it would have meant adjourning the oral proceedings, but the opposition division had based its final decision on a failure to establish the prior existence of a single given feature and the witness would allegedly have been able to give evidence on that very point. Thus, the refusal to hear him was wrong and might have affected the outcome of the decision.

In **T 273/16**, during the opposition proceedings the appellant-opponent had, on multiple occasions, requested that two witnesses be heard on the alleged prior use of a commercial dishwasher. The opposition division had opted not to invite the witnesses. Its decision appeared to be based primarily on the fact that no production or sale of the dishwasher had been demonstrated. Yet the opponent had offered the two witnesses in relation to that very issue. The decision not to hear the witnesses was therefore incorrect and might have influenced the outcome of the proceedings.

3.1.3 Taking evidence (hearing of a witness) deemed unnecessary

In **T 361/00** the board explained in detail why, given the circumstances of the case before it, hearing the witness would be unnecessary because it would in no way affect the outcome of its decision. (In the same vein, see **T 377/17** regarding witnesses offered for carrying out the furnished tests.)

As per **T 41/19**, an affidavit was one possible form of evidence and could therefore be taken into account as stand-alone evidence. This being the case, a written statement carried no less weight than hearing the author of the statement as a witness.

In **T 1410/14** (prior use – train – test drive) the board remarked in particular that, since the witness whose hearing the opponent had requested would not have been able to testify as to the decisive material facts, such a hearing would serve no purpose.

3.1.4 Hearing the witness introduces new facts into the proceedings

In **T 1231/11** the board refused the request to hear a witness in support of an allegation of prior use. The witness had been offered to confirm the contents of his statutory declaration, but the board concluded that since he had not made any written statement regarding the decisive issue, any information provided on this matter would amount to introducing new facts into the proceedings. In addition the board concluded that there had been no substantial procedural violation by the department of first instance since hearing the witness had not been considered relevant for the outcome of the case. The board found the circumstances to be different from those ruled on in three other cases, where the request to hear witnesses related to facts already on file: **T 267/06** (essential details referred to in the affidavit); **T 25/08** (hearing necessary in order to confirm what had been brought forward in writing); **T 448/07** (need to clarify inconsistencies in a written statement).

3.1.5 Hearing the patent proprietor

In **T 753/14** the opponent (appellant) requested that the board hear the proprietor of the patent in suit (respondent) under Art. 117(1)(a) EPC to clarify the scope of the disclosure