

Intellectual Property Disputes before the General Court of the European Union: Procedure and Experience Drawn from Handling Lithuanian Cases*

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Summary. The article presents the particular procedure before the General Court of the European Union, i.e. the specific rules applicable in case of actions brought against the decisions of the European Union Intellectual Property Office (EUIPO) set out in the Rules of Procedure of the General Court complemented by the Practice Rules for the Implementation of the Rules of Procedure (last amended 30 November 2022).

In addition, the article covers the procedural particularities of intellectual property cases resulting from the status of the other party in the procedure before the EUIPO, the rules of determining the language of the case, the absence of a second exchange of pleadings as well as other matters.

The author analyses the procedural aspect of cases examined during the twenty years of Lithuania's membership in the EU trade mark protection system.

The article presents a study of the experience drawn by the Lithuanian lawyers in the field of intellectual property before the General Court and aims at providing intellectual property litigation experts with a relevant overview of the recent developments.

Keywords: General Court, Rules of Procedure, EUIPO, proceedings before the General Court, intellectual property cases.

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Intelektinės nuosavybės ginčai Europos Sąjungos Bendrajame Teisme: procesas ir lietuviškų bylų administravimo patirtis

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Santrauka. Straipsnyje pristatomas ypatingas Europos Sąjungos Bendrojo Teismo procesas – specialios taisyklės, taikomos ieškiniams dėl Europos Sąjungos intelektinės nuosavybės tarnybos (EUIPO) sprendimų, nustatytos Bendrojo Teismo procedūros reglamente, papildytame Procedūros reglamento praktinėmis įgyvendinimo nuostatomis (paskutinį kartą pakeistas 2022 m. lapkričio 30 d.).

Be to, straipsnyje aptariami intelektinės nuosavybės bylų procesiniai ypatumai, atsirandantys dėl kitos šalies statuso procedūroje EUIPO, proceso kalbos nustatymo taisyklės, pasikeitimo pareiškimais antrą kartą nebuvimas, taip pat kiti klausimai.

Autorė analizuoja bylų, išnagrinėtų per dvidešimt Lietuvos narystės Europos Sąjungos prekių ženklų apsaugos sistemoje metų, procesinius aspektus.

Straipsnyje pateikiama Lietuvos intelektinės nuosavybės teisininkų patirtis, sukauptos Bendrajame Teisme, studija ir siekiama suteikti intelektinės nuosavybės bylų ekspertams aktualių naujausių pokyčių apžvalgą.

Pagrindiniai žodžiai: Bendrasis Teismas, Procedūros reglamentas, EUIPO, Bendrojo Teismo procesas, intelektinės nuosavybės bylos.

Introduction

Since 1994¹, the General Court of the European Union has had jurisdiction to handle actions brought against:

- a) decisions of the Boards of Appeal of the European Union Intellectual Property Office (EUIPO) concerning the registration of a sign as a European Union trade mark or the registration of a Community design;
- b) decisions of the Board of Appeal of the Community Plant Variety Office (CPVO) concerning the grant of a Community plant variety right in the European Union².

The possibility of bringing an action against decisions of the above-mentioned Boards of Appeal is envisaged in the following legal acts:

- a) Article 72 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ('the Trade Mark Regulation');
- b) Article 61 of Council Regulation (EC) No 6/2002 of 18 December 2006 on Community designs;
- c) Article 73 of Council Regulation (EC) N 2100/94 of 27 July 1994 on Community plant variety rights.

As a rule, actions against decisions of the Board of Appeal of CPVO are not brought frequently, whereas actions challenging the legality of decisions of the Boards of Appeal of EUIPO account for a considerable part of the cases before the General Court. In 2023, as many as 309 intellectual property actions were brought before the General Court that accounts for around 30 % of all the actions brought during the year. That same year, as many as 283 actions were related to trade marks, 23 actions challenged designs and three actions concerned issues related to plant variety (Statistics on the judicial activity of the General Court ...).

¹ The first case (*Procter & Gamble v OHIM (BABY-DRY)*, T-163/98) was registered in 1998.

² In this article, 'Office' means the European Union Intellectual Property Office (EUIPO), as the case may be, (until 23 March 2016 – the Office for Harmonization in the Internal Market (OHIM)) or the Community Plant Variety Office (CPVO). The reference made to EUIPO applies *mutatis mutandis* to the CPVO. The reference to 'trade marks' also applies to other intellectual property rights, namely design and plant varieties.

