

4. Fourth plea, alleging failure to observe the statutory time limits for drawing up the contested report.
5. Fifth plea, alleging errors of fact and of calculation. The applicant submits in that regard that the application of incorrect coefficients and rounding rules led to an incorrect overall mark.
6. Sixth plea, alleging breach of the right to be heard, on the ground that the oral exchange between the applicant and his appeal assessor concerned only part of the observations made by the applicant on the draft report.

---

**Action brought on 30 January 2023 — Domator24 v EUIPO — Acer (PREDATOR)**

**(Case T-33/23)**

(2023/C 94/76)

*Language in which the application was lodged: Polish*

**Parties**

*Applicant:* Domator24 sp. z o.o. (Zielona Góra, Poland) (represented by: T. Gawliczek, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Acer, Inc. (Taipei, Taiwan)

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* EU word mark 'PREDATOR' — EU trade mark No 16 757 262

*Proceedings before EUIPO:* Cancellation proceedings

*Contested decision:* Decision of the Fifth Board of Appeal of EUIPO of 9 November 2022 in Case R 381/2022-5

**Form of order sought**

The applicant claims that the Court should:

- annul in part the contested decision of EUIPO of 9 November 2022 (points 1 and 2 of the operative part) and find that not all of the conditions laid down in Article 53(1)(a), in conjunction with Article 8(1)(b), of Council Regulation (EC) No 207/2009 are satisfied in the present case, and consequently uphold the first instance decision and dismiss the claim for a declaration of invalidity of the trade mark EUTM-016757262 'PREDATOR' in its entirety;
- order EUIPO to pay the costs incurred by the applicant in the proceedings before the Court and — pursuant to Article 190(2) of the Rules of Procedure — the costs necessarily incurred by the applicant for the purposes of the proceedings before the Board of Appeal;
- if the intervener joins the proceedings, order that the intervener should bear its own costs.

**Pleas in law**

- Infringement of Article 53(1)(a), in conjunction with Article 8(1)(b), of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version);
  - Infringement of the principle that evidence must be freely evaluated and infringement of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, in conjunction with Article 55(1) and (2) and Article 22(2) of Delegated Commission Regulation (EU) 2018/625.
-