

This taking of evidence was performed during the oral proceedings before the board. See T 144/17 for a visual inspection by the opposition division.

3.2.12 When to submit supporting evidence – specific examples

In T 7/07 the respondent (patent proprietor) disputed the admissibility of the appeal due to the question of the identification of the appellant (opponent) (R. 64(a) EPC 1973 / R. 99(1)(a) EPC). The board observed that the universal successor to the opponent automatically acquires party status in proceedings pending before the EPO on the date on which a merger becomes effective, irrespective of when supporting evidence is filed (see T 6/05).

In J 14/19, the board held that evidence that the requirements for a stay of the proceedings as per R. 14(1) EPC had been met needed to be provided while the proceedings for grant were still pending and thus before the mention of the grant was published in the European Patent Bulletin. Any evidence not submitted by then should not be taken into account by the EPO.

3.2.13 Late offer of a replacement for a deceased witness – admitted

In T 1760/10, a replacement witness, Mr S, was offered due to the death of the first witness proposed. During oral proceedings the board decided to hear Mr S as a witness. The respondent (patentee) objected to the hearing of the witness: the nomination of Mr S as a witness was **late** (March 2013 / notice of appeal 2010 / oral proceedings October 2013) and the appellant (opponent) had not indicated the matters on which he should testify. In the board's view, nothing should have surprised the respondent in this regard.

3.2.14 Hearing the party without their attorney

A party may be heard in the absence of his patent attorney if the latter has been duly informed (cf. T 451/89 and T 883/90, ex parte cases – taking of evidence ordered at oral proceedings).

3.3. Right to be heard

3.3.1 General

In T 1110/03 (OJ 2005, 302) the board observed that Art. 117(1) EPC and Art. 113(1) EPC embody a basic procedural right generally recognised in the EPC contracting states, viz. the right to give evidence in appropriate form (specifically by producing documents under Art. 117(1)(c) EPC) and the right to **have that evidence heard** (T 1110/03) to the extent that it has not been expressly excluded from the debate (T 2294/12).

EPO departments must ascertain the relevance of evidence submitted to them before deciding to admit or reject it. Only in exceptional circumstances need they not do so (T 142/97, Catchword). An opposition division's refusal to consider evidence filed **in due**