The actions, known as intellectual property actions before the General Court, fall into two categories:

- a) *ex parte* cases are the cases where one of the Boards of Appeal of EUIPO refuses registration of a trade mark on the grounds that the sign at issue does not meet the requirements of the Trade Mark Regulation ('absolute grounds for refusal'). Where the action is directed against such a decision of a Board of Appeal, proceedings before the General Court involve the participation of a private (natural or legal) person who is challenging a decision of an EU institution; such a situation is comparable to a classic dispute;
- b) *inter partes* cases are the cases where one of the Boards of Appeal of EUIPO takes a decision in a dispute between two private (natural or legal) persons, namely the person applying for the registration of a trade mark and the person opposing it by reason of his status as proprietor of an identical or similar earlier trade mark, or the person who is the proprietor of an EU trade mark, and the person applying for a declaration of invalidity or revocation of that trade mark on the basis of one of the grounds for invalidity or revocation provided for in the Trade Mark Regulation. Thus, in the context of an action brought against a decision of the Board of Appeal, proceedings before the General Court may involve two private (natural or legal) persons where one of them usually challenges the decision whereas the other defends the decision thus supporting the defendant.

Of the total of intellectual property cases brought before the General Court in 2023, 43 cases accounted for *ex parte* and 266 accounted for *inter partes* cases.

Of the 21 cases registered before the General Court since 2004 containing a 'Lithuanian element', i.e., the cases where legal persons established in Lithuania were parties or could have been parties, three related cases were *ex parte* cases brought by the same applicant. The remaining 18 cases concerned two private parties who were raising objections before the Office.

The handling of intellectual property cases is governed by the Rules of Procedure of the General Court of 4 March 2015 ('the Rules of Procedure')³ and the Practice Rules for the Implementation of the Rules of Procedure of the General Court of 20 May 2015 ('the Practice Rules')⁴. Since such cases have specific procedural characteristics, they are the subject to specific provisions in the Rules of Procedure. i.e., Title IV entitled 'Cases relating to intellectual property rights'. Article 191 of the Rules of Procedure provides that without prejudice to the specific provisions of the above-mentioned Title, the provisions of Title III applicable to direct actions are to apply to the procedure provided for in Title IV.

1. Parties to the proceedings

1.1. The Office as the defendant

In intellectual property cases, the defendant is always the Office who adopted the contested decision (in most cases, EUIPO). Sometimes, instead of referring to the Office, the application designates the other party to the proceedings before the Board of Appeal as the defendant. The incorrect identification of the defendant in the application does not render the action inadmissible if the application contains information that unequivocally identifies the party against whom the action is brought, i.e., the title of the contested decision and its author. In such cases, the Registry of the Court invites the President of the Court to decide of its own motion to appoint the Office as defendant if the conditions laid down

³ Amendments entered into force on 1 April 2023.

⁴ Amendments entered into force on 1 April 2023.

in the case-law⁵ are met or, if that is not the case, to invite the applicant to confirm the Office's status as defendant.

1.2. Status before the General Court of the other party to the proceedings before the Board of Appeal

In addition to the applicant and the defendant in *inter partes* cases, the other party to the proceedings before the Board of Appeal may become a party to the proceedings before the General Court. Under Article 173 (1) and (2) of the Rules of Procedure, the other party to the proceedings before the Board of Appeal becomes an intervener before the Court by lodging a procedural document such as observations on the language of the case. The above-mentioned party ceases to be an intervener if it does not submit a response within the period referred to in Article 179 of the Rules of Procedure, automatically extended on account of distance pursuant to Article 60 of the Rules of Procedure.

The 'other party' is considered to be an 'intervener' but is granted the same procedural rights as the main parties. It may support the form of order sought by one of the main parties and may put forward claims and pleas in law independent of those set out in the application or in the defendant's response. Article 182 of the Rules of Procedure provides that a party to the proceedings before the Board of Appeal, who is not the applicant, may submit a cross-claim within the same time limit as that prescribed for the submission of a response.

Thus, the status of the other party to the proceedings before the Board of Appeal (until the expiry of the period prescribed for replying to the application and in the subsequent stages of the proceedings) depends on its active or passive procedural behaviour. If the other party to the proceedings before the Board of Appeal does not respond to the application within the time limit prescribed, it ceases to be an intervener and becomes again a 'party to the proceedings before the Board of Appeal', i.e., a 'third party' to which the Registry of the General Court no longer transmits procedural documents related to the case. The Case *Metamorfoza v EUIPO – Tiesios kreivės (MUSEUM OF ILLUSIONS)*, T-70/20 may serve as an example where the party, who had lodged the opposition before the Office, did not respond to the application before the General Court against the decision of the Board of Appeal of the Office upholding the opposition and did not become a party to the proceedings.

