

revocation (that is, the legal and factual reasons) are fully and properly proved (**T.750/94**, OJ 1998, 32; **T.329/02**; **T.750/94** was cited and considered in the context of evidence by the board in **T.545/08**). See Guidelines G-IV, 1 – November 2015 version): "If the applicant shows sound reasons for doubting whether the document forms part of the 'state of the art' in relation to his application and any further investigation does not produce evidence sufficient to remove that doubt, the examiner should not pursue the matter further." See also the version currently in force, G-IV, 1 – March 2022 version.

The board in **T.286/10**, citing **T.472/92**, observed that it is settled case law that evidence is generally assessed in terms of what seems most probable; it made an **exception** only for public prior use objections where practically all the supporting evidence lay within the power and knowledge of the opponent (see in this chapter III.G.4.3.2 "Public prior use"). It considered the balance of probabilities standard to be met if, after evaluating the evidence, a board was **persuaded** one way or the other.

For **internet publications**, the standard of proof is the balance of probabilities (**T.286/10**, **T.2227/11**, **T.1711/11**, **T.353/14**, **T.545/08**). See also chapters I.C.3.2.3 "Internet disclosures" and I.C.3.5.2 c) "Internet – proof of the date of availability" with reference to the Guidelines and OJ 2009, 456-462).

In the board's judgment in **T.658/04**, an expert's declaration which is not supported by verifiable facts but which merely constructs some hypotheses, cannot reflect the **common general knowledge** to be considered for assessing the sufficiency of disclosure within the meaning of Art. 83 EPC. For this reason, document (12) – declaration of U.K Pandit submitted by the appellant (patent proprietor) as an expert opinion – did not form part of the common general knowledge. **T.658/04** also summarised what is part of the common general knowledge according to the case law of the boards of appeal.

For cases dealing with requests for re-establishment of rights, see chapter III.E.4.4.

#### 4.3.2 Public prior use

Although the standard of proof is the same for all objections covered by Art. 100 EPC (cf. **T.270/90**, OJ 1993, 725), the case law identifies two levels or standards of proof to be applied with regard to disputes around public prior use – either the "balance of probabilities" or "up to the hilt".

About burden of proof, see decision **T.2037/18**, which sets out detailed reasons on the issue (prior use; distinction between the admissibility and the substantive merits of the opposition; burden of presentation and burden of proof; principle of "*negativa non sunt probanda*"; non-confidentiality clause; shifting of the burden of proof) and cites numerous other decisions.

a) Both parties have access to the evidence: balance of probabilities

The **balance of probabilities** standard is applicable only if the patent proprietor and the opponent had equal access to the material allegedly in public prior use (**T.1776/14**).