

on document D7 by a person (librarian) not mentioned in document D7). D7 did not belong to the relevant state of the art.

In T 473/93 the board decided that the appellant's surmise that he had been in error in making his statutory declaration was not sufficient to allow orally presented facts which deviated from the declaration to appear more credible. The fact alleged orally therefore had to be regarded as not proven.

An **unsigned statement** by an unknown and unnamed person should in principle be given minimal weight (T 750/94, OJ 1998, 32; T 1818/12). In T 212/97, the board could not regard the citation of facts based on **hearsay** and not accompanied by a witness testimony as adequate evidence for the alleged prior uses.

In T 939/14, the patent proprietor complained that the opposition division had ruled after having heard **just one witness**. Addressing its objection that, as per the decision in T 1210/05, a single item of testimony was insufficient to rule on the facts beyond any reasonable doubt, the board held that no such general principle could be gathered from that decision or, for that matter, from the case law of the boards of appeal in general. Cf. T 2165/18 *supra*.

#### e) Witness testimony and national proceedings

In **national proceedings** before the Dutch District Court and Court of Appeal, several witnesses had been heard, and written statements had been introduced by both parties. The Dutch Court of Appeal could not establish an uninterrupted chain of proof that the alleged public prior uses had indeed taken place before the priority date of the contested patent. After evaluating the Dutch Appeal Court's findings, the board's judgment in T 665/95 was that no further investigations were necessary and that the conclusion of the Dutch Appeal Court could be followed, with the consequence that the subject-matter of the granted claim 1, contrary to the impugned decision of the opposition division, was considered to be novel. Other examples of cases dealing more generally with national proceedings and issues of evidence include T 760/89, OJ 1994, 797 (USA); T 582/90 (FR), T 1043/93 (IT), T 885/02 (NL); T 276/07 (IT); R 21/09 (UK); T 1904/12 (DE), T 202/13 (NO) and T 2220/14 (USA).

In T 407/08 the appellant (patent proprietor) filed a copy of an expert opinion which was ordered by a German Court in a patent dispute. A statement according to general experience in this expert opinion was taken into account by the board to conclude that a given feature was not implicit to a skilled person (Art. 100(c) EPC).

#### f) Obligation to raise objections under R. 106 EPC

In case R 8/17 the Enlarged Board of Appeal recalled that an objection under R. 106 EPC must be expressed and specific. The petitioner claimed that it raised the objection in the oral proceedings but neither the minutes – it had not been requested that they be corrected because incomplete – nor the written reasons contained any indication of such an