take evidence; it now includes a general reference to "proceedings before the European Patent Office" (**T 2320/16** regarding oral proceedings by videoconference made some remarks on Art. 117 EPC 1973, the travaux préparatoires, and EPC 2000).

Art. 117 EPC, entitled "Means and taking of evidence", provides for the submission of evidence before all EPO departments, including the Receiving Section, examining divisions, opposition divisions, the Legal Division and the boards of appeal.

Beyond the letter of the EPC, the boards of appeal have addressed multiple issues of admissibility and taking of evidence in their case law. In addition, they have elaborated specific principles governing the evaluation of evidence and the allocation of the burden of proof in order to ensure that EPO proceedings are conducted in a fair and consistent manner.

In **T 2037/18**, the board explained that in most legal systems and in proceedings before the EPO (beyond the area open to examination by the EPO of its own motion), the **burden of presentation and the burden of proof** were allocated such that each party had to present and prove the facts that were favourable to them, i.e. the facts that supported their own assertions (**T 219/83**, **T 270/90**). According to the board, the principle of "*negativa non sunt probanda*", recognised in the boards' case law (see **R 15/11**, **R 4/17**), was a clear expression of this allocation of the burden of proof. In other words, a party to the proceedings was not required to prove a negative fact, but rather it was incumbent on the opposing side to prove any positive fact favourable to them. As a general rule, the burden of presentation followed the burden of proof.

In accordance with the principle of free evaluation of evidence, any kind of evidence, regardless of its nature, is admissible (**T 482/89**, OJ 1992, 646). Parties can freely choose the evidence they wish to submit – the kinds listed in Art. 117(1) EPC are merely examples (**T 543/95**, **T 142/97**, OJ 2000, 358).

That proceedings before the EPO are conducted in accordance with the principle of free evaluation of evidence was reiterated by the Enlarged Board (**G 1/12**, OJ 2014, A114).

Art. 117(1) EPC and Art. 113(1) EPC embody a basic procedural right, viz. the right to give evidence in appropriate form and the right to have that evidence heard (**T 1110/03**, OJ 2005, 302). A decision should discuss the facts, evidence and arguments which are essential to the decision in detail (see for example **T 278/00**, OJ 2003, 546, in chapter III.K.3.4.4 b)).

Whether or not a fact can be regarded as proven has to be assessed by the department hearing the case having taken all the relevant evidence into consideration (**T 474/04**, OJ 2006, 129 and **T 545/08** citing **G 3/97**, OJ 1999, 245, point 5 of the Reasons).

If the evidence offered as proof of contested facts essential to the settlement of the dispute is decisive, the department hearing the case must, as a rule, **order that it be taken** (see **T 474/04**, OJ 2006, 129, about witnesses, see also **T 2659/17**). All appropriate offers of evidence made by the parties should be taken up (**T 329/02**).