

However, the principle of free evaluation of evidence in EPO proceedings cannot go so far as to justify the **refusal of a relevant and appropriate offer of evidence**. Free evaluation of evidence means that there are no firm rules according to which certain types of evidence are, or are not, convincing. The deciding body must take all the relevant evidence before deciding whether or not a fact can be regarded as proven (T 474/04, OJ 2006, 129, citing G 3/97, OJ 1999, 245, point 5 of the Reasons). On the other hand, failure to submit evidence despite a board's request to do so may be viewed as a sign that the evidence would perhaps not confirm what has been claimed (see T 428/98).

Ruling on a refusal to hear witnesses, the board in T 1363/14 held that the principle of free evaluation of the evidence did not apply until after it had been taken and could not be used to justify not taking evidence offered. See also T 2238/15 and all decisions cited there; see also in this chapter III.G.2.2.

In J 14/19 (stay of the proceedings) the board explained that the EPO did not have any discretion when deciding on a stay of proceedings under R. 14(1) EPC. If a third party demonstrated that the requirements in R. 14(1) EPC were met, the proceedings for grant had to be stayed. This was not the same as deciding whether the factual requirements for a stay under R. 14(1) were indeed met, which was not a matter of discretion but a question of evaluating the evidence. The latter saw the decision-making body examine the evidence to decide whether it was satisfied that the claimed facts were correct (see G 1/12, OJ 2014, A114). If it considered that a pivotal fact had not been established, it could order that more evidence be submitted under Art. 114(1) EPC.

4.2. Probative value of evidence on a case-by-case basis

According to the principle of free evaluation of evidence, each piece of evidence is given an appropriate weighting according to its probative value. As the Enlarged Board of Appeal pointed out in G 3/97 (OJ 1999, 245, point 5 of the Reasons) and G 4/97 (OJ 1999, 270, point 5 of the Reasons), "(t)he principle of free evaluation would be contradicted by laying down firm rules of evidence defining the extent to which certain types of evidence were, or were not, convincing" (cited in G 1/12, OJ 2014, A114).

With regard to reviewing the evaluation of evidence, in T 1604/16 the board held that boards had the power to review contested decisions in full, including not only the points of law but also the facts (see also in this chapter III.G.4.2.2 b)).

The following cases illustrate how the boards have evaluated various pieces of evidence in the light of the specific circumstances.

4.2.1 Ranking of means of evidence

The board in T 2659/17 observed (with reference to T 474/04) that an affidavit carried less weight than testimony. It found, therefore, that decisions should not be based solely on an affidavit, but rather the person who had made it should be heard as a witness whenever offered by a party. This applied all the more in the case in hand since the patent proprietor had challenged the content of the affidavits and demanded that the offered witnesses be