

In T.245/10 the board held that the respondent (opponent) had had sufficient time to consider the results of comparative tests filed with the statement of the grounds of appeal, and admitted them into the appeal proceedings. The respondent had announced in 2010 that it would comment on those tests and in filing its own comparative tests only a month before the oral proceedings in 2012, the respondent had taken the risk of compromising the admissibility of its own tests, the board observing that a **piecemeal strategy** resulting in multiple rounds of oral proceedings devoted solely to the admissibility of late-filed evidence ran counter to **procedural economy** (Art. 15(6) RPBA 2007; citing T.270/90, OJ 1993, 725, point 2.2 of the Reasons – **tactical abuse of procedure**). See also T.2010/08.

### 3.2.10 Parties treated equally (or not)

In case T.712/97 the opposition division did not allow the appellant's experimental report **in response** to the respondent-patentee's experimental report into the proceedings. To admit the experimental report of one party, but not the response of the other party gave the appearance of **discriminatory treatment**. The opposition division had committed a procedural violation.

The board in T.523/14 considered that it was contrary to the principles of **procedural fairness** and of **equal treatment** of the parties to admit late-filed D55 (written statement submitted by the opponent), while disregarding late-filed D54 (results of a search with internet wayback machine submitted two days later by the patent proprietor) because it lacked prima facie relevance for establishing the publication date of D11. In the board's opinion, D54 could serve to cast reasonable doubt on opponent's allegation that D11 was available on the Glasstech website in November 2007 or before and could thus have been admitted. However, in light of the opposition division's detailed consideration of D54, the board tended to conclude that its admission would not have altered the outcome. Nevertheless, in view of its potential impact on the most contentious issue in the proceedings, namely the public availability of D11, the board decided to consider D54 (see also T.1551/14).

### 3.2.11 When to order the taking of evidence and hearing of witnesses at oral proceedings

In J.20/85 (OJ 1987, 102) the Legal Board held that evidence should be taken as soon as an issue arises. In a dispute between the appellant and the Receiving Section as to whether a particular document had been filed on a particular day, the post room staff could not have been expected to have a clear recollection of what had happened more than a year after the events in question. See also in this chapter: T.1028/11 (late-filed request for a witness hearing); T.2003/08 of 31 October 2012 (hearing of a duly summoned witness who had failed to confirm attendance but was present on the appointed day).

Decision T.1505/16 (slide mechanism of vehicle seat) is an example of a case where, in relation to an alleged prior use, the board decided at the oral proceedings to take evidence by **visual inspection** – of the slide mechanism of the seat brought along by the appellant (opponent) to those oral proceedings – pursuant to Art. 117(1)(f) EPC and R. 117 EPC.