

Third party observations – now available for international PCT applications

Third party observations provide an opportunity to challenge pending patent applications. You may well be familiar with filing third party observations at the UK or European Patent Offices.

Third parties may now make observations on international PCT applications, on the basis that the claimed invention lacks novelty and/or an inventive step.

The key points of the service and the applicable time limits are:

- A person may only make a single observation on any particular application.
- An observation consists of a list of between one and ten citations that refer to one or more documents published prior to, or having a priority date before, the international filing date, together with a brief indication of how each document is considered to be relevant to the claimed invention.
- The third party may submit a maximum of ten observations on any particular application.
- The observations are notified to the applicant.
- The individual offices decide what use to make of an observation.
- The third party submitting the observation has no additional right to intervene in the processing of the international application, save what may be possible in the national phase through opposition and similar procedures.
- The observations (excluding copies of cited documents) and any responses by the applicant are made publicly available (on PATENTSCOPE).

Time limits

- The third party must submit any observations after publication of the international application (18 months from the priority date), but before 28 months from the priority date.
- The applicant may respond to any observations until 30 months from the priority date, but is not required to do so.

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It is worth noting that submissions made by third parties other than through the third party observation service (for example on paper or by uploading a PDF file) are not normally treated as observations and are not visible on the file of the international application. If you would like any further information, please do not hesitate to contact us.