Request for a preliminary ruling from the Markkinaoikeus (Finland) lodged on 15 February 2022 — Lännen MCE Oy v Berky GmbH, Senwatec GmbH & Co. KG

(Case C-104/22)

(2022/C 171/24)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicant: Lännen MCE Oy

Defendants: Berky GmbH, Senwatec GmbH & Co. KG

Questions referred

Company A is established in Member State X, where it has its registered office, and has used on a website a sign identical to an EU trade mark belonging to Company B, in advertising or as a keyword.

1. In the situation described above, may it be concluded that the advertising is directed at consumers or traders in Member State Y, where Company B has its registered office, and does an EU trade mark court in Member State Y have jurisdiction to hear an action for infringement of an EU trade mark ([1]) under Article 125(5) of the EU Trade Mark Regulation where, in the advertising published electronically or on an advertiser's website connected to that advertising via a link, the geographical area where the goods are to be supplied is not specified, at least not expressly, or no individual Member State is expressly excluded from that area? May the nature of the goods to which the advertising relates and the fact that the market for Company A's products is allegedly global and thus covers the entire territory of the European Union, including Member State Y, be taken into account in that respect?

2. May it be concluded that the above advertising is directed at consumers or traders in Member State Y if it appears on a search engine website operated under the national top-level domain of Member State Y?

3. If Question 1 or 2 is answered in the affirmative, what other factors, if any, should be taken into account in determining whether the advertisement is directed at consumers or traders in Member State Y?

([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, p. 1).

Request for a preliminary ruling from the Markkinaoikeus (Finland) lodged on 17 February 2022 — Teva B.V. and Teva Finland Oy v Merck Sharp & Dohme Corp.

(Case C-119/22)

(2022/C 171/25)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicants: Teva B.V. and Teva Finland Oy

Defendant: Merck Sharp & Dohme Corp.

Questions referred

1. What criteria must be applied to determine when a product has not already been granted a supplementary protection certificate within the meaning of Article 3(c) of Regulation (EC) No 469/2009 ([1]) of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products ('SPC Regulation')?

2. Must the assessment of the condition set out in Article 3(c) of the SPC Regulation be regarded as being different from the assessment of the condition set out in Article 3(a) of that regulation, and if so, in what way?

3. Must the statements on the interpretation of Article 3(a) of the SPC Regulation in the judgments of the Court in Case C-121/17 ([2]) and Case C-650/17 ([3]) be regarded as relevant to the assessment of the condition in Article 3(c) of the SPC Regulation and, if so, in what way? In that connection, particular attention should be paid to the statements made in those judgments regarding Article 3(a) of the SPC Regulation, specifically:

   — the essential meaning of patent claims; and

   — the assessment of the case from the point of view of a person skilled in the art and in the light of the prior art at the filing date or priority date of the basic patent.

4. Are the concepts 'core inventive advance', 'central inventive step' and/or 'subject matter of the invention' of the basic patent relevant to the interpretation of Article 3(c) of the SPC Regulation and, if any or all of those concepts are relevant, how are they to be understood for purposes of interpreting Article 3(c) of the SPC Regulation? For the purposes of applying those concepts, does it make any difference whether the product in question consists of a single active ingredient ('mono-product') or a combination of active ingredients ('combination product') and, if so, in what way? How is the latter question to be assessed in a case in which the basic patent contains, on the one hand, a patent claim for a mono-product and, on the other hand, a patent claim for a combination product, the latter patent claim relating to a combination of active ingredients consisting of the active ingredient of the mono-product plus one or more active ingredients from the known prior art?

([1]) OJ 2009 L 152, p. 1.
([2]) Judgment of the Court (Grand Chamber) of 25 July 2018 (Case C-121/17 *Teva UK Ltd and Others* v *Gilead Sciences Inc.*, EU:C:2018:585).
([3]) Judgment of the Court (Fourth Chamber) of 30 April 2020 (Case C-650/17 *Royalty Pharma Collection Trust* v *Deutsches Patent- und Markenamt*, EU:C:2020:327).

Appeal brought on 25 February 2022 by Patrick Breyer against the judgment of the General Court (Tenth Chamber) delivered on 15 December 2021 in Case T-158/19, Breyer v European Research Executive Agency

(Case C-135/22 P)

(2022/C 171/26)

Language of the case: German

Parties

Appellant: Patrick Breyer (represented by: J. Breyer, Rechtsanwalt)

Other party to the proceedings: European Research Executive Agency

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of 15 December 2021 in Case T-158/19, *Breyer* v *REA*, and annul the decision of the European Research Executive Agency (REA) of 17 January 2019 (ARES [2019] 266593) in its entirety; and