

law, Taiwanese law); R.18/09 (external legal opinion on the admissibility of the petition), T.156/15 (opinion of a former board member submitted as expert evidence), T.2132/16 (opinion of different technical experts and a transcript of their cross-examination in a UK court case). See also T.335/15, in which two months before the oral proceedings the opponent had filed a request that a technical expert be heard but did not specify on what point that expert would be speaking until the oral proceedings. The board ruled on the issue with reference to the findings in G.4/95 on oral submissions by an accompanying person. More generally, this issue is discussed in chapter III.V. "Representation".

## 2.5. Statements in writing

### 2.5.1 Sworn statements and affidavits

Art. 117(1)(g) EPC provides for sworn statements in writing as a means of evidence (rare in practice). However, since any kind of evidence is admissible in proceedings before the EPO, other, less solemn types of written statement (common in practice), e.g. statutory declarations, are also accepted. It is for the decision-making departments then to assess their probative value on a case-by-case basis. Such declarations consist of a witness's written statement, the main purpose of which is to avoid the need to hear that witness. The various departments may, however, decide to order such a hearing, for example if a party so requests. The terminology used in the case law of the boards of appeal includes "affidavits", "statutory declarations" and "unsworn statements" (French: "déclarations écrites", "déclarations sur l'honneur" and "attestations"; German: "eidesstattliche Versicherungen" and "eidesstattliche Erklärungen").

For further decisions dealing with unsworn declarations, see T.443/93, T.563/02. The board in French-language case T.2338/13 explicitly referred to affidavits as "attestations". The board in T.474/04 (OJ 2006, 129), which had English as the language of the proceedings, referred to a document entitled "eidesstattliche Versicherung" as a "declaration in lieu of an oath" and an "unsworn witness declaration". In T.703/12, the board called a document of this kind entitled "eidesstattliche Versicherung" a "statutory declaration" and in T.1231/11 an "affidavit". In proceedings before the EPO even a simple declaration can be an admissible means of evidence within the meaning of Art. 117(1) EPC (T.474/04, OJ 2006, 129).

A statutory declaration ("eidesstattliche Erklärung" or "déclaration tenant lieu de serment") is a means of giving evidence within the meaning of Art. 117(1) EPC and as such is subject to the **principle of free evaluation of evidence** (T.558/95, cf. T.482/89, OJ 1992, 646; T.575/94). The EPO accepts unsworn solemn declarations the same way it accepts other unsworn statements (T.970/93, T.313/04, T.535/08). Older decisions include T.770/91, J.10/04 and T.1127/97.

The board in T.939/14 also held that the objection that affidavits did not meet the requirements of Art. 117(1)(g) EPC failed on the whole because standard board of appeal practice was to handle witness declarations, in whatever form or manner they are made, pursuant to the principle of free evaluation of the evidence.