1.3. 'Classic' intervener

With the exception of the *sui generis* intervener, 'classic' applications for leave to intervene may be submitted within six weeks of the publication in the Official Journal of the European Union of the notice of the application initiating proceedings. Such applications shall be examined in accordance with the general procedure laid down in Articles 142 to 145 of the Rules of Procedure. The rights of the intervener are 'classic' rights of the intervener, i.e., it can only support the position of one of the main parties. It shall not confer the same procedural rights as those conferred on the main parties and, in particular, shall not give rise to any right to request for a hearing to be held. Admittedly, applications to intervene in intellectual property cases under Article 143 of the Rules of Procedure are relatively rare. In recent years, applications to intervene have been submitted and granted only in a few cases where the legal persons who submitted them have established their interest in the result of the case in accordance with the second paragraph of Article 40 of the Statute of the Court of Justice of the Euro-

⁵ See, e.g., the order of 12 July 2005, *Schäfer v OHIM – KoKa (Mik's MEALS ON WHEEL)*, T-163/04, EU:T:2005:282.

pean Union ('the Statute') applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 of the Statute: *EMMENTALER Switzerland v EUIPO (Emmentaler)*, T-2/21, *Iceland Foods v EUIPO – Íslandsstofa (Promote Iceland) e.a. (ICELAND)*, T-105/23, *Iceland Foods v EUIPO – Icelandic Trademark (Iceland)*, T-106/23 and *Comité interprofessionnel du vin de Champagne and INAO v EUIPO – Nero Lifestyle (NERO CHAMPAGNE)*, T-239/23⁶. In the above-mentioned cases, several Member States submitted applications for leave to intervene.

In such cases, intellectual property cases may raise issues related to confidential treatment of certain procedural and other documents annexed to the file which *a fortiori* do not arise in cases of this category.

1.4. Replacement of a party

In some cases, the ownership of an intellectual property right invoked before the Office undergoes changes before the case is decided and the new owner wants to become a party to the case before the General Court.

Where an intellectual property right relating to a case is transferred to a third party by a party to the proceedings before the Board of Appeal of the Office, the successor in title may apply for leave to replace the original party in the proceedings before the General Court.

The owner of an intellectual property right invoked before the Office may be replaced:

- a) before bringing an action before the General Court: either during the administrative proceedings before the Office or within the time limit for the lodging of an application. It follows from the case-law of the General Court that in such cases the new proprietor may be a party to the proceedings before the General Court if he has shown that he has a right relied on before the Office and if it is established that the Office has registered the transfer of that right⁷. The new owner shall be deemed to become *a posteriori* a party to the proceedings before the Office;
- b) in the course of the proceedings before the General Court. In this case, the new owner must request the replacement of the former proprietor as a party to the proceedings.

The replacement of a party is governed by Articles 174 to 176 of the Rules of Procedure. In accordance with Article 175(1) of the Rules of Procedure, the application for a replacement of a party must be made by submitting a separate document and may be made at any stage of the proceedings.

Once the parties have submitted their observations on that application, a decision shall be taken on the replacement of a party either by reasoned order of the President of the Chamber or by the decision closing the proceedings. If the application for replacement is granted, the successor to the party, who is replaced, shall accept the case as he finds it at the time of the replacement and shall be bound by the procedural documents lodged by the original party to the proceedings.

1.5. Representation of the parties

Only a lawyer authorised to practise before a court of a Member State or of another State, which is a party to the Agreement on the European Economic Area, may represent parties to an intellectual property dispute as in any other proceedings before the Courts of the European Union.

In many Member States, the representation of individuals in the field of intellectual property is entrusted to certain professionals, such as 'patentų patikėtinis' in Lithuania, 'Rzecznik Patentowy' in

⁶ These three cases are still pending.

⁷ See, to that effect, the judgement of 28 June 2005, *Canali Ireland v OHIM – Canal Jean (CANAL JEAN CO. NEW YORK)*, T-301/03, EU:T:2005:254, paragraphs 18 to 20, and the judgement of 21 April 2010, *Peek that Cloppenburg and van Graaf v OHIM, Queen Sirikit Institute of Sericulture (Thai Silk)*, T-361/08, EU:T:2010:152, paragraphs 30 to 35.

