

of the three persons mentioned meant that the necessary conditions for the hearing of witnesses did not exist in the case before the board (other examples: T 2054/11; T 703/12, general reference to the party's submissions in opposition; T 1570/14, implicit request and requirements of Art. 12(2) RPBA 2007). T 1028/11, cited below, deals with a – justified – refusal to hear a witness and an alleged infringement of the right to be heard; T 30/12 deals with a refusal to rehear a witness.

Additional clarifications provided by a witness to close a potential gap in the documentary evidence on file cannot be considered per se new facts; hearing a witness would otherwise be futile (T 2565/11, T 660/16).

The boards in T 1363/14 and T 2238/15, ruling on alleged prior use, held that the opposition division should have ordered the hearing of the witnesses requested by the opponent to substantiate the facts set out in detail in the notice of opposition (see also T 1553/07 and chapter IV.C.2.2.8.i) "Alleged public prior use").

b) Relationship between witness and party

The EPC does not preclude the parties to the proceedings from offering their **employees** (see e.g. T 482/89, OJ 1992, 646; T 830/90, OJ 1994, 713; T 443/93, T 937/93, T 505/15 on assessing credibility in view of a bonus element in an employee's remuneration, and T 523/14 on written statements) or **clients** (T 575/94) as witnesses. See also T 327/91 (general manager of one party), T 558/95, T 64/13 cited in this chapter III.G.2.5. concerning statements in writing, and T 508/00 in chapter III.G.3.2.8 on when evidence should be submitted. The credibility of witnesses cannot be impugned merely because they had a **business relationship** with a party (J 10/04, referring to several other decisions). The allegation that a witness might be biased does not itself render the testimony inadmissible; suspicion of bias is rather a matter to be considered during the evaluation of evidence. The parties must be given an **opportunity to comment** on the results of the witness hearing (T 838/92; on this point also T 582/90).

In the context of an alleged oral disclosure (lecture), evidence from the lecturer and a member of the audience, provided by them in the form of both affidavits and oral testimony, was not considered by the board in T 2003/08 of 31. October 2012 to prove beyond reasonable doubt that the subject-matter of the claim was disclosed during the lecture; the board also observed that relations with the appellant-opponent's company could possibly have influenced their objectivity. In contrast to the opposition division the board considered it appropriate to hear the witnesses because their testimony **could affect the outcome of the proceedings**. The transcript of the witness hearing contained a point concerning their relationship to the appellant-opponent.

See also in this chapter III.G.2.5.2. "Relationship between witness and party" and III.G.4.2.2.a) "Credibility of allegedly kinked witnesses".