In **T 798/93** (OJ 1997, 363) the board observed that the only specific means requested was a sworn statement in writing but, in the absence of any legitimate doubt as to the opponent's identity, the board considered that this was neither useful nor necessary.

All appropriate offers of evidence made by the parties should be taken up. As a rule, it cannot be considered to be in keeping with good procedural practice for an opposition division not to take up an opportunity to hear a witness or party in evidence (**T 329/02**; see **T 860/01** on the extent of the discretionary power of the first-instance department).

All the cases cited below relate to requests to hear witnesses. The sub-headings are aimed at guiding readers to more specific aspects. Since the reasons for a decision may touch on several aspects, the abstracts may also deal with points not alluded to in the heading.

3.1.2 Offering evidence – effect on the outcome of the dispute

See the introduction above with reference to **T 329/02** and **T 860/01**.

According to **T 716/06**, it is true that where **oral evidence of a witness** is requested by a party the competent EPO department should grant this request only if it considers this oral evidence necessary, i.e. when it is required to clarify matters that are decisive for the decision to be taken. If a request is made by an opponent to hear a witness on an alleged public prior use and on the disclosure of a certain feature by this prior use, the competent department of the EPO must as a rule grant this request before deciding that the alleged public prior use is neither established nor a novelty-destroying part of the state of the art because the feature in question is not found to be disclosed therein. In **T 2003/08** of 31 October 2012 the board – in contrast to the opposition division – considered it appropriate to hear the witnesses because their testimony **could affect the outcome** of the proceedings.

In **T 246/17** the opposition division had declined to hear the witnesses offered in relation to prior use and considered the public prior use to be adequately proven by the documentary evidence. However, the board came to the conclusion that it could not be ruled out that hearing the witnesses, alongside evaluating the documentary evidence, could have led to a different assessment of novelty and inventive step and thus to a different outcome. The disclosures of documents O1 (manual) and O2 (brochure) left open whether certain features were present in the instrument described, but the instrument had actually been made and sold and might itself have disclosed them even though O1 and O2 did not, and this was a matter which witness testimony could resolve. Not hearing the witnesses was therefore a fundamental procedural violation that justified setting the decision aside (see e.g. **T 716/06**, **T 1363/14** and **T 314/18**).

In **T 1100/07** (alleged prior use, sale of a vehicle with a given feature), the department of first instance had refused to hear two witnesses. The board held that it had been right to refuse to hear one of them, as he would merely have confirmed what he had said in his written statement about documents that anyway spoke for themselves and hearing him would have had no impact on the final decision. It should, however, have heard the other witness. It was true that the request that he be heard had been filed late and that granting