

in support of disclosure of a poster was found to fall within the patent proprietor's sphere of influence.

In T 2338/13, which likewise concerned information disclosed on a **poster** displayed at a conference, the primary evidence of the alleged prior use (A3, a copy of a PowerPoint presentation) was in the possession of a witness who had been contacted by an **anonymous friend** referred to by the appellant (opponent) as a third party. The appellant was unable to specify how the witness, this third party and he were connected and the board held that he had to bear the consequences of this lack of information and that A3 thus had to be deemed to lie within his power and knowledge. The witness being likewise considered to fall within his sphere of influence, he also bore the burden of proving that A3's content had been made publicly available beyond any reasonable doubt. The board concluded that A3's content had indeed been disclosed in the form of a poster, but discrepancies between the witness's statutory declarations and his oral testimony cast doubt on the reliability of his evidence. The appellant not having proved his case beyond reasonable doubt, the board disregarded A3 when assessing patentability.

T 1057/09 concerned a "diploma thesis" whose content was allegedly disclosed inter alia during an oral presentation before the priority date of the patent in suit (ephemeral – beyond any reasonable doubt).

In T 1212/97 the opponent had submitted that the invention had been made available to the public at a lecture given some days before the priority date to an audience of some 100 to 200 persons. The question to resolve was whether there was any safe and satisfactory evidence regarding the content of what had been made available to the public at the lecture. The board did not consider **evidence from the lecturer alone** to be satisfactory evidence as to what had been made available to the public at the lecture. Even an audio or video tape recording made of the lecture, unless publicly available, would have to be treated with caution, if several hearings or viewings were necessary to extract all the information (see also T 428/13 and T 2003/08 of 31 October 2012 below).

In T 2003/08 of 31 October 2012 the board observed that, in contrast to a written document the contents of which are fixed and can be read again and again, an **oral presentation** is ephemeral. Therefore, the standard of proof for ascertaining the contents of an oral disclosure is high. T 1212/97 could not be interpreted as setting an absolute standard for the amount of evidence necessary to prove the contents of an oral disclosure. In the present case evidence from the lecturer and a member of the audience, provided by them in the form of both affidavits and oral testimony, was not considered by the board to prove beyond reasonable doubt that the subject-matter of the claim was disclosed during the lecture (see also T 12/01 about oral presentations; T 667/01 about declaration of the presenter as to the content of his oral presentation usually not sufficient and T 1057/09 about the alleged availability of a "diploma thesis" whose content was allegedly disclosed inter alia during an oral presentation before the priority date of the patent in suit).

Decision T 1212/97 was also cited in T 421/14, with the respondent (patent proprietor) arguing that both the poster C30 and slide presentation C31 involved "ephemeral" oral presentations, which meant that the standard of proof for ascertaining the content of the