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Patent case: Canon Kabushiki Kaisha vs. Nickel, A., EPO

Bart van Wezenbeek (Hoffmann Eitle) · Monday, September 26th, 2022

In a case where the patent is not opposed in its entirety, the opposition being directed at certain claims only, and where the Opposition Division decides that all of the proprietor's requests in relation to the opposed claims must fail, only the unopposed claims, which are not part of any opposition proceedings, are left standing.

Hence, provided the requirements of Rule 82(1) EPC are met (either during oral proceedings or, in a written procedure, by means of a separate communication), the patent may be maintained on the basis of the unopposed claims, irrespective of whether the proprietor has filed an explicit request for this during the proceedings. Such a request would, in fact, be superfluous, since the unopposed claims have been granted and are not the subject of any opposition. The unopposed claims of the granted patent are therefore always available to the proprietor as the minimum basis on which the patent may be maintained.

Case date: 05 July 2022

Case number: T 0809/21

Court: European Patent Office (EPO), Board of Appeal

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

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