Art. 114(2) EPC might, depending on the circumstances, arise first at the stage of filing the statement of grounds of appeal. See also **T 998/17**.

The board in **T 574/02** found that documents could not be considered late-filed simply because they had only been submitted on appeal, and any board faced with a request that it refuse to admit a document or evidence as late-filed first of all had to verify whether it really was late or whether, in the particular circumstances of the case, it had been submitted **in due time**. Finding that the filing party had at all times acted and reacted promptly and with good judgment, the board held that the documents had been submitted in due time within the meaning of Art. 114 EPC. See also **T 1647/15** in chapter III.G.3.3.4.

3.2.7 Parties' responsibilities

When a party seeks to prove potentially relevant facts by means of the statement of a witness, it is particularly important that this statement be furnished early in the opposition phase so as to enable the witness to give oral evidence in accordance with Art. 117 EPC 1973, in the event that the statement is challenged or the EPO deems it necessary (**T 953/90**).

In appeal proceedings both parties are under a duty to submit all relevant facts in due time. In **T 106/15** the appellant did not at any point in opposition (or opposition appeal) proceedings request that the author of the statutory declaration be heard (see also **T 2010/08**). Compare with **T 41/19**.

In **T 753/09** an expert declaration had been late filed by the appellant (opponent). Having said that it would allow such belated evidence only if it were sufficiently relevant and if the other party could reasonably react to the late filing, the board ultimately refused to admit it into the proceedings. The board pointed out, inter alia, that as an **expert declaration** had to be considered **not just as an argument**, but as evidence pursuant to Art. 117(1)(e) EPC, the other party should be given the possibility to have such an expert declaration verified or possibly refuted by another expert with the same qualifications (as requested by the respondent as an auxiliary measure). Indeed, in the particular case, such a defence against the expert declaration required quite some time.

In case **T 703/12** the board stated that, in accordance with Art. 12(2) RPBA 2007, the appellant's statement of grounds of appeal **should contain its complete case**, inter alia it should specify expressly all the evidence relied on. The appellant (opponent) was aware from the impugned decision that it was questionable whether the alleged prior use had been proven beyond any reasonable doubt. There was no justification for waiting until the oral proceedings to request that the witness be heard. Furthermore, consistent with established jurisprudence, the **generic reference** to the appellant's submissions in opposition in the notice of appeal could not be interpreted as expressly specifying the offer of a witness. Accordingly, the witness offer made for the first time during the oral proceedings constituted an **amendment to the appellant's case** in accordance with Art. 13(1) RPBA 2007 and could only have been dealt with by an adjournment of the oral proceedings. In accordance with Art. 13(3) RPBA 2007, the board decided not to hear the witness. As regards the duty to present a complete case, see **T 30/15** and **T 1949/09** (late-