Patent Register](#).

Direct access

Access the third-party observations form


[Third-party observations form](#)

[Printable notes for users of the third-party observations form](#)

Getting started

→ [Decision of the President of the European Patent Office dated 10 May 2011 concerning the filing of third-party observations under Article 115 EPC by means of an online form](#)

→ [Notice from the European Patent Office dated 10 May 2011 concerning the filing of third party observations under Article 115 EPC by means of an online form](#)

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See also

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- European patent register
- Register Alert
- Third-party observations**
- European publication server
- European Patent Bulletin
- Open Patent Services
- EBD
- IPscore
- European patent applications and specifications
- Common Citation Document

Treatment of observations (1)

- Submissions filed as third-party observations are placed in the **public part** of the file of the patent application or patent.
- Observations filed **when no proceedings before the EPO are pending** are not treated under [Article 115 EPC](#) and are therefore not communicated to the applicant/ patent proprietor. The observations are placed in the non-public part of the file.
- All observations meeting the formal requirements are considered by the examining or opposition division, which then **comments on the relevance** of the observations in the next substantive communication to the parties to the proceedings ([EPO OJ2011, 420](#)).

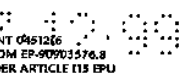
Treatment of observations (2)

- If the observations relate to alleged prior art available other than from a document, e.g. from use, this should be taken into account only if the alleged facts are either not disputed by the applicant or proprietor or are established beyond reasonable doubt ([GL E-V, 3](#)).
- The third party is **not a party to the proceedings** before the EPO and so will not be informed directly or be further involved in proceedings.
- However, the progress of proceedings before the EPO can be followed online using the [European Patent Register](#) (<http://www.epo.org/searching/free/register.html>).

Example - Observations filed anonymously

- In the case of EP 0451216, observations were filed by "Buzz Lightyear".

0451216 TIP A1 1999-12-07



 EUROPEAN PATENT 0451216
 INVALIDLY GRANTED FROM EP-90901376.8
 OBSERVATIONS FILED UNDER ARTICLE 115 EPC
 =====

Yes, it is me again. Buzz Lightyear is back to strike terror into the heart of the rubeulous Cary Queen. I have some final comments before the oral proceedings. I hope that they will be as useful to the Opposing Division as my earlier helpings.

I am glad that the Opposing Division thinks that the definition of "CDR" in the granted claims is not the same as is sensible. It is suitable for the regal Inventors to define "CDR" as he has done so, but it is not true in 1990. The Opposing Division should also remember that Mr Queen defines various residues as "adjacent to CDR" which are in fact "re-defined" CDR. Sections A, B, C and D on pages 1-2 of my earlier letter show this. Why is Mr Amit's residue 30 said to be "immediately adjacent" to a CDR if, on the opposite, residue 30 is "inside" a CDR. You are a town down liar, Mr Queen, and you would sell your own children if you could get the claims that you want. I will not allow this, so think again. I tell you.

I am now looking at novelty and Riechmann (D36). How hilarious that Masters Bizley and Joenichen (who hee) admit that Riechmann's light chain did include framework changes, but then argue that there are no "substitutions". I may not know as much as our German *Amaryllidaceae* about patent law, but I know that a product is a product and not a process. Stomps on you. It seems to me that D36 tells me a light chain that falls bang bang bang in the middle of your shitty claims. As I said before, it doesn't matter if I change a framework residue to "W" because it is biologically correct or because it is the initial letter of "Wahl".

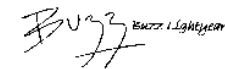
I am sorry that the Opposing Division has ignored novelty and claim 1 by hiding behind added subject matter, but whichever way this patent disappears up its own behind, I do not care. Do not forget, however, that there is novelty problems once added matter is helped out. Oh, I say goodbye to your priority.

My favourite bit of this is inventive step. I see Scheinberg & Vincent have signed their bastard's evidence, and this is irrelevant to the fundamental questions. I do not care that your "wonder drug" is well tolerated, because this is far from (a) any disclosure in your patent and (b) the use of a single framework residue substitution. Where in the patent is there basis for your "technical problem". Mr Joenichen should know better! Where do I find "therapeutically useful binding affinity", where do I find "while exhibiting acceptable immunogenicity in patients"? I find this not in the patent, and I find it not anywhere that either of these things happens when just one framework residue is changed. Can I change any single residue? NO! Where is your evidence in the patent? Where, where, where, where, where! Nowhere, you yellow dog. You want to make one shitlike anti-Tac antibody by changing 14 residues but then stop me making better anti bodies using "sweet" residues. I don't think the patent lawyers can allow this type of thing. I do not see it correct that you write down what was plain and apparent and then send evidence 10 year later to show that it was not obvious. You make me sick. Uncertain based on prior art, but still uncertain based on your patent. Sure, you did well to make the single anti-Tac that turned out later to be useful, but my humanisations owe nothing to your 14-residue low affinity rubbish. But don't forget that a tiny success with anti-Tac does not generalise to all antibodies without extra effort. You did nothing *fundamental or ground-breaking* in theory. What does any one framework change offer beyond D36?

Opposing Division - do not make the skilled person in 1990 stupid but then make them wise having read this patent application. Only with the dreaded hindsight could the patent application have changed their speculation into knowledge. As you agree, the scientist would see that the affinity disappears when only CDRs are transferred. It is so clear, without hindsight, that something else would have to be transferred. That is all that claim 1 tells me. There is nothing in the patent that shows how just one framework residue might work beyond what was already apparent viz. that at least one framework residue would be required. Your attempt at circumstantial evidence (D55) of zero transfers does not see the Cheshire CDRs transferred! Ooops!

