The EPC does not provide that certain questions of fact may only be proved by certain forms of evidence. Questions of fact must be settled on the basis of any credible information available (see e.g. **J 11/88**, OJ 1989, 433).

2.2. Distinction between the admissibility of evidence and its probative value

The admissibility of evidence should be clearly **distinguished** from the weight of evidence: whereas admissibility involves the question whether a piece of evidence should be considered at all, the probative value of evidence refers to the question whether the evidence to be considered provides sufficient proof of the alleged facts (see e.g. **T 1698/08** with regard to a document, **T 1363/14** and **T 838/92** with regard to witnesses).

The allegation that a witness might be biased does not itself render the testimony inadmissible; rather, suspicion of bias is a matter to be considered during the evaluation of evidence (**T 838/92**). The principle of free evaluation of evidence applies only once evidence has been taken and cannot be used to justify not taking evidence offered (**T 2238/15**).

Assessing the evidence is part of the process of ascertaining whether the opposition is well founded in substance (**T 234/86**; along the same lines **T 353/06**, **T 1194/07**). No EPC provision requires that an alleged prior use must actually be proven within the opposition period in order to substantiate the allegation (**T 1363/14**, **T 2238/15**).

The board in **T 885/02** observed that the opinion of an expert does not necessarily reflect the view of the skilled reader for various reasons. Those **experts** who were in the case at issue **eminent scientists** had their own experience which was not necessarily common general knowledge. Those observations did not mean that those declarations were to be disregarded.

In **T 1551/14**, after the first oral proceedings the patent proprietor had filed a new auxiliary request in which the subject-matter of the two independent claims had been limited by a new feature. After the summons to a second round of oral proceedings, and within the period fixed under R. 116 EPC, the opponent had filed a statutory declaration from a witness who had already been heard and that this witness be heard again. Among other things, the board held that not even **contradictions with previous submissions** – which it did see in the case in hand – could justify refusing from the outset to admit submissions that were a legitimate reaction to a change in the counterparty's case.

2.3. Freedom of choice when selecting evidence

Under Art. 117(1) EPC, parties are free to choose what kind of evidence they present. In particular, they can make use of any of the means of evidence listed in that article (**T 142/97**, OJ 2000, 358). In **T 1710/12**, in the board's view, Art. 117(1) EPC gives **no order of preference** regarding the means of giving or obtaining evidence in proceedings before the EPO and it remains the **free choice of a party** to rely on the hearing of a witness (Art. 117(1)(d)) EPC or on production of a sworn statement in writing (Art. 117(1)(g) EPC). For other findings that witness testimony does not necessarily carry