In the first ground of appeal it is submitted that the General Court erred in law by ignoring or incorrectly applying the case law on intra-group economic succession on the one hand and the case law on the transfer of liability between consecutive undertakings on the other hand. By treating the asset transfer from ITR to Parker ITR (at the time called ITR Rubber) (within the Saiag group) and the subsequent share deal (transfer of the shares in Parker ITR from Saiag to Parker-Hannifin) together, the General Court incorrectly assumes an *inter-group transfer of the infringing business* from Saiag to Parker-Hannifin. The General Court errs by assessing economic continuity only as a possible transfer of liability between the independent undertakings Saiag and Parker-Hannifin, because this ignores the already accomplished *intra-group* economic succession to Parker ITR. In doing so, the Judgment relies on subjective intentions, namely the fact that the incorporation of the marine hoses business into Parker ITR was part of an objective of selling that subsidiary's shares to a third party. However, such intentions of the parties are not an obstacle to applying the case-law on intra-group economic succession (C-204/00 P *Aalborg*, C-280/06 *ETI*, C-511/11 P *Versalis*, T-43/02 *Jungbunzlauer* and T-405/06 and Joined Cases C-201/09 P and C-216/09 P *ArcelorMittal*), according to which economic succession takes place at the time of an *intra-group transfer* insofar as there are '*structural links*' between the transferor (here: Saiag/ITR) and the receiving entity (here: Parker ITR). Moreover, there is a difference in law between a transfer of assets and the transfer of a legal person. In the latter case, the transferred entity will carry its own liability for any infringement prior to the transfer, and this may include liability as economic successor for assets transferred to the entity at a time when it was still part of the infringing undertaking. The fact that other legal entities in the undertaking could also have been held liable (although not fined in this case) is not a valid reason to exclude holding liable as economic successor the transferred subsidiary Parker ITR.

The second ground of appeal is that, in the context of the exercise of its unlimited jurisdiction, the General Court acted *ultra petita* and unlawfully reduced the uplift for duration in the fine corresponding to EUR 100 000 for the parent company Parker Hannifin. Neither the actual duration of its participation in the infringement nor the corresponding duration factor in the calculation of the fine was challenged by Parker-Hannifin (or Parker ITR). While Parker-Hannifin successfully challenged the aggravating circumstance for leadership, for which the General Court adjusted the fine, this should not open the possibility for the General Court, even when it exercises its unlimited jurisdiction, to modify other aspects of the fine (here: the factor for duration) against which the applicant did not raise a plea.

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 5 August 2013 — Pez Hejduk v EnergieAgentur.NRW GmbH

(Case C-441/13)

(2013/C 313/18)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Pez Hejduk

Defendant: EnergieAgentur.NRW GmbH

Question referred

Is Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] to be interpreted as meaning that, in a dispute concerning an infringement of rights related to copyright which is alleged to have been committed in that a photograph was kept accessible on a website, the website being operated under the top-level domain of a Member State other than that in which the proprietor of the right is domiciled, there is jurisdiction only

— in the Member State in which the alleged infringer is established; and

— in the Member State(s) to which the website, according to its content, is directed?

[1] OJ 2001 L 12, p. 1.

Appeal brought on 7 August 2013 by Delphi Technologies, Inc. against the judgment of the General Court (Sixth Chamber) delivered on 6 June 2013 in Case T-515/11: Delphi Technologies, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-448/13 P)

(2013/C 313/19)

Language of the case: English

Parties

Appellant: Delphi Technologies, Inc. (represented by: C. Albrecht, J. Heumann, Rechtsanwälte)