

EPO: T 1689/12, European Patent Office, Board of Appeal, 5 October 2016

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Although it did not admit a broader claim 1, an EPO board of appeal allowed an auxiliary request wherein claim 1 as granted was replaced by a combination of independent claims from different first instance requests. This combination was admitted because the first instance department had had the opportunity to decide on both claims in the impugned decision. The opposition division had maintained the patent with the first claim and not admitted requests that included the second. Because the opponent did not appeal, the reformatio in peius ban prevented arguments against the second claim based on arguments against the first claim.

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