Poland, or ‘Patentanwalt’ in Germany and Austria. Unfortunately, those representatives do not fulfil all the conditions to be allowed to represent a party under Article 19 of the Statute. In particular, they are not lawyers and are therefore not authorised to represent a party before the General Court even though they are authorised to represent parties in certain actions brought before national courts.

The action brought by the party represented by such a representative shall be inadmissible. That does not, however, prevent trade mark or patent attorneys from assisting the lawyers representing the parties in written or investigative work and, where appropriate, answering the questions put by the Court at the hearing with the authorisation of the President of the Chamber and under the direction and supervision of the lawyer⁸.

2. Written part of the procedure

2.1. Length of written pleadings

The Practice Rules provide for a much smaller volume of written submissions in intellectual property cases as compared to direct actions. Point 107 of the Rules provides that in intellectual property cases the maximum number of pages of pleadings may not exceed:

- 20 pages for the application and for responses;
- 15 pages for the cross-claim and for the responses thereto;
- 10 pages for a plea of inadmissibility and for observations thereon;
- 10 pages for the statement in intervention and 5 pages for observations thereon.

Where the number of pages exceeds the maximum number of pages indicated, this shortcoming must be rectified unless instructed to the contrary by the President, who may be authorised to do so only in the event of particularly complex questions of law or fact.

Where a party is requested to remedy a defect due to its excessive length, the service of the submission to be remedied shall be delayed.

2.2. Formal requirements for actions

The formal requirements for intellectual property actions are similar to those applicable to direct actions. However, several particularities can be distinguished:

- a) under Article 177(2) of the Rules of Procedure, if the applicant was not the only party to the proceedings before the Board of Appeal of the Office, the application must contain the names and addresses for the service of documents of all the parties to those proceedings; this formal requirement is foreseen because the application is served on the other party to the proceedings before the Board of Appeal of the Office in the form of a certified copy sent by registered post with a form of acknowledgement of receipt at the address given by the applicant; as amended in 2022, Article 178(3) of the Rules of Procedure was supplemented by an exception intended to reduce the number of formal deficiencies and prevent the delay of service of the application on the parties: in the absence of such an address in the application, it shall be served at the address indicated by the Board of Appeal in the contested decision;
- b) Article 177(3) of the Rules of Procedure provides that the application must be accompanied by an obligatory annex, i.e., the decision of the Board of Appeal being the subject of an application and must indicate the date on which this decision was notified to the applicant; the period for

⁸ Regarding their possible presence at the court hearing, see point 161 of the Practice Rules.

bringing an action starts to run from that date, namely two months extended on account of distance; in order to determine the date of notification of the contested decision to the applicant it is necessary to take into account the rule laid down by EUIPO that the notification via User Area (the secure electronic communication platform operated by the Office) is considered to have taken place on the fifth calendar day following the date on which the Office placed the document in the user's inbox⁹;

- c) unlike in case of direct actions, no provision is made for evidence usually produced or offered, where appropriate, to be submitted (Article 76(f)). This could be explained by the fact that the subject matter of the dispute is settled by the Boards of Appeal of services and cannot in principle be changed in the course of the proceedings before the General Court (Article 188). Consequently, in Case *Scorify v EUIPO – Scor (SCORIFY)*, T-328/19, the Court rejected the annex to the applicant's, Scorify UAB, application, which was not part of the administrative proceedings before the Office and was submitted before the Court¹⁰ for the first time. Admittedly, there may be exceptions allowing the parties to submit new evidence at a later stage in the proceedings in accordance with Article 85(3) of the Rules of Procedure;
- d) the form of order sought in the application must be clearly set out at the beginning or at the end of the application¹¹; under Article 72(3) of the Trade Mark Regulation, the purpose of an action before the General Court seeks to examine the legality of the decision of the Board of Appeal, who decided the dispute concerning registration of the mark applied for and to obtain, in an appropriate case, the annulment or alteration of that decision;¹² the claim in the application that the Court should order the Office to register a trade mark or uphold the opposition shall be inadmissible; in Case T-69/14, the head of claim of the applicant MELT WATER, a Lithuanian research and production company, requesting the Court to order the Office to grant the trade mark application was rejected as inadmissible¹³;
- e) in intellectual property cases, it is not necessary to provide a summary of the pleas in law and main arguments intended to facilitate the preparation of a notice published in the Official Journal of the European Union;
- f) after the service of the application, the defendant forwards to the General Court the file relating to the proceedings before the Board of Appeal (Article 178(5)). The file known as an 'administrative' file contains, in essence, the information in the file and defines the subject matter of the case.

