

principles for assessing late-filed evidence, see primarily chapter IV.C.4. "Late submission of documents, lines of attack and arguments" for the procedure before an opposition division and chapters V.A.5 (RPBA 2007) and V.A.4. (RPBA 2020) for the procedure before the boards. Below are a number of examples specifically related to issues of late-filed evidence.

The sub-headings are aimed at guiding readers to more specific aspects. The Since the reasons for a decision may touch on several aspects, the abstracts may also deal with points not alluded to in the heading.

3.2.1 Evidence wrongly rejected by the examining division as late-filed

In ex parte case T. 545/08 when exercising its discretion, the examining division should have been aware that, although it had cited document D1 (internet publication from a commercial website) at the beginning of the examination proceedings, it had never provided any further explanations or evidence as to the document's public availability before the priority date, so that the objections based on this document had not been properly raised. Moreover, the arguments provided by the examining division for the exercise of its discretion were not persuasive. Under these circumstances, it was not permissible for the examining division to reject the appellant's further evidence as late-filed and to continue to rely on document D1 as prior art. It had thereby infringed the appellant's right to be heard (Art. 113(1) EPC in conjunction with Art. 117(1) EPC).

3.2.2 Evidence wrongly rejected by the opposition division as late-filed

The board in T. 1100/07 held that, although the opponent's request that a witness be heard had been filed late and unsatisfactorily presented, the opposition division ought to have heard the witness, particularly since he could have provided testimony on a crucial point it had ultimately relied on in its decision.

In T. 190/05 the board found that the opposition division had been wrong to base its finding that an alleged prior use had destroyed a patent's novelty solely on a statutory declaration, because the patent proprietor had expressly disputed both the allegations made by the opponent and those in the declaration, which represented, besides, a piece of evidence and not in itself prior art. That it would have been impossible to give the witness named by the opponent the minimum two months' advance notice of the already scheduled oral proceedings was not, in the board's view, an exceptional circumstance justifying the failure to invite him.

3.2.3 Late-filed evidence before the board of appeal - rejected

In T. 100/97 the board discussed in detail the criteria to be applied to late-filed evidence. Since a UK infringement action had been stayed pending the outcome of the EPO appeal, a swift settlement of the case was especially desirable, and admitting facts and evidence submitted at a late stage might have resulted in a remittal protracting the already lengthy proceedings and thus further delaying the UK proceedings. Moreover, for the contents of the statements to be considered sufficiently credible, they had to be **corroborated by**