

opposition division, the board observed that it was generally accepted that the principle of free evaluation of evidence applied before the EPO (G. 3/97, G. 1/12), which also had to have an impact on the review during the appeal proceedings (T. 1107/12, T. 621/14). Provided that there had not been an error in the application of the law (e.g. an incorrect standard of proof had been applied), a board of appeal should therefore only overrule the evaluation of evidence made by a department of first instance and replace it with its own if that department's evaluation of the evidence clearly had one of the following shortcomings: (i) essential points had not been considered (T. 1553/07), (ii) irrelevant matters had been taken into consideration (T. 2565/11) or (iii) the laws of thought had been violated, for instance in the form of errors in logic and inconsistencies in the reasoning (T. 2565/11). In the case in hand the board considered that the opposition division's evaluation of evidence was not open to objection. Unlike the opposition division, however, the board was of the opinion that public prior use at trade fairs was novelty-destroying.

T. 1418/17 has to date been cited by three decisions. Decision T. 1057/15 referred to the principles laid down in the second catchword of T. 1418/17 and endorsed the opposition division's evaluation of the evidence and facts in the case in hand; decision T. 41/19 endorsed the basic principle stated in T. 1418/17. And T. 1604/16 did not follow T. 1418/17 and considered that the boards have competence to review appealed decisions in full, including points of law and fact. Decision T. 1069/14 endorsed decision T. 1604/16.

In T. 1604/16, the invention related to a foldable ramp for loading a wheelchair into a vehicle. The opposition division had based its assessment on E1, E1/1 (with photographs) and the testimony given by a witness (buyer of the vehicle equipped with the ramp). The evidence adduced before the board included documents E1, E1/1 and the minutes of the hearing of the witness at first instance. There were no issues in terms of the witness's credibility (see in general T. 474/04). In the board's view, the principle of the free evaluation of evidence has no direct bearing on the extent of the boards' competence to review decisions. The board referred to the explanatory remarks to Art. 12(2) RPBA 2020 that the boards have competence to review appealed decisions in full, including points of law and fact. The board was aware that there is case law on a restriction of the boards' competence when reviewing discretionary decisions and did not consider the evaluation of evidence to be a discretionary decision. The board did not see any reason why it should limit its review of the opposition division's findings of fact in the context of the public prior use by applying the criteria set out in decision T. 1418/17. In the case in hand, in view of several remaining doubts which arose from the content of the minutes, the board held that the evidence produced was insufficient and hence that the opposition division had erred in concluding that the ramp shown in E1/1 formed part of the prior art. See also chapter V.A.3.2.1. "Primary object of the appeal proceedings – Article 12(2) RPBA 2020".

#### c) Events long past

In T. 1191/97 the appellant's criticism of the evaluation of evidence by the department of first instance did not pose a serious threat to the witness's credibility. The fact that the events at issue had taken place a long time ago could readily explain certain imprecisions in the witness's testimony. The board saw no indication that the witness had been in breach of his obligation to testify to the best of his recollection.