

# The anonymous character of third party observations in ex parte and inter partes appeal proceedings

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The boards of appeal of the European patent office recently issued a decision on December 14, 2011, T 1336/09, in which it was found in ex parte appeal proceedings that third party observations filed anonymously under Article 115 EPC only four working days before scheduled oral proceedings and citing two new documents that were highly relevant for some of the requests on file can be admitted into the procedure.

This is in contrast to another recent decision of December 13, 2011, T 0146/07 in an inter partes appeal, in which the board disregarded such anonymous third party observations because of their anonymous character, and wherein it was emphasized that "identification is particularly important in the context of opposition proceedings in order to allow the competent organ of the EPO to verify whether the observations are indeed filed by a third party rather than by a party to the proceedings. Otherwise, party might be tempted to submit late observations and/or documents by means of anonymous third party observations in order to avoid negative procedural consequences such as apportionment of costs"

In ex parte proceedings, the appeal board seems, however, to acknowledge the fact that the appellant is the sole party and therefore can at any time raise new issues or submit new prior art. The appeal board has therefore concluded that the risk of anonymous third party decisions providing a cover for procedural abuse can be largely excluded in ex parte proceedings, and the anonymous character does not bar them from being admitted into the procedure.

The nature of the appeal proceedings and timing should therefore be carefully considered when filing anonymous third party observations.

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