2.3. Cross-claim

The Rules of Procedure lay down procedure regarding the cross-claims that are specific to intellectual property cases. Chapter 3 of Title IV governing the procedure in the intellectual properties cases contains rules designed to facilitate the identification and processing of a cross-claim lodged by the other party to the proceedings before the Board of Appeal. The present action seeks the annulment or

⁹ Article 4(5) of Decision No. EX-20-9 of the Executive Director of the Office of 3 November 2020 on communication by electronic means published in *Official Journal of the European Union Intellectual Property Office* exclusively in electronic format, entered into force on 1 March 2021.

¹⁰ Judgement of 8 July 2020, EU:T:2020:311, paragraphs 23 to 25.

¹¹ See the Model application for intellectual property cases available on the website of the Court of Justice of the European Union: https://curia.europa.eu/jcms/jcms/Jo2_7040/en/

¹² Judgement of 12 October 2004, *Vedial v OHIM*, C-106/03 P, EU:C:2004:611, paragraph 28.

¹³ Judgement of 14 January 2015, *Melt Water v OHIM (MELT WATER Original)*, T-69/14, EU:T:2015:8, paragraphs 7 and 9 to 11).

alteration of the decision of the Office in so far as it relates to matters not raised in the application. The parties to the proceedings before the Board of Appeal other than the applicant may submit a cross-claim within the same time limit as that prescribed for the submission of a response. The other parties may submit their responses to the cross-claim within two months of the date on which it was served on them.

2.4. Closing of the written part of the procedure

The existing version of the Rules of Procedure does not provide for the possibility of a second exchange of pleadings in intellectual property cases. The provisions of Article 83 of the Rules of Procedure are not applied to intellectual property cases because the arguments of the parties have already been the subject of analysis at administrative boards and a single exchange of pleadings is sufficient to ensure efficient protection (Luszcz, 2020, p. 504). Article 181 of the Rules of Procedure provides that the written part of the procedure shall be closed after the lodging of the response by the defendant and, where applicable, by the intervener within the meaning of Article 173 of the Rules of Procedure. If the parties do not reply to the application, the written part of the procedure shall be closed upon expiry of the time limit for lodging the responses. In the context of a cross-claim, the written part of the procedure is closed by the last response to that cross-claim. If interveners within the meaning of Article 143 of the Rules of Procedure have intervened, the written part of the procedure becomes longer since the intervener may lodge a statement in intervention and the main parties may respond to it.

3. Determination of the language of the case

Where the applicant was the only party to the proceedings before the Board of Appeal, the language of the application shall automatically be the language of the case and the application may be served on the defendant without any delay. Thus, the general rule laid down in Article 45(4) (a) of the Rules of Procedure applies to *ex parte* proceedings. Three cases have been brought before the General Court of which the language of the case was Lithuanian, the applicant having brought actions in that language for annulment of the decisions of the Office refusing registration of the trademarks: Cases *Melt Water v OHIM (NUEVA)*, T-61/13, *Melt Water v OHIM (MELT WATER Original)*, T-69/14 and *Melt Water v OHIM (Shape of a transparent cylindrical bottle)*, T-70/14. The contested decisions were also drafted in Lithuanian.

In *inter partes* cases, it is necessary to determine the language of the proceedings before service of the application in accordance with Article 45(4) (b) and (c) of the Rules of Procedure. If the application is written in the language of the decision appealed against, in this case the language of the application shall automatically become the language of the case. In such a case, it is not necessary to obtain the observations of the other party to the proceedings before the Board of Appeal of the Office and the application may be served immediately on the other parties. If the application is not drafted in a language of the contested decision chosen by the applicant from the twenty-four official languages of the European Union referred to in Article 44 of the Rules of Procedure, it shall become the language of the case, unless the other party to the proceedings before the Board of Appeal of the Office objects within a period which the Registrar prescribes for that purpose after the application has been lodged. The Office being a defendant, as an EU institution, is not in a position to comment on the language of the proceedings to which it is required to adapt. If the other party to the proceedings before the Board of Appeal does not object to the language of the application or does not submit any observations, the

language of the application becomes the language of the case. If the other party disagrees with the language of the application, the language of the contested decision, which was used by both parties to the proceedings before EUIPO, becomes the language of the case. The application, translated into the language of the case by the Directorate-General for Multilingualism of the Court of Justice of the European Union, together with the application in its original language shall be served on the defendant and on the intervener. Thus, in Case *Audimas v EUIPO – Audi (AUDIMAS)*, T-467/18, the applicant chose Lithuanian to draft the application but the other party to the proceedings before the Board of Appeal of EUIPO raised the objection relating to the language of the appeal; in accordance with the rules governing the choice of the language of the case it was established that the language of the case was German, in which the decision of the Board of Appeal of EUIPO under appeal before the General Court had been drafted. The language of the proceedings of the seventeen *inter partes* cases, of which the applicants or interveners were legal persons established in Lithuania, was English since the applications were lodged in English, i.e., the language of the proceedings before the Office.

