

is unable to decide on an issue without advice from a technical expert, since it is first and foremost down to the parties to find the necessary evidence (T 1906/17). In T 1906/17, the respondent (patent proprietor) had not set out why an independent expert needed to be heard for the decision.

In T 375/00 the board, ruling on the opponent's request that it order an expert opinion under Art. 117(1)(e) EPC, held that actively seeking experts to help the case of one of the parties could leave it open to an accusation of partiality and that it was for the parties to find the evidence they needed. **Only if** the board did not consider itself in a position to decide upon a matter without technical assistance would expert evidence within the meaning of Art. 117(1)(e) EPC become appropriate (T 1676/08, citing also T 395/91, T 230/92, T 375/00, T 311/01 and T 1907/06). Other cases rejecting a request for an expert opinion: T 1548/08, T 1763/06, T 38/15, T 377/17 (independent expert opinion on Art. 83 EPC requested and refused; point of law), T 471/16.

In T 443/93 too, the board refused a request for such an expert opinion made at the oral proceedings after a witness had been heard, noting that the appellant had neither filed the request on time, nor supplied specific grounds justifying such a request at that stage in the proceedings. See also T 8/13.

In T 392/06, during oral proceedings the respondent (opponent) requested the appointment of an independent technical expert in view of the contradictory experimental results of the appellant (proprietor) and the respondents (opponents). The board had no reason to substitute for the respondents **to compensate for their deficiency** in the provision of the evidence which supported their objection of lack of novelty in allowing an independent expert. Furthermore, commissioning of an independent expert would have made postponement of the oral proceedings necessary, which was contrary to Art. 13(3) RPBA 2007 (see also the obiter dictum in T 998/04, reported in this chapter III.G.5.1.1, on the burden of proof).

2.4.4 Expert opinion submitted by a party

Following on from the section on expert opinions ordered by a board (Art. 117(1)(e) EPC), this section relates to expert opinions the parties themselves furnish as evidence (as occurs most often in practice).

In T 517/14 (priority right, Israeli law), with regard to an expert opinion submitted by the appellant the board noted that, while an opinion by an expert who has represented a party "in numerous proceedings" may, upon free evaluation of the evidence, have carried less weight than a court decision, another independent authority under the national law or an expert commissioned by the board under Art. 117(1)(e) EPC together with R. 117, first sentence, EPC, an opinion of a party's expert was a **means of evidence** under Art. 117(1) EPC.

In the following cases, the boards likewise dealt with expert opinions offered by a party: T 1676/08, T 658/04, T 885/02, T 276/07 (expert opinion not translated from Italian), T 74/00 (legal expert opinion, Japanese law), T 1201/14 (transfer of right of priority – US