

heard. Denying it the opportunity to question those witnesses had prevented it from rebutting the ultimately crucial evidence. This was even more serious given that evidence for the prior use lay largely within the power and knowledge of the opponent (violation of Art. 113(1) EPC). See also T 329/02 in this chapter III.G.3.3.4.

In T 918/11, the board held that a mere reference to the fact that testimonies B1 and B2 concerned facts which had occurred at least 14 years ago and that other documentary evidence might possibly exist did not suffice in the case in hand to dismiss the testimonies as insufficient. It went against the general rules concerning the consideration of evidence to distinguish dogmatically between the evidentiary value of a witness testimony on the one hand and a document on the other hand. The opposition division had apparently considered documents to be of a more conclusive evidentiary value than witnesses. Such an approach had no basis in the EPC, Art. 117 EPC containing no ranking of the means of evidence it listed (see also T 2565/11, in which it was similarly found that witness testimony and documents were not ranked in this way).

See also in this chapter III.G.2.4.1.d) and III.G.2.5.4.

4.2.2 Witness testimony and written statements

See also in this chapter III.G.2.4. and III.G.2.5.

Witness testimony may be given in writing (written witness statements/statutory declarations) or orally (hearing of witness).

a) Credibility of allegedly linked witnesses

The probative value of the declarations of a witness depends on the circumstances of the particular case (T 937/93, cited in T 190/05). The **credibility of witnesses** cannot be impugned merely because they are related to one another and have a business relationship with one of the parties (T 363/90). An allegation based solely on suspicion cannot reasonably be expected to form a valid ground for casting doubt on the credibility of the evidence (see T 970/93 involving allegations of falsified evidence). The statements of employees of one of the parties were regarded as sufficient evidence in a series of appeal cases, e.g. T 162/87 and T 627/88; T 124/88; T 482/89, OJ 1992, 646; T 363/90; T 830/90, OJ 1994, 713; T 838/92 and T 327/91 (general manager of one party); T 190/05; J 10/04 (employee of representative's law firm).

While the written statements of independent persons would tend to carry more weight, the statements of employees of parties to the proceedings are not objectionable per se. In this respect, case T 523/14 was not comparable with T 1257/04, in which an **employee** statement was the sole piece of evidence filed to prove the public availability of a brochure. In T 523/14, the content of written statements by two employees of the opponents was considered sufficiently credible (public availability of an advertising newsletter sent by e-mail) because it was corroborated on its crucial points by other documents. Concerning the probative value of two expert reports submitted, one being from an employee of the opponent, see T 129/12.