The language of the case shall be used in particular in the written and oral pleadings of the parties, accompanying documents, and in the minutes and decisions of the General Court.

It should be added, however, that the Rules of Procedure allow the parties to derogate subsequently from the language rules, i.e., to use one of the other languages referred to in Article 44 in the entire proceedings or in a part of it. Derogation from the rules on languages pursuant to Article 45(1) (c) or (d) of the Rules of Procedure may be granted, as the case may be, either at the joint request of the main parties or at the request of one of the parties after the other parties have been heard. EUIPO and CPVO are not allowed to make such requests.

In accordance with the settled case-law, a request for derogation from the language of the case must contain a detailed and specific statement of the reasons¹⁴. According to settled decision-making practice, derogation from the rules on the use of languages is not, in principle, granted to applicants who may have the choice of the language at the beginning of the proceedings. Where an application is made by an applicant, the statement of reasons must be sufficiently plausible to justify derogation from the choice of the original language of the proceedings¹⁵.

4. Other procedural particularities of intellectual property cases

4.1. Oral part of the procedure

Since the Rules of Procedure of 2015 abolished the distinction between direct actions and intellectual property cases with regard to the absence of the need for a hearing which previously existed for the latter (Andová, Bardeleben, 2015, p. 7), intellectual property cases are governed by the general provision in Article 106, according to which the hearing is to be organised by the court of its own motion or at the request of the main party.

As noted above, in intellectual property cases, the other party to the proceedings before the Board of Appeal of EUIPO, being an intervener in the proceedings before the court, may make a request for a hearing. This procedural possibility enables the parties, *inter alia*, to respond, if necessary, to certain arguments put forward in the written procedure which comprises only one exchange of pleadings and to put forward new arguments relating to the events that occurred after the close of the written procedure and which, therefore, could not be submitted in the written pleadings.

¹⁴ Order of 13 May 1993, *Ladbroke Racing v Commission*, T-74/92, EU:T:1993:41, paragraph 14.

¹⁵ Order of 24 January 1997, *EFMA v Council*, T-121/95, EU:T:1997:6, paragraph 10.

4.2. Judgments by default

Article 173(6) of the Rules of Procedure provides for an important distinction in relation to direct actions in the absence of a response by the Office to the application within the prescribed time period. In that case, by way of derogation from Article 123, the default proceedings is not applied where the other party to the proceedings before the Board of Appeal replies to the application in the manner and within the time limit prescribed; the case then is continued between the applicant and the intervener.

4.3. Designation of a case to a single Judge

Starting with 27 September 2019, cases relating to intellectual property rights are allocated to the six Chambers specifically designated to that effect in the decision of assigning Judges to Chambers on a rotational basis in accordance with the date on which the cases are registered at the Registry¹⁶.

The Rules of Procedure of 2015 extended the jurisdiction of a single judge to intellectual property cases. Pursuant to Article 26, cases assigned to a Chamber of three judges may be designated to a Judge-Rapporteur sitting as a single Judge in accordance with the conditions laid down in this Article, i.e., regarding to the lack of complexity of the questions of law or fact raised, the case being of a limited importance and the absence of any other particular circumstances.

4.4. Filter of the appeals before the Court of Justice

An appeal brought against a judgment of the General Court concerning a decision of the Board of Appeal of EUIPO and the Board of Appeal of CPVO shall not proceed unless the Court of Justice first decides that it should be accepted: in accordance with Article 170a of the Rules of Procedure of the Court of Justice of 25 September 2012¹⁷, it is for the appellant to join with its appeal a request that the appeal be allowed to proceed. In the above-mentioned request it identifies the issue raised by the appeal that is significant with respect to the unity, consistency or development of EU law as well as all the relevant information to enable the Court to rule on that request.