Finally, I was sorry to see that Mr Bizley thinks that I do not qualify as a person. On the contrary, Herr Bizley - I am a person, and indeed a person which you have met. As evidence of this, I submit that you have a beard and that you smile. What more evidence could be required that I know you, you human lammergeyer. I will be at the oral proceedings, and you only need to look around the room to see me. But where will you look! Where, where, where? Behind you? In front of you? Inside you? I will be there, and I will make myself known when Mr Queen's "tutor on the coronet of a horse" (minus saidine) patent is revoked. Am I male, female, or otherwise? Soon all will be revealed...

Thanking you



 Buzz Lightyear

(Example taken from "The Annotated European Patent Convention", D. Visser)



Form for submitting third-party observations

Form	Notes for user
1. Personal details <ul style="list-style-type: none"> Name Address Telephone e-mail 	Not mandatory. However, if you do not provide any contact details, it will not be possible for us to send you an invitation to correct formal deficiencies.
2. Subject of third-party observations <ul style="list-style-type: none"> European patent application number/patent number 	European patent application numbers consist of eight digits, starting with a two-digit year code (e.g. 11123456). European patent numbers start with the letters EP, followed by up to seven digits.
<ul style="list-style-type: none"> Title Applicant Date of priority Date of filing 	
3. Facts and evidence 3.1 Patent literature <ul style="list-style-type: none"> Publication number 	You can upload any patent documents (granted patents and published patent applications) you wish to refer to here.
<ul style="list-style-type: none"> Reference Title Inventor Date of publication 	Please use the reference code shown when referring to this document in your observations.
/Add another patent document/	
3.2 Non-patent literature <ul style="list-style-type: none"> Reference Title Author Date of publication /Upload file/ 	<p>You can upload any non-patent literature (e.g. scientific papers, brochures or internet publications) you wish to refer to here.</p> <p>Please use the reference code shown when referring to this document in your observations.</p>
3.2.1 Availability of the document to the public	<p>The EPO will need to be satisfied that this document was available to the public before the filing date (or, if validly claimed, the priority date) of the patent or patent application in question.</p> <p>If you have any further arguments which will help establish this, please mention them here.</p> <p>If you have any supporting documentary evidence, please upload each document as a separate non-patent document.</p>

<p>3.3 Prior use</p> <ul style="list-style-type: none"> • When was the prior use made available to the public? • What was made available? • Where was it made available? • How and to whom was it made available? 	<p>If your prior art involves a prior use, please use this section to describe the exact circumstances of the prior use.</p> <p>Any evidence, such as affidavits, drawings or brochures, should be uploaded as non-patent documents.</p>
<p><i>/Add details of a further prior use/</i></p>	
<p>3.4 Common general knowledge</p>	<p>If you have any comments on the common general knowledge on the date of filing, you can add them here.</p>
<p>4. Novelty (Article 54 EPC)</p>	<p>If you have any comments on the novelty of the claimed invention, you can enter them here.</p> <p>If you consider that the claim(s) lack novelty, please identify the novelty-destroying prior art (the claimed invention must be disclosed in a single prior art document only for novelty to be destroyed).</p> <p>Starting with the independent claim(s), identify the precise location in the prior art of the disclosure of each claimed feature.</p>
<p><i>/Add a further observation on novelty/</i></p>	
<p>5. Inventive step (Article 56 EPC)</p>	<p>If you consider the claim(s) to be novel but not inventive, please identify the closest prior art. Starting with the independent claim(s), identify the precise location of the disclosure in the prior art of each claimed feature that you consider lacks novelty.</p> <p>If you have any comments on the obviousness of the claim(s), you can enter them here. We recommend that you follow the three steps of the problem/solution approach (Guidelines, C-IV, 11.7).</p>
<p><i>/Add a further observation on inventive step/</i></p>	
<p>6. Unallowable amendments (Articles 76 and 123 EPC)</p>	<p>Please note that amendments and divisional applications must be based on subject-matter which does not extend beyond the content of the application <u>as originally filed</u>. Your observations should refer to this version.</p> <p>If you have any comments on any aspects of the amendments which you consider contravene the requirements of Articles 76 and/or 123 EPC, you can enter them here. Please identify the precise amendments you are referring to.</p>

7. Sufficiency of disclosure (Article 83 EPC)	If you have any comments on the sufficiency of disclosure of the claimed invention, you can enter them here. Please identify the specific aspects which the skilled person would be unable to carry out.
8. Clarity (Article 84 EPC)	If you have any comments on the clarity of the claimed invention, you can enter them here. Please identify the specific aspects which are unclear.
9. Further observations	If you have any further comments (e.g. Art. 52(2) and (3), 53 or 57 EPC) concerning the patentability of the claimed invention, you can enter them here. Please state the specific provisions of the EPC on which your comments are based.





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<ul style="list-style-type: none"> Reference Title Inventor Date of publication 	Please use the reference code shown when referring to this document in your observations.
/Add another patent document/	
3.2 Non-patent literature <ul style="list-style-type: none"> Reference Title Author Date of publication /Upload file/ 	<p>You can upload any non-patent literature (e.g. scientific papers, brochures or internet publications) you wish to refer to here.</p> <p>Please use the reference code shown when referring to this document in your observations.</p>
3.2.1 Availability of the document to the public	<p>The EPO will need to be satisfied that this document was available to the public before the filing date (or, if validly claimed, the priority date) of the patent or patent application in question.</p> <p>If you have any further arguments which will help establish this, please mention them here.</p> <p>If you have any supporting documentary evidence, please upload each document as a separate non-patent document.</p>

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