

less weight than documentary evidence, see also [T.918/11](#), [T.2565/11](#) and [T.441/04](#) (in which, however, the board first observed that documentary evidence was generally preferable to witness testimony for proving long-ago events).

In [T.329/02](#), the board found that it was not in keeping with good procedural practice for an opposition division not to take up an opportunity to hear a witness in evidence on a disputed matter that was highly relevant to the legal validity of the contested patent, and instead to require written declarations in place of the oral evidence.

See also chapter [III.G.3.3](#) "Right to be heard" below.

2.4. Witness testimonies and expert opinions

2.4.1 Hearing witnesses

By way of introduction to this topic, the following sets out some of the principles that have emerged from the case law reported in the sub-sections below. The EPC requires **clear requests** with regard to testimonies which a party wishes witnesses to give. A party who wishes to adduce witness evidence should indicate what **factual details** it wishes to prove by this means. The function of a witness is to corroborate what has been alleged and not to fill in the gaps in facts. Additional clarifications provided by a witness to close a potential gap in the documentary evidence on file cannot be considered per se new facts; hearing a witness would otherwise be futile. The parties must be given an opportunity to comment on the results of the witness hearing. The EPC does not preclude the parties to the proceedings from offering their employees as witnesses. An allegation that a witness might be biased does not in itself render their testimony inadmissible; rather, suspicion of bias is a matter to be considered when evaluating the evidence. All the means of giving or taking evidence covered by [Art. 117 EPC](#) are subject to the discretion of the department concerned but if the evidence offered is decisive for proving contested facts on which the case turns, the department must, as a rule, order that it be taken.

a) Role of witnesses and wording of request

It is the function of a witness to corroborate what has been alleged ([T.543/95](#)) and not to fill in the gaps in facts brought forward to support the case ([T.374/02](#); confirmed more recently in e.g. [T.1100/07](#), [T.1028/11](#) and [T.2054/11](#)). It is necessary that a party who wishes to adduce evidence by means of a witness should indicate what **factual details** it wishes to prove by this means ([T.374/02](#)). The principle of free evaluation of evidence also applies to the hearing of witnesses under [Art. 117\(1\)\(d\) EPC](#) ([T.482/89](#), OJ 1992, 646).

The EPC requires **clear requests** with regard to testimonies a party wishes witnesses to give, since the responsible department of the EPO must issue a decision regarding the taking of oral evidence (see [Art. 117\(1\)\(d\)](#) and [R. 72\(1\) EPC](#)). The board in [T.374/02](#) was of the opinion that the "implicit offer of witnesses" did not specify what should be able to persuade the board to evaluate the evidence already existing in the file differently. Witnesses were meant to corroborate the facts, not to fill in gaps in the facts and arguments. The lack of an indication of the facts which were to be proven by testimonies