

In T.2466/13, concerning the formal validity of a transfer of the right of priority and the required standard of proof, the board observed that the case law on this is not consistent: "balance of probabilities" in T.205/14 and T.517/14; stricter standard of proof in T.1201/14. In the end, the board concluded that there was no need to decide on the standard of proof as there was never any doubt that the transfer had taken place.

More recent decision T.407/15 stated that, regardless of the form that the transfer of the priority right might have taken, evidence of any such transfer had to be provided in order for the board to decide on the issue. The standard of proof applied was the balance of probabilities.

See also chapter II.D.2.2. "Right of priority of the applicant or his successor in title".

4.3.6 Abusive conduct

In G.3/97 and G.4/97 (OJ 1999, 245 and 270) the Enlarged Board of Appeal held that if the person named as opponent according to R.76(2)(a) EPC (former R.55(a) EPC 1973) was acting on behalf of a third party, such an opposition was inadmissible only if the involvement of the opponent was to be regarded as circumventing the law by abuse of process. The deciding body had to be satisfied on the basis of clear and convincing evidence that the law had been circumvented by abuse of process.

In T.291/97 the appellant had contended in the statement of grounds of appeal that the publication of document (1) had occurred in consequence of an evident abuse within the meaning of Art.55(1)(a) EPC, and thus did not constitute prior art citable against the claims at issue. The board decided that the above publication was to be taken into consideration for the application of Art.54 EPC. It observed in its decision that the finding of an **evident abuse** under Art.55(1)(a) EPC was a serious matter. An abuse was not lightly to be presumed. The standard of proof was identified by the words "evident abuse" (German: "offensichtlicher Missbrauch"; French: "un abus évident") as being high: the case had to be clear-cut, and a doubtful case would not be resolved in favour of the applicant. The evidence filed in the case at issue did not meet this standard (see also T.41/02).

In J.14/19 (stay of the proceedings), the appellant (applicant) asserted that the respondent was committing an abuse of law in delaying the proceedings for grant. The Legal Board held that improperly asserting a right could amount to an abuse of law in some cases, for instance if the right was exerted predominantly with a view to causing damage, ahead of other, legitimate aims. The abuse of law had to be established beyond any doubt; that meant carefully examining and weighing up the circumstances of the individual case, with the burden of proof falling on whoever alleged abuse. (Same standard of proof in T.2951/18 regarding an intervener).

In D.5/86 (OJ 1989, 210) the board held that an infringement of the rules of professional conduct had to be established to the satisfaction of the disciplinary body before it could impose a disciplinary measure. Absolute certainty was not required, but a **higher degree of probability** which in human experience verged on certainty. A disciplinary measure