

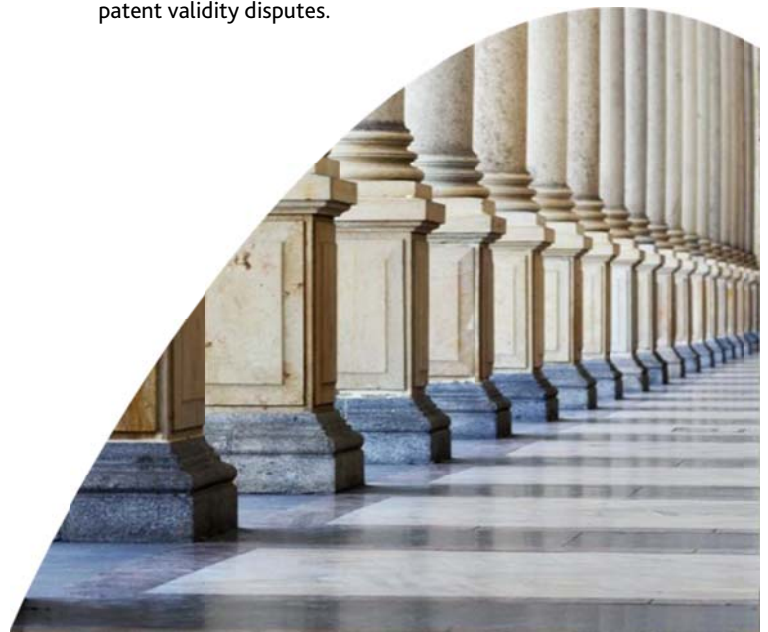
Five thoughts on the new streamlined EPO opposition procedure

The EPO has announced that from 1 July 2016, a new opposition procedure will come into effect which aims to reduce the overall duration of the procedure for straightforward cases. According to the announcement, opposition cases presently take anywhere between 19 and 27 months (although frequent users of the opposition system may consider even this to be a somewhat generous assessment) and the EPO hopes that under the new, streamlined procedure, this will be reduced to 15 months.

Under the current practice, opposition to the grant of a European patent can be filed within nine months from its grant. This will remain unchanged. However, extension of time limits during opposition will only be available in exceptional cases with duly substantiated requests under the new procedure. Further, the Opposition Division will aim to issue the summons to oral proceedings within five months of expiry of the deadline for the Patentee to file their observations on the grounds of opposition. The oral proceedings will take place no less than six months following the date of the summons being issued, to give parties sufficient time to prepare for the oral proceedings

Five thoughts on the changes:

- 1) **The EPO's attempts to speed up the opposition process address criticism that the procedure is too lengthy.** The timelines of the opposition procedure currently are well out of kilter with timelines for litigation in many member states.
- 2) **Streamlining of opposition proceedings will make the forum a more attractive forum for challenging European patents,** especially once the Unified Patent Court (UPC) is open for business. Before the UPC, cases will be dealt with in a streamlined manner; the preamble to the rules indicates that actions should be brought to trial within one year. Speeding up opposition proceedings is crucial for the EPO to remain attractive as a forum to mount pan-European patent challenges.
- 3) **It is not clear what would be considered a 'straightforward case'.** Even in cases which turn on a small number of straightforward points, numerous attacks may be raised at the outset of the proceedings which on their face appear highly complex. Further, where multiple opponents challenge grant of a patent, this may also be perceived to add to complexity. Thus, the concern would be that oppositions to business critical patents (which challengers will argue most acutely require speeding up), where numerous grounds of opposition are advanced and / or where numerous opponents are involved may not qualify for the streamlined procedure.
- 4) **Opponents will have to be prepared to move quickly.** The goal of issuing the summons to oral proceedings within five months of the deadline for the Patentee to lodge their observations will mean that if an Opponent wishes to respond in writing to any point made in the Patentee's observations in advance of the summons being issued, they will have to move quickly to prepare and file these. This will be a significant departure from the current proceedings.
- 5) **The streamlined procedure needs to extend to proceedings before the Boards of Appeal.** Without any corresponding streamlining of appeal proceedings, opposition plus appeal proceedings could still take in the region of 4 to 5 years (assuming that the case is not remitted back to first instance following appeal, in which case the proceedings will be even longer). Compared to timelines in national litigation in key European jurisdictions and the anticipated timelines before the UPC, this may still disadvantage those seeking the prompt resolution of patent validity disputes.



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