

Order of the requests/DA PONTE, European Patent Office (EPO Board of Appeal), 11 November 2009

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The patent proprietor appealed a decision of the Opposition Division, wherein the Opposition Division decided to maintain the patent in amended form. In appeal the patent proprietor filed a new main request and seven auxiliary requests. The second auxiliary request corresponded to the request that was found allowable by the Opposition Division. The Board of Appeal held that the Boards of Appeal were not necessarily bound by the numerical order of the requests as submitted by the patent proprietor. It was considered inconsistent with the nature of the appeal proceedings under the EPC that, when a higher-ranking request would be found allowable by the Board of Appeal, this would prevent a decision on the correctness of the first instance decision as requested in a lower-ranking request.

A [full summary](#) of this case has been published on [Kluwer IP Law](#).