Since the introduction of the mechanism for filtering appeals on 1 May 2019¹⁸, the Court of Justice has been seised of 229 appeals referred to in Article 58a of the Statute: 227 as regards the judgments of the General Court concerning decisions of the Boards of Appeal of EUIPO and two as regards decisions of the Board of Appeal of CPVO, respectively¹⁹. During the above-mentioned period, only seven appeals were allowed to proceed. This year, the Court of Justice has delivered its judgement on the first appeal allowed to proceed in 2021 in Case *EUIPO v The KaiKai Company Jaeger Wichmann*, C-382/21 P²⁰ after hearing the Opinion of the Advocate General²¹.

¹⁶ Criteria for the assignment of cases to Chambers (OJ C 286, 2023, p. 2) defined for the period from 12 July 2023 to 31 August 2025.

¹⁷ OJ L 265, 29.9.2012, p. 69.

¹⁸ The Statute was amended by Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 25 April 2019 (OJ L 111, 2019, p. 1) which introduced a new Article 58a.

¹⁹ Statistics on the judicial activity of the Court of Justice available on the website of the Court of Justice of the European Union: <https://curia.europa.eu>.

²⁰ Order of 10 December 2021, EU:C:2021:105; judgement of 27 February 2024, EU:C:2024:172.

²¹ Opinion of Advocate General Čápetá delivered on 13 July 2023, EU:C:2023:576.

Conclusions

1. Disputes relating to intellectual property rights (trademarks, designs and plant varieties) have features which justify distinguishing them from the category of direct actions in many procedural respects. Therefore, intellectual property proceedings are regulated under Title IV of the Rules of Procedure and are handled by specialised chambers.
2. The above-mentioned cases directed exclusively against decisions of the Boards of Appeal of the European Union Intellectual Property Office (EUIPO) and of the Community Plant Variety Office (CPVO) are classified into *ex parte* or *inter partes* cases depending on the configuration of the parties.
3. They require a specific regime for determining the language of the proceedings. Usually, it is the applicant who may choose the language of the case; however, in the event of disagreement between the applicant and the other party to the proceedings before the Office on the language of the proceedings before the General Court, the language of the contested decision, i.e., the language of the case before the Board of Appeal of the Office, considered to be understood by both parties, becomes the language of the case.
4. Procedural possibilities to intervene and acquire the status of main party have been provided for the other party to proceedings before the Board of Appeal of the Office which, unlike the Office, does not automatically become a party to the proceedings. Such a party may respond to the application, submit a cross-claim and request a hearing.
5. Where an intellectual property right relating to a case is transferred to a third party by a party to the proceedings before the Board of Appeal of the Office, the successor in title may apply for leave to replace the original party in the proceedings before the General Court. The successor in title accepts the dispute as it finds it at the time of the replacement.
6. Parties to intellectual property proceedings may be represented only by a lawyer who meets the conditions laid down in Article 19 of the Statute of the Court of Justice. Other intellectual property professionals are not allowed to represent the parties independently before the General Court.
7. Because of the fact that questions of law and fact raised before the Court have already been dealt by administrative board, the written pleadings of the parties must be shorter; only a single exchange of written pleadings is provided and the subject matter of the procedure before the Board of Appeal cannot be modified.
8. The parties to the proceedings before the Board of Appeal, other than the applicant, may submit a cross-claim within the same time limit as that prescribed for the submission of a response.
9. The Rules of Procedure provide that, where the defendant does not respond to the application in accordance with the manner and within the time limit prescribed, a judgment by default may not be given if the intervener has lodged its response.
10. The Court of Justice shall rule on appeals against judgments of the General Court in intellectual property cases only after having applied an admissibility filter and having determined the significance of the issues raised in terms of the unity, consistency or development of EU law.

Bibliography

Legal acts

Treaty on the Functioning of the European Union, Protocol (No 3) on the Statute of the Court of Justice of the European Union. *OJ* 2016 C 202, pp. 210–229.

- Rules of Procedure of the Court of Justice of 25 September 2012. *OJ* 2012 L 265, pp. 1–49.
- Rules of Procedure of the General Court of 4 March 2015. *OJ* 2015 L 105, pp. 1–66, last amended 30 November 2022, *OJ* 2023 L 44, pp. 8–14.
- Practice Rules for the Implementation of the Rules of Procedure of the General Court of 20 May 2015. *OJ* 2015 L 152, pp. 1–30, last amended 1 February 2023. *OJ* 2023 L 73, pp. 58–66.
- Council Regulation (EC) N 2100/94 of 27 July 1994 on Community plant variety rights. *OJ* 1994 L 227, pp. 1–30.
- Council Regulation (EC) No 6/2002 of 18 December 2006 on Community designs. *OJ* 2022 L 3, p. 1.
- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark. *OJ* 2017 L 154, pp. 1–24.
- General Court. Criteria for the assignment of cases to Chambers. *OJ* 2023 C 286, p. 2.
- Decision No. EX-20-9 of the Executive Director of the EUIPO of 3 November 2020 on communication by electronic means published in *Official Journal of the European Union Intellectual Property Office* exclusively in electronic format, entered into force on 1 March 2021 [online]. Available at: <https://euipo.europa.eu>

