Appeal brought on 14 February 2019 by Gregor Schneider against the judgment of the General Court (Fourth Chamber) delivered on 4 December 2018 in Case T-560/16, Gregor Schneider v European Union Intellectual Property Office (EUIPO)

(Case C-116/19 P)

(2019/C 213/04)

Language of the case: German

Parties

Appellant: Gregor Schneider (represented by: H. Tettenborn, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property office (EUIPO)

Form of order sought

The appellant claims that the Court should:

1. set aside in its entirety the judgment of the General Court of the European Union (Fourth Chamber) of 4 December 2018 in Case T-560/16;

2. rule in accordance with the form of order sought by the applicant in those proceedings, that is,

   annul the decision of EUIPO (then: OHIM) of 2 October 2014, according to which the applicant was transferred from the International Cooperation and Legal Affairs Department to the Operations Department;

   in the alternative: refer the case back to the General Court of the EU after setting aside the abovementioned judgment;

3. order EUIPO to pay the costs of all of the proceedings — that is, the proceedings before the General Court of the EU and the appeal proceedings before the Court of Justice of the EU.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on nine grounds of appeal.

First, in the judgment under appeal, the General Court misinterpreted the 'rule of correspondence' between the complaint within the meaning of Article 91(2) of the Staff Regulations and the subsequent action, since it rejected as inadmissible, by reference to the correspondence principle, a plea in law which the applicant, at the time of submitting the complaint, was not at all in a position to put forward in the absence of an allocation of tasks that has still not been made.

Second, the General Court erred in law by misinterpreting the criteria for the assessment of whether there has been a misuse of powers, in so far as it set out the legal principle that, where a reassignment measure has not been deemed to be contrary to the interests of the service, there can be no question of a misuse of powers. That legal principle cannot be correct because it would, in principle, exclude from misuse of powers cases all situations in which the administration puts forward a plausible interest of the service,

without actually pursuing that interest. It is precisely the cases of intelligently construed misuse of powers that should not generally be deprived of judicial review through a legal principle thus formulated.

Third, the General Court erred in law in misinterpreting the requirements for a hearing that is guaranteed by the applicant's right to be heard, which is also laid down in Article 41(1) in conjunction with Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, in so far as it considers a hearing necessary only where a targeted individual measure could, in the authority's view, adversely affect the person concerned. A hearing and the granting of the right to be heard should, however, serve precisely to bring to light points of view and effects of intended decisions that the authority itself has not yet considered.

Fourth, the General Court repeatedly infringed the applicant's right to be heard, in so far as it, inter alia, ignored the further evidence produced in the oral part of the procedure in accordance with Article 85(3) of the Rules of Procedure of the General Court and failed to address the corresponding proposal of witnesses or take a decision under Article 85(4) of the Rules of Procedure. The General Court also infringed the applicant's right to be heard because it did not hear the witnesses already proposed in the application and at the same time reproaches the applicant for failing to provide evidence.

Fifth, the General Court thereby also fails to observe fundamental principles that ensure a fair hearing under the rule of law for the purposes of Article 47 of the Charter of Fundamental Rights and casts doubt on the effectiveness of judicial protection.

Sixth, the General Court repeatedly distorted the facts before it.

Seventh, the General Court failed to clarify the facts; eighth, failed to state reasons; and, ninth, disregarded the rules of logic.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 27 February 2019 — MG, NH v Germanwings GmbH

(Case C-190/19)

(2019/C 213/05)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: MG, NH