in another of its patents (A10), which the opponent had cited as novelty-destroying prior art. In other words, the proprietor was to be heard with a view to obtaining information that had not been specified in A10 but, in the opponent's eyes, had to be known to the proprietor. The board did not order the requested hearing; it considered it unnecessary as it would provide new information that had not been publicly available on the basis of A10 at the time of filing of the patent in suit.

3.1.6 Re-hearing a witness

In case **T 30/12**, as evidence adduced for proving the invoked public prior use in opposition proceedings, the appellant (opponent) relied upon the drawing A9 and the testimony of Mr H, made before the opposition division. As regards the request for a renewed hearing of the witness Mr H before the board, the board noted that the appellant did not request that the witness be heard again to supplement his testimony by corroborating facts but only to clarify the statements made before the opposition division. However, the statements made by the witness as to whether document A9 was handed over to a member of the public were clear and unambiguous. The request to **rehear** Mr H was eventually rejected by the board.

In **T 544/14** re-hearing the witness was necessary. In view of the complication and the subsequent delay in the proceedings, the board decided first to clarify whether the alleged public prior use was novelty-destroying (without any doubt, no).

3.1.7 Example procedure for hearing a witness

Decision **T 401/12** of 8 November 2017, in which the taking of evidence requested by both parties was considered necessary, is an example of an interlocutory decision ordering that evidence be taken by hearing witnesses at a future date (R. 117 EPC) and dealing with the associated costs (R. 122(1) EPC) and the language issue (R. 4(3) EPC). The witnesses were given permission to bring any relevant documents. See also, in case **T 738/04** the decision of 22 August 2008 ordering the hearing of a witness under R. 117 EPC at the oral proceedings on 11 December 2008, at the end of which the final decision was taken. **T 660/16** addresses the issue regarding the nature of a decision – in this case, before the opposition division – ordering the hearing of a witness (case-management measure), and the deposit of an advance payment.

3.2. Time frame for submitting evidence and ordering the taking of evidence

This section concerns when the parties should submit evidence and when the taking of evidence should be requested or ordered.

While it has been accepted in the jurisprudence of the boards of appeal that EPO departments have some discretion in admitting evidence, e.g. where the evidence is unnecessary or of no relevance (cf. **T 142/97**, OJ 2000, 358, point 2.2 of the Reasons), the **main legal basis for refusing the admission of evidence** is, as stated by the board in **T 1698/08**, the provisions dealing with the late filing of evidence (see Art. 114(2) EPC, R. 116 EPC, Art. 12(4) and 13 RPBA 2007 (now RPBA 2020)). As regards the basic