

filed tests). See also the case law applying new Art. 12(3) RPBA 2020 in chapter V.A.4 below.

In T 1201/14, concerning a fourth line of argument (i.e. implied transfer under Taiwanese law) together with exhibits (opinion of a legal expert and excerpts from the Taiwanese Patent Act) the board concluded that even if Taiwanese law were to be accepted as the applicable law, the outcome would not be different from that of the appellant's second line of argument, as a result of a lack of substantiation regarding the content of the underlying evidence. Consequently, the board decided not to admit the fourth line of argument or the evidence submitted in support of it.

3.2.8 Large volume of evidence

It is clear from the provisions of Art. 13 RPBA 2007 that, in spite of the principle of the right to be heard under Art. 113(1) EPC, a party does not have the right to have evidence which he filed or offered during appeal proceedings, in particular during inter partes proceedings, admitted into these proceedings (T 1676/08). In T 1676/08 the patent proprietor had submitted as evidence – allegedly in response to expert opinions submitted by the opponent – a large volume of documents comprising more than a thousand pages and containing expert opinions only one month ahead of the oral proceedings, which the board had already postponed once at the proprietor's request. The board refused to admit one of those expert opinions (D100), finding that D100 was not identifiable as of particular relevance among submissions of over a thousand pages. It also refused to order at such a late stage an opinion by an expert pursuant Art. 117(1)(e) EPC or to hear the party's expert at the oral proceedings in the capacity of an accompanying person (application of G 4/95).

The board in T 508/00 (allegation of prior use) refused to admit **documents (large in number** and including technical drawings) submitted by the opponent. By contrast, it admitted written statements produced by the opponent because they related to the alleged prior use, had been submitted relatively early in the appeal proceedings, giving the patent proprietor time to respond to them, and constituted a response to the opposition division's decision and to employee statements produced by the proprietor a month prior to the oral proceedings before the opposition division.

3.2.9 Strategic procedural approaches of parties to presenting evidence

In T 1096/08, notwithstanding that both witnesses were offered at a very late stage, the board could not share the view of the opposition division. Exercising its discretion under Art. 12(4) and 13(1) RPBA 2007, the board considered it appropriate to take evidence from the two witnesses offered by the respondent (opponent) during the first oral proceedings. However, the **piecemeal** approach taken by the respondent in asserting another alleged prior use shortly before the second oral proceedings clearly could not have been dealt with by the appellant or the board without yet another adjournment of the oral proceedings. Therefore, regardless of its relevance, the board decided not to admit this allegation of prior use into the proceedings and not to hear the witness offered as to such use.