

The principle of unfettered consideration of the evidence does not apply until after it had been taken and could not be used to justify not taking evidence offered (T 2238/15, alleged prior use – offer of witnesses; see also the principles laid down in T 1363/14).

As regards the handling on appeal of evidence that was admitted in the first-instance proceedings, the EPC does not provide a legal basis for excluding, in appeal proceedings, documents which were correctly admitted into the first-instance proceedings, in particular when the impugned decision is based on them (T 1201/14, T 26/13, T 931/14, T 564/12; see also T 95/07, point 4.2.12 of the Reasons, T 1277/12 of 7 April 2017, and more recently T 110/18, T 617/16, T 487/16 (with reference to the RPBA 2007 and the RPBA 2020), T 2049/16, with detailed reasons; for the issue in general, see in particular chapter V.A.3.4.4 "Submissions admitted at first instance are part of the appeal proceedings"). Compare with the nuanced approach taken recently in T 960/15. And on the question of the admissibility of evidence submitted by the intervener, including the reintroduction of certain evidence originally submitted by a party but not admitted as late, see T 2951/18.

As for the standard of proof, the EPO generally applies the "balance of probabilities" (see J 20/85, OJ 1987, 102, point 4 of the Reasons). The balance of probabilities standard is met if, after evaluating the evidence, the boards are persuaded one way or the other (T 286/10). However, especially in cases where only one party – the opponent – had access to information about an alleged public prior use, the case law has tended toward expecting that the public prior use be proved beyond any reasonable doubt or "up to the hilt" (see e.g. T 55/01, point 4.1 of the Reasons; and T 472/92, OJ 1998, 161, point 3.1 of the Reasons; T 2451/13, Catchword). Summary of the case law concerning the standard of proof can be found e.g. in the following cases: T 738/04, point 3.4 of the Reasons; T 286/10, point 2.2 of the Reasons; T 918/11, point 3.3 of the Reasons; T 2054/11, points 2.2 and 2.3 of the Reasons; T 2227/11, point 2 of the Reasons; T 274/12, point 4.2.1 of the Reasons; T 202/13, point 15.6.1 of the Reasons; T 2451/13, point 3.2 of the Reasons; T 545/08, points 7-11 of the Reasons.

The standard of proof for **internet citations** now seems to have been established by the decisions in T 286/10 and T 2227/11, which were endorsed in T 1711/11, T 353/14 and T 545/08. The appropriate standard of proof for internet citations is the "**balance of probabilities**". The conclusion reached in the earlier decision T 1134/06 (followed by T 19/05 and T 1875/06) that the stricter standard of proof "beyond reasonable doubt" had to be applied to internet disclosures has been refuted.

Examining the evidence a board took into account would amount to revisiting the substance of the case and so falls outside the ambit of the review procedure (R 21/09, R 6/12). A reversal of the burden of proof is not covered by the exhaustive list of possible grounds for a petition for review (R 21/10).

R. 3(3) EPC provides that documentary evidence may be filed in any language. The EPO may, however, require that a translation in one of its official languages be filed within a specified period. If the required translation is not filed in due time, the EPO may disregard the document in question, as for example in T 276/07 (see T 2437/13 for another