

## **FILING OF EPO OPPOSITIONS BY SO-CALLED “STRAW MEN”**

Clients sometimes ask us if it is possible to file an opposition to an EPO patent anonymously or in the name of a straw man, in order not to reveal their identity. It has never been possible to file an anonymous opposition and past case law from the Boards of Appeal has indicated that oppositions cannot be filed in the name of professional representatives or “straw men”.

Notwithstanding this, oppositions have sometimes been filed in the name of a straw man, particularly where the “true” opponent resided in a jurisdiction where this is normal, for example Japan. The Enlarged Board of Appeal of the EPO was recently asked to rule on the issue.

The Enlarged Board decided on 22 January 1998 (G4/97) that “any person” can file an opposition except if this is an abuse of process. Two specific examples of such abuse were given, namely if the opponent is acting on behalf of the patent proprietor (in order to achieve a central amendment of the patent) or if the named opponent is effectively acting as an EPO patent attorney without being qualified to do so. The Enlarged Board specifically said that it was not an abuse of process for a resident in an EPC country to file an opposition on behalf of a party outside the EPC countries.

Unfortunately, however, the Board’s wording is not crystal clear. Some doubts must remain concerning what is an “abuse of process”. There is scope for proprietors at least to cause delay and expense by arguing the issue. If they were successful, the opposition would be deemed inadmissible ab initio.

Therefore, clients who wish to conceal their identity when oppositions are being filed can now do so, by using a straw man. Please note, however, our concerns above, and also that a recent German decision, holding that a patentee is estopped in infringement proceedings from breaking undertakings provided in EPO opposition proceedings (for example concerning the scope of the claim), probably applies only to the situation in which the defendant in the infringement action was the opponent.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.

Please note that all our Newsletters can be found on our website at [www.eric-potter.com](http://www.eric-potter.com).

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