Appeal brought on 19 January 2015 by Mr Eugen Popp and Mr Stefan M. Zech against the judgment of the General Court (Fifth Chamber) of 6 November 2014 in Case T-463/12 *Eugen Popp and Stefan M. Zech* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)*

(Case C-17/15 P)

(2015/C 406/13)

Language of the case: German

Parties

Appellants: Eugen Popp and Stefan M. Zech (represented by: A. Kockläuner and O. Nilgen, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

The Court of Justice of the European Union (Sixth Chamber) dismissed the appeal in a judgment of 26 October 2015 and ordered the appellants to bear their own costs.

Appeal brought on 23 July 2015 by Vichy Catalán, S.A. against the order of the General Court (Third Chamber) delivered on 25 June 2015 in Case T-302/15 Vichy Catalán v OHIM — Hijos de Rivera (Fuente Estrella)

(Case C-399/15 P)

(2015/C 406/14)

Language of the case: Spanish

Parties

Appellant: Vichy Catalán, S.A. (represented by: R. Bercovitz Álvarez, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Hijos de Rivera (Fuente Estrella)

Form of order sought

The appellant claims that the Court should:

— Annul the order under appeal, replacing it with a declaration that the application brought by the appellant in Case T-302/15 before the General Court is admissible.

— Order any parties that may appear to defend order under appeal to pay the costs of the present appeal.

Pleas in law and main arguments

The order of the General Court (Third Chamber) in which the application was dismissed as inadmissible is unlawful for the following reasons:

1. Infringement of Article 45 of the Statute of the Court of Justice of the European Union (no statute-barring when the existence of unforeseeable circumstances, or of *force majeure,* is proved), in two respects;

a. the order was made without giving sufficient time for the appellant to prove the existence of unforeseeable circumstances or *force majeure* that delayed the sending of the hard copy of the application. That has deprived the appellant of the right to a fair hearing; and

b. there were unforeseeable circumstances in the present case.

2. Incorrect interpretation of Article 43(6) of the Rules of Procedure.

3. Retroactive application, to the detriment of the appellant, of new provisions of the Rules of Procedure, which came into force on 1 July 2015, to situations which had to be subject to the previous Rules of Procedure.

Appeal brought on 3 September 2015 by the European Commission against the judgment of the General Court (Third Chamber) delivered on 24 June 2015 in Case T-527/13 Italy v Commission

(Case C-467/15 P)

(2015/C 406/15)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and P. Němečková, Agents)

Other party to the proceedings: Italian Republic

Form of order sought

The Commission claims that the Court of Justice should:

— set aside the judgment of the General Court (Third Chamber) of 24 June 2015, of which the Commission was notified on the same day, in Case T-527/13 *Italian Republic* v *Commission*;

— dismiss the action brought at first instance and order the Italian Republic to pay the costs of both sets of proceedings.

Pleas in law and main arguments

1. The General Court unlawfully reinterpreted and reclassified the second plea in law relied on at first instance. In doing so, the General Court infringed the principle that the action is confined to the subject-matter as delimited in the application and the rule prohibiting the Court from raising of its own motion a plea relating to the substantive legality of the decision which the applicant did not raise in good time in the application.

2. The General Court infringed Article 108 TFEU and Article 1 of Council Regulation (EC) No 659/1999, ([1]) in relation to the concepts of new and existing aid. In particular, it erred in considering that aid may be considered to be existing aid even though a condition laid down by the decision declaring that aid compatible was infringed. Accordingly, the General Court ignored the settled case-law to the effect that mere failure to comply with such conditions is sufficient for it to be found that there is new aid and, in the absence of new facts enabling a different assessment to be made, justifies a new decision declaring the aid incompatible.