

applicant within the meaning of Art. 113(2) EPC 1973. See also the summary of T 148/06 in chapter III.1.3.2. "Requests of equal ranking".

In T 1439/05 the board held that to avoid misunderstandings, the examining division should clarify the status of the requests before pronouncing its decision at the conclusion of oral proceedings.

2.2. Order of examination of requests

Before a decision can be taken on the basis of an auxiliary request, the main request has to be examined and decided upon (T 484/88). The board in T 169/96 pointed out that, under Art. 113(2) EPC 1973, the EPO was bound by the requests of the applicant or proprietor, and, in the case of main and auxiliary requests, this meant that the EPO was also **bound to the order of the requests** (see also T 540/02).

However, in T 911/06 the board held that this principle did not necessarily apply in proceedings before the boards. In the case in hand the appellant (patent proprietor) had requested maintenance of the patent in amended form according to new claim sets as higher ranking requests and review of the first instance decision as a lower ranking request. The board stated that applying the general principles of court procedure, such as the principle of party disposition (see G 8/91, OJ 1993, 346), to the order of the appellant's (patent proprietor's) requests might be inconsistent with the purpose of the inter partes appeal procedure as expressed in G 9/91 (OJ 1993, 408). The board considered that it was in line with the purpose of the appeal to examine first whether the department of first instance had correctly assessed the substance of the requests presented to it.

In the proceedings underlying R 8/16 the board had revoked the patent. The Enlarged Board held that, as a matter of principle, the technical board was free to examine the (pending) claim requests in any order, and therefore it was also free to conduct the discussion on them in any order, without having to give reasons. 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 might examine the subject-matter before it. The only obligation on the EPO was not to overlook any still pending request before a final decision was taken. The order of examination or discussion was a question of procedural economy, for which mainly the deciding body was responsible. As long as a discussion on the substantive issues of the still pending requests was possible, even if only by reference to discussions on other requests (see R 6/11), such a procedure was unobjectionable and the board had no particular duty to give reasons why it chose to proceed as it did.

In T 353/18 the board noted that there was no provision in the EPC establishing any legal primacy of the **clean version** over an **annotated version** of a request. If they were different, only a declaration by the patent proprietor could establish the valid one (in the case in hand: the clean version). At the same time, the appellant (opponent) who had relied on the correctness of the (incorrect) annotated version, should not suffer a disadvantage from this.