

In T. 5/89 (OJ 1992, 348) the board confirmed that a decision may confine itself to rejecting the main request only if all subordinate requests have been withdrawn. This principle was also confirmed in T. 785/91 and T. 81/93. Following T. 5/89, the board in T. 861/97 stated that deciding to revoke a patent solely on the basis of the main request when there was an expressly maintained auxiliary request constituted an infringement of Art. 113(2) EPC 1973.

In T. 155/88 the board made it clear that the patentee could not be required to withdraw any request. If he filed one or more auxiliary requests in addition to a main request and did not withdraw any of them, an opposition division was obliged in its decision to give reasons why each successive request was either not admissible (in the exercise of its discretion under R. 57(1) EPC 1973 and R. 58(2) EPC 1973, see T. 406/86, OJ 1989, 302), or not allowable on substantive grounds (see T. 234/86, OJ 1989, 79). If an opposition division allowed an auxiliary request without giving reasons in its decision as to why the main request or preceding auxiliary requests were not allowable, such decision would be set aside as void and of no legal effect, and the appeal fee refunded on the basis of a substantial procedural violation, as was the case in T. 234/86 and T. 484/88.

In T. 848/00 the patentee had requested the deletion of the product claims from the main request in oral proceedings before the opposition division. In appeal proceedings the patentee argued that it had never abandoned the subject-matter of the product claims and that its actions in opposition had only introduced a new auxiliary request. The board agreed with the reasoning of decision T. 155/88 that if a patentee proposed amendments to its claims which arose out of the opposition and which were intended to meet the grounds of objection raised in the opposition by limiting the scope of protection sought, this should **not** normally be interpreted as an **abandonment** of the subject-matter protected by the claims of the patent as granted. But this statement did not influence how the amended set of claims was to be read, because a **restriction** of claims was possible without abandoning the subject-matter of the patent specification as originally filed. Since the patentee had expressly requested an amendment of the main request, the board concluded that the opposition division had granted the patentee's main request and that the patentee was thus not adversely affected.

9. Appeal procedure

In T. 1477/15 the board stated that it is generally accepted that in appeal proceedings the **principle of party disposition** applies (see e.g. R. 13/13), meaning that parties can put forward, withhold or withdraw their requests as they see fit. In other words, if a patent proprietor withdraws or no longer agrees to a text (two auxiliary requests, in this case), this principle prevents the board of appeal from deciding on these issues.

Regarding the order of requests, however, in R. 8/16 the Enlarged Board held that the principle of party disposition expressed in Art. 113(2) EPC did not extend so as to permit a party to dictate how and in which order a deciding body of the EPO may examine the subject-matter before it. On principles established by case law with regard to the order of requests, see also chapter III.1.2.