

failed to give an evaluation that was free of contradictions. The board gave its own evaluation of the evidence regarding the relevant facts. The board also noted that further explanations given by a witness, in order to close a potential gap in the documentary evidence on file, could not be considered per se as **new facts**. Otherwise, hearing a witness would be meaningless, and evidence provided on the basis of documents would be given a higher evidentiary value than a witness testimony, for which no basis could be found in the EPC. T 2565/11 is cited in T 2398/12 in the context of an object submitted as evidence in support of an allegation of public prior use which had gone missing during the appeal but had already been examined by the opposition division.

The board in T 1476/14 held there was no ground in the case in hand to overturn the opposition division's assessment of the testimony of two witnesses. The credibility of witnesses cannot be impugned because of **differences** in testimonies relating not to the essentials but to less important aspects of prior use.

In T 1798/14 the opposition division had considered the witness reliable and his answers detailed, credible and consistent overall. The respondent (patent proprietor) had not voiced any concerns either; it had merely disputed that the machine witnesses may have seen comprised all the features of the claim. The board saw no reason to depart from this assessment and to doubt the accuracy of the witness's statements. In T 544/14 the question of evaluating the evidence was again discussed in detail by the board (re-hearing the witness necessary but eventually not decisive – alleged public prior use not novelty-destroying).

According to the board in T 621/14 appeal proceedings were not intended as a **second opportunity** to have evidence heard unless sufficiently substantiated grounds for appeal gave some reason for it. The mere desire for evidence to be evaluated differently did not result in a re-opening before the board of the procedure for taking evidence. The board saw no reason to deviate from the prior art identified by the opposition division through the hearing of witnesses.

In T 1107/12 the board pointed out that the opposition division's evaluation of the testimony had left it in no doubt as to its reliability or the witness's credibility as a person. Its evaluation of the evidence was not otherwise vitiated by any error in law. It was based on the right criteria, could be followed in all respects and did not contain any logical mistakes. It was therefore not open to the board to overrule its findings and re-evaluate the evidence in its place.

In T 804/92 (OJ 1994, 862) the opposition division had, in a communication to the parties, suggested in detail the content of a statement under oath. Such a practice was firmly rejected by the board because it involved the risk of leading witnesses and could seriously undermine the probative value of such statements. This applied to departments at any instance in proceedings before the EPO.

In T 1418/17 the board established that all the relevant arguments by the parties regarding both prior uses (sale/exhibition) had already been put forward and taken into account in the proceedings at first instance. With regard to the relevant facts established by the