

In T.41/19, the appellant (patent proprietor) asserted that an affidavit should only be taken into account if the person who provided the affidavit could also be called as a witness. The board did not agree, stating among other things that affidavits were one possible form of evidence in the non-exhaustive list in Art.117 EPC and so could be taken into consideration as stand-alone evidence as per the principle of free evaluation of the evidence.

In T.474/04 (OJ 2006, 129), where one party invoked T.674/91 to justify not having to hear the author of an unsworn witness declaration ("eidesstattliche Versicherung") as a witness, the board pointed out that the case before it was different in that the fundamental assertions made in the declaration were **contested**, the author had been offered as a witness, and the appellant had consistently demanded that he be heard. The opposition division's decision not to summon him as a witness although he was available had handicapped the appellant in its defence against what turned out to be the **decisive piece of evidence**. It was observed that this piece of evidence largely lay "within the power and knowledge of the opponent". Compare with T.2659/17 (see infra, ranking of means of evidence), which cites various sections of T.474/04 and concludes, on the basis that the evidence of an alleged prior use was in the opponent's hands, that the opposition division **should have heard** the author of the pivotal, contested declaration as a witness so as not to deprive the patent proprietor, who had made the request that the witness be heard, of its right to be heard under Art. 113(1) EPC.

As to whether, when offered, the author of a declaration should be heard as a witness in addition to their declaration, see the chapter "Evidence" and in particular chapter III.G.3.3 "Right to be heard"; as to when a declaration alone can be adequate proof, see chapter III.G.4 "Evaluation of evidence".

2.5.4 Ranking of means of evidence

See in this chapter III.G.4.2.1.

2.6. Other documents

As the EPC neither defines the term "documents" (Art.117(1) EPC) nor gives any indication of the probative value of such documents, the principle of free evaluation of evidence applies. **Any kind of document**, regardless of its nature, is **admissible** during proceedings before the EPO, including appeal proceedings (T.482/89, OJ 1992, 646).

In T.1698/08 the respondent (patentee) objected to the admission of an (**internet**) extract from the Zürich Commercial Register as it stated at the end that the information was provided without warranty and had no legal effect whatsoever, which in its opinion had the consequence that the extract could not be considered as a means of evidence within the meaning of Art.117(1) EPC. The board stated that a refusal to admit such a piece of evidence (an uncertified extract from a commercial register) could therefore not be based on Art.117(1) EPC. The board decided that there was no reason to exercise its discretion to refuse to admit the evidence, as it could neither be said that it was irrelevant nor that it was unnecessary. A **refusal** to admit it could in any case **not be based** on statements in