

Parties to the main proceedings

Applicant: Abraxis Bioscience LLC

Defendant: Comptroller General of Patents

Question referred

Is Article 3(d) of the SPC Regulation⁽¹⁾ to be interpreted as permitting the grant of an SPC where the marketing authorisation referred to in Article 3(b) is the first authorisation within the scope of the basic patent to place the product on the market as a medicinal product and where the product is a new formulation of an old active ingredient?

⁽¹⁾ Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ L 152, p. 1)

Appeal brought on 31 July 2017 by Rami Makhoul against the judgment of the General Court (Fifth Chamber) delivered on 18 May 2017 in Case T-410/16, *Rami Makhoul v Council of the European Union*

(Case C-458/17 P)

(2017/C 309/42)

Language of the case: French

Parties

Appellant: Rami Makhoul (represented by: E. Ruchat, avocat)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

The appellant claims that the Court should:

— declare the present appeal to be admissible and well founded;

consequently,

— set aside the judgment of 18 May 2017 delivered by the General Court of the European Union in Case T-410/16, *Rami Makhoul v Council of the European Union*, ECLI:EU:T:2017:349;

and

adjudge the case afresh and accordingly:

— annul Decision (CFSP) 2016/850 of 27 May 2016⁽¹⁾ and the subsequent measures implementing that decision, in so far as they relate to the appellant; and

— order the Council of the European Union to pay the costs of the proceedings.

Grounds of appeal and main arguments

The first ground of appeal alleges an error of law in that the General Court infringed the appellant's right to be heard, enshrined in Article 41 of the Charter of Fundamental Rights, prior to the adoption of the new restrictive measures;

The second ground of appeal alleges an error of law consisting of a distortion of facts, in that the General Court disregarded the articles lodged by the appellant in support of his action for annulment and designed to demonstrate that he did not support the Syrian regime;

The third ground of appeal alleges an error of law in that the General Court did not find the provisions of Articles 27 and 28 of Decision 2013/255/CFSP,⁽²⁾ under which membership of the Al-Assad or Makhoul families constitutes an autonomous criterion justifying the imposition of sanctions, to be unlawful, while at the same time reversing the burden of proof;

The fourth ground of appeal alleges an error of law and a failure to state reasons in that the General Court took the view that the concept of a 'prominent businessman' was sufficiently precise to include the appellant on the lists of persons and entities covered by the restrictive measures and that it failed to justify why it took the view that the appellant had influence over the Syrian regime.

⁽¹⁾ Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125).

⁽²⁾ Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14).
