

It was decided in T.417/13 that physical and mathematical facts about particle size measurements were notorious. Therefore there was no need to discuss documents filed in order to establish the related facts.

See, for example, T.2437/13 as to how boards deal with an unsubstantiated allegation made by an opponent who bears the burden of proof.

See also chapter II.C.9. "Evidence"; T.63/06 (summary of its contribution in T.347/15), T.338/10 and T.967/09 in present chapter III.G.5.2.2.

d) Content of the priority document

In T.1147/02 the board dealt with the issue of which party to the appeal proceedings bore the burden of proving the exact content of a priority document in order to establish the relevant priority date. Since the appellant was the one to challenge the priority date necessary for establishing prior art, the principles elaborated in the case law of the boards of appeal dictated that the appellant also bore the burden of convincingly proving that the relevant date was not the filing date of the priority document.

e) Specific case of internet citations of prior art

As a rule, each party bears the burden of proof for facts which it alleges. In the specific case of internet citations of prior art cited by the EPO, the burden of proof thus lies with the EPO. If however, the EPO is satisfied that, on the balance of probabilities, an internet citation constitutes prior art, it is then up to the party to prove otherwise (ex parte cases T.2227/11, T.1589/13).

In ex parte case T.545/08 the board stated that the commercial website from which document D1 was retrieved could not be considered, at least not without further investigations, as a source generally deemed to provide reliable publication dates, such as the websites of scientific publishers. It concluded that the examining division was not entitled to consider document D1 as prior art in its first substantive communication without providing further explanations and evidence as to the document's public availability before the priority date (see also T.1961/13). Thus, the objection was not properly raised. It could not generate an obligation on the applicant's side to submit evidence against the assumed publication date in the written proceedings (see the observations on the burden of proof in T.545/08, points 12 and 13 of the Reasons, see also T.1066/13).

f) Receipt of formal documents

See at first place chapter III.S.4. "Spheres of risk and apportioning the burden of proof". R.126.EPC (notification by post) and R.127.EPC (electronic notification) lay down rules on the burden of proof in case of dispute (for the amended versions of these provisions, see CA/D 6/14 in OJ 2015, A17, and the explanatory notice in OJ 2015, A36, points 3.1 ff). On the requisite standard of proof, see also in chapter III.G.4.3.7.