

not accurately replicated. Secondly, the product presented as representative of the prior art had not been shown to belong to the prior art. Thus the experimental evidence of the appellant did not demonstrate that the process steps set out in claim 1 of the main request resulted in products indistinguishable from those of the prior art.

In T 1248/08, in the application as filed, a number pertaining to a value used in example 1 was illegible and indecipherable. It was not clear whether it should read "0.08" or "0.09", or even "0.05". The board held that the arguments of the appellant adopting proof "on the balance of probability", in particular **a survey** in favour of the value of "0.09", had to fail. According to the survey conducted amongst partners and staff at the firm of the appellant's representative these results demonstrated that the value in question could not be considered to be "0.09" with a certainty "beyond reasonable doubt", as required by the established jurisprudence. In any event, a question of accuracy and disclosure could not be decided by a **poll** (see also chapter II.E.5. "Evidence and standard of proof for allowing amendments and corrections").

4.2.4 Archives and internet publications

In T 314/99 concerning the availability to the public of a diploma degree paper ("Diplomarbeit"), the board took the view that the paper had not become publicly available by its mere arrival in the archive of the Chemistry Department **Library** of the University. The **logbook** produced in evidence was a handwritten note book in which the diploma degree papers received in the archive were entered by the librarians. The logbook itself was not an official publication of the library but essentially an internal document of the library staff. After closer examination of the annotations in the logbook, the board said that it could not be concluded with certainty that the relevant entries had actually been made before the relevant priority date and it could not be ruled out that they had been added at a later time, when for one reason or another the time frame had become relevant. See also, with respect to a diploma thesis allegedly disclosed during an oral presentation, T 1057/09; and with respect to the value of a hand-written annotation from a librarian, T 915/12.

In T 91/98 the respondent (opponent) had challenged inventive step on the basis of document (8) which was an **entry from the Lexis-Nexis database**. The document did not, however, provide any evidence as to when this information had been entered into the database, i.e. as to when it had been made available to the public. Nor could the date of availability be taken as the date mentioned in the heading of the entry (September 3, 1985) as this latter date could not be equated to the distribution date of the information and was not even necessarily correct. After detailed evaluation of the declarations and affidavits filed by the respondent the board arrived at the conclusion that the date on which the information contained in document (8) had been made available to the public could not be unambiguously defined.

T 2284/13 (Wayback machine as prior art) the board accepted a combination of D5, an incomplete archive version of a web page (on the Wayback Machine web.archive.org; publicly available on 2004 with only small images) and D5', a recent download (2009) of the webpage (with full images) as evidence of a prior art publication. Accordingly, when