Specialised literature

- Andová, K., von Bardeleben, E. (2015). *La refonte du règlement de procédure du Tribunal de l'Union européenne pour une efficacité juridictionnelle renforcée*. Europe, 25e année, No. 7, pp. 5–10.
- Luszcz, V. (2020). *European Court Procedure: A Practical Guide*. Bloomsbury Collections.

Jurisprudence

Judgments and Orders of the Court of Justice of the European Union

- Vedial v OHIM* [CJUE], No. C-106/03 P [12.10.2024]. EU:C:2004:611.
- EUIPO v The KaiKai Company Jaeger Wichmann* [CJUE], No. C-382/21 P [10.12.2021]. EU:C:2021:1050
- EUIPO v The KaiKai Company Jaeger Wichmann* [CJUE], No. C-382/21 P [27.02.2024]. EU:C:2024:172.

Opinions of Advocates General of the Court of Justice of the European Union

- Opinion of Advocate General Čapeta, *EUIPO v The KaiKai Company Jaeger Wichmann*, No. C-382/21 P [13.07.2023]. EU:C:2023:576.

Judgments and Orders of the General Court of Justice of the European Union

- Ladbroke Racing v Commission* [GC], No. T-74/92 [13.05.1993]. EU:T:1993:41.
- EFMA v Council* [GC], No. T-121/95 [24.01.1997]. EU:T:1997:6.
- Procter & Gamble v OHIM (BABY-DRY)* [GC], No. T-163/98 [8.07.1999]. EU:T:1999:145.
- Canali Ireland v OHIM – Canal Jean (CANAL JEAN CO. NEW YORK)* [GC], No. T-301/03 [28.05.2005]. EU:T:2005:254.
- Schäfer v OHIM – KoKa (Mik's MEALS ON WHEEL)* [GC], No. T-163/04 [12.07.2005]. EU:T:2005:282.
- Peek that Cloppenburg and van Graaf v OHIM, Queen Sirikit Institute of Sericulture (Thai Silk)* [GC], No. T-361/08 [21.04.2010]. EU:T:2010:152.
- Melt Water v OHIM (NUEVA)* [GC], No. T-61/13 [21.05.2014]. EU:T:2014:265.
- Melt Water v OHIM (MELT WATER Original)* [GC], No. T-69/14 [14.01.2015]. EU:T:2015:8.
- Melt Water v OHIM (Shape of a transparent cylindrical bottle)* [GC], No. T-70/14 [14.01.2015]. EU:T:2015:9.
- Audimas v EUIPO – Audi (AUDIMAS)* [GC], No. T-467/18 [12.07.2019]. EU:T:2019:513.
- Scorify v EUIPO – Scor (SCORIFY)* [GC], No. T-328/19 [8.07.2020]. EU:T:2020:311.
- Metamorfoza v EUIPO – Tiesios kreivės (MUSEUM OF ILLUSIONS)* [GC], No. T-70/20 [12.05.2021]. EU:T:2021:253.
- Emmentaler Switzerland v EUIPO (EMMENTALER)* [GC], No. T-2/21 [24.05.2023]. EU:T:2023:278.

Cases pending before the General Court of Justice of the European Union

- Iceland Foods v EUIPO - Íslandsstofa (Promote Iceland) e.a. (ICELAND)*, No. T-105/23.
- Iceland Foods v EUIPO - Icelandic Trademark (Iceland)*, No. T-106/23.
- Comité interprofessionnel du vin de Champagne and INAO v EUIPO – Nero Lifestyle (NERO CHAMPAGNE)*, No. T-239/23.

Other sources

Statistics on the judicial activity of the Court of Justice [online]. Available at: <https://curia.europa.eu>

Statistics on the judicial activity of the General Court [online]. Available at: <https://curia.europa.eu>

Model application for intellectual property cases [online]. Available at: https://curia.europa.eu/jcms/jcms/Jo2_7040/en/

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