

In **T.225/03** the opposition division had not taken evidence by hearing the witness before revoking the patent because it had considered the allegation of public prior use to be adequately proven by the documentary evidence. The board found that level of proof to be insufficient, and held that the respondent's (opponent's) request – that the **documentary evidence be complemented by hearing the witness** – had to be granted, as only the witness could confirm the links between the individual pieces of evidence and the circumstances of use as explained in his statutory declaration. It therefore sent the case back to the department of first instance for further prosecution.

In **T.441/04** the board agreed with the respondent (patent proprietor) that evidence in document form was normally preferable to witness testimony about long-ago events. But that did not mean that in the case in point such testimony was necessarily excluded per se or less convincing than documentary evidence. Applying the (high) standard of proof beyond doubt, the board considered that it had taken due account of the fact that the alleged public prior use – proven by witness testimony – was attributable to the appellant. The evidence submitted (mainly witness testimony) had measured up to that standard, and therefore no new or additional proof (such as drawings) was needed.

In **T.1914/08** the board – like the opposition division at first instance – regarded two witnesses' testimonies as the decisive evidence proving without any gaps the alleged prior public use. Each testimony, considered in isolation, gave a consistent and full picture of the process in question. Accordingly, it endorsed the opposition division's evaluation of the evidence, the standard of proof applied by it ("beyond all reasonable doubt") and the result of its analysis. It held, moreover, that the patent proprietor's (appellant's) request for additional evidence had to be refused. Since the opposition division had, in the course of its unfettered consideration of the evidence, concluded that the alleged prior public use had, essentially, been established by the two witnesses' testimonies and since the appellant had been unable to cast doubt on the probative value of those testimonies, there was no need for the opponent (respondent) to adduce further evidence in either the opposition or the appeal proceedings.

In **T.833/99** the opponent (appellant) had raised a novelty objection, claiming that prior use had occurred following public disclosure of an identical process: grooved-rail frogs for tramlines had been sold and installed in various German towns over a specified period. The opposition division had found this disclosure to be insufficiently proven, and had duly dismissed the objection. In support of its contention that the manufacturing process lacked novelty, the opponent relied on two photos (showing the grooved-rail frogs) measuring 6 cm by 6 cm and appearing inside a **prospectus**. The **photos were not clear enough** to say that the edges could not have been the result of flame-cutting. Lastly, during **invitations to tender**, the municipal employees had been required to observe confidentiality. The appellant said they might have breached that confidentiality, e.g. by informing repair workers of certain steps in the process, but **did not back this up with firm facts** such as dates, circumstances, etc., or with other evidence. Mere suppositions could not be entertained; they were not proof, and the onus was on the appellant to show that its **allegations were well founded** (**T.782/92**; **T.472/92**, OJ 1998, 161). Lastly, the board observed that there was no law to the effect that the confidentiality governing **tender procedures** ends when they do.