

Features of subject-matter that was visible only briefly can be considered to have been made publicly available only if it can be shown beyond doubt that they were clearly and directly apparent to the skilled person for that short time (T 1410/14: train – test drive).

In T 2565/11 the invention concerned a method of operating a ventilator and air conditioner for vehicles. It was not contested that the trains which were the subject of a prior use allegation were indeed delivered to DB Regio AG and operated in a public manner. However, it was disputed that information concerning the ventilation and air conditioning system of those trains was published in the sense of Art. 54 EPC by the delivery and operation of the trains and further that the structure and operation of the ventilation and air conditioning system had been adequately proved by the opponent. In its decision the opposition division held that the alleged public prior use had not been proven beyond reasonable doubt. The board, in the case at hand, overturned the evaluation of evidence made by the department of first instance because the opposition division erred as regards the underlying facts and failed to give an evaluation that was free of contradictions. The board gave its own evaluation of the evidence regarding the relevant facts. Even applying a high standard of proof ("beyond any reasonable doubt"), the board found that the basic facts presented by the witness could not be questioned.

Decisions applying the boards' case law on the strict standard of proof – initially established for public prior use – to other matters include T 1107/12, on the accessibility of documents, and T 1201/14, on proof of the transfer of priority right.

See also chapter V.A.4.4.6.g) "Late-filed evidence of a public prior use – not admitted".

#### 4.3.3 Posters and ephemeral presentations

Decision T 421/14 recalled that, according to the case law of the boards of appeal, the usual standard of proof was the overall balance of probabilities. The stricter standard of proof "beyond all reasonable doubt" had been used, exceptionally, in cases of public prior use where all the supporting evidence lay within the power and knowledge of the opponent. The issue of public prior presentation of posters or slides had, as a rule, been assessed in line with the requirements for public prior use. However, in the case of documents C30 (poster) and C31 (slide presentation), whose public availability was at issue in T 421/14, they were the patent proprietor's own documents.

In T 1210/05 the board concluded that the contested prior disclosure via the public display of a **poster** identical to document (1) at an Edinburgh congress had not been sufficiently established, i.e. beyond all reasonable doubt, based on the following considerations: the fact that the various means of evidence, namely the submitted documents, the affidavits of the witnesses as well as their oral testimony, did not contradict each other was not sufficient to meet the required standard of proof. Furthermore, the finding of the opposition division rested **exclusively on the testimony of one of the witnesses**. No independent evidence (in writing or by other persons) was available to support it. This did not mean that the written and oral testimony of the witness was per se insufficient. However, the board stated that there had to be good reasons for treating this evidence alone as having established the facts beyond any reasonable doubt. See also T 729/05, in which evidence