

In T.61/07, the board made clear that the doubts cast by the respondent on the witness's memory about events which had happened 23 years ago concerned not the witness's credibility but the **credibility of the testimony**. However, it saw no reason to doubt that his testimony was credible. Just because the witnesses had each independently met a third witness before being heard did not automatically mean that their recollections had been influenced. Shortly before a party alleges prior use, witnesses are normally sounded out about what they actually remember. Such a **discussion with a potential witness** did not automatically imply that during it the party or one of its staff had influenced what the party remembered.

In the circumstances of case T.918/11, the board considered that the reasoning of the impugned decision that "... the mere declaration of one witness in connection with facts which occurred between 1992 and 1997, i.e. at least 14 years ago, is not sufficient to prove the details of prior use" was not well founded.

In T.905/94 the board held that the fact that one witness had made his declaration three years earlier than other witnesses was not sufficient reason to make his testimony more credible.

With regard to the credibility of witnesses, the board observed in T.1210/05 that even a person who was not being dishonest might make untrue statements. A person can be honestly mistaken in his recollection of an event, particularly if the event took place some time previously.

In T.483/17 (prior use – up to the hilt), the respondent (patent proprietor) doubted that the witness had been able, in his declaration on oath, to reproduce all the details about the delivery, which had taken place more than 10 years earlier, and pointed out that the appellant, who had obviously pre-drafted this declaration, must have had more information and documents than it was willing to submit in these proceedings. However, since the declaration was not needed to convince the board of the delivery, any "inconsistency" in it was irrelevant.

T.2165/18 (see also the abstract below, under "Archives and internet publications") turned on an undated user manual that had been published online. The board ultimately found that the statements made by a witness were not enough on their own to fill in the gaps in the evidence as to its date of publication and the software version it had been supplied with. It was unlikely that a witness, even if the manual's author, would still be able to remember the whole text nine years later. The opponent cited the decisions in T.1798/14, T.2565/11 and T.918/11 in support of its contention that a **single witness's testimony** could in fact be enough to prove prior use and that a witness could also fill in gaps in the alleged facts, but the board rejected this position, ruling that they did not apply in the evidential situation in the case in hand. See also T.939/14 below.

d) Contradictory or consistent testimony

In T.361/00, as to the two **statutory declarations** (relating to visits to a cement works), the board had no doubt that they had been made in good faith but found them to be