

inference which is subject to challenge as to its plausibility. Only a document of the first kind can be disregarded on the sole ground that it is published after the priority date. Documents of the second kind do not stand or fall by their publication date even on issues of novelty and inventive step. Disregarding indirect evidence would deprive the party of a basic legal procedural right generally recognised in the contracting states and enshrined in Art. 117(1) and Art. 113(1) EPC (T 1110/03 cited in T 1797/09, T 419/12 and recently in T 2508/17, T 504/14, T 1436/17)

3.3.10 Third-party observations

While it is well-established by case law that **third-party observations** (and accompanying evidence) can be considered, both at first instance and on appeal, there is no obligation on the board beyond such consideration and no right of a third party to be heard (T 390/07). As a rule, third parties have none of the procedural rights associated with status as a party to the proceedings, in particular the right to be heard (T 1756/11). Conversely, parties to the proceedings can comment **at any stage** on new facts and evidence emerging from third-party observations filed after expiry of the opposition period, if they think that these could influence the decision (T 1756/11; see also chapter III.N. "Observations by third parties").

3.3.11 Failure of a party to attend oral proceedings

In G 4/92, concerning the case of a decision taken against a party who has been duly summoned but fails to appear at oral proceedings, the Enlarged Board established that **new evidence** may not be considered unless it has been previously notified and merely supports the assertions of the party who submits it, whereas **new arguments** may in principle be used to support the reasons for the decision (G 4/92, OJ 1994, 149, headnote 2). For more on non-attendance at oral proceedings, see chapter III.C.5.

4. Evaluation of evidence

4.1. Principle of free evaluation of evidence

Neither in the EPC nor in the case law of the board of appeal are formal rules laid down for the evaluation of evidence. The Enlarged Board of Appeal has recalled that proceedings before the EPO are conducted in accordance with the principle of the free evaluation of evidence (G 1/12, OJ 2014, A114, citing G 3/97, OJ 1999, 245, point 5 of the Reasons; and G 4/97, OJ 1999, 270, point 5 of the Reasons).

Thus the EPO departments have the power to assess whether the alleged facts are sufficiently established on a case-by-case basis. Under the principle of free evaluation of evidence, the respective body takes its decision on the basis of all of the evidence available in the proceedings, and in the light of its conviction arrived at freely on the evaluation whether an alleged fact has occurred or not (see e.g. T 482/89, OJ 1992, 646; T 592/98, T 972/02; see also e.g. T 838/92, in which the board found there was a detailed and consistent body of evidence establishing that a device had been on sale before the patent application was filed).