

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 6 November 2017 in Case R 541/2017-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) Regulation No 1001/2017.

Action brought on 5 February 2018 — Endoceutics v EUIPO — Merck (FEMIVIA)

(Case T-59/18)

(2018/C 112/53)

Language in which the application was lodged: English

Parties

Applicant: Endoceutics, Inc. (Quebec, Quebec, Canada) (represented by: M. Wahlin, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Merck KGaA (Darmstadt, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'FEMIVIA' — Application for registration No 13 148 986

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 November 2017 in Case R 280/2017-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the Applicant's costs both at EUIPO and at the General Court.

Plea in law

- Infringement of Article 8(1)(b) of Regulation No 2017/1001.

Action brought on 5 February 2018 — Probelte v Commission

(Case T-67/18)

(2018/C 112/54)

Language of the case: English

Parties

Applicant: Probelte, SA (Murcia, Spain) (represented by: C. Mereu and S. Saez Moreno, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- declare the application admissible and well-founded;
- annul Commission's Implementing Regulation (EU) 2017/2065 of 13 November 2017 confirming the conditions of approval of the active substance 8-hydroxyquinoline, as set out in Implementing Regulation (EU) No 540/2011 and modifying Implementing Regulation (EU) 2015/408 as regards the inclusion of the active substance 8-hydroxyquinoline in the list of candidates for substitution ⁽¹⁾ (the 'contested decision'); and
- order the defendant to pay all the costs and expenses of these proceedings.

Pleas in law and main arguments

The applicant contends that the defendant committed a manifest error of assessment and infringed the applicant's rights of defence and legitimate expectations when it adopted the contested decision rejecting the applicant's request to amend the conditions for the approval of 8-hydroxyquinoline and included that substance in the list of candidates for substitution.

Specifically, the applicant seeks the annulment of the contested decision on the following grounds:

1. The rejection of the applicant's request to amend the conditions for the approval of 8-hydroxyquinoline under Implementing Regulation (EU) No 540/2011 ⁽²⁾.
 - Rights of defence: the defendant failed to peer review the new data which the applicant was explicitly allowed to submit in the context of the procedure for the amendment of 8-hydroxyquinoline under Regulation 1107/2009 ⁽³⁾. In doing so, the defendant deprived the applicant of its right to have its views presented properly and effectively. Likewise, the defendant included 8-hydroxyquinoline in the list of substances candidates for substitution without due consideration of the applicant's new test data.
 - Legitimate Expectation: the defendant failed to peer review the new data which the applicant was explicitly allowed to submit in the context of the procedure for the amendment of 8-hydroxyquinoline under Regulation 1107/2009, although it explicitly informed the applicant that this would be the case. In doing so, the defendant infringed the applicant's legitimate expectation that its new data would be peer reviewed by all Member States.
 - Manifest error of assessment: It was clear from the scientific point of view that there was a deficiency of data, and hence that new data as submitted by the applicant would assist in plugging the classification gap. The defendant committed a manifest error of assessment inasmuch as it failed to consider all current scientific and technical knowledge on the substance 8-hydroxyquinoline.
2. The modification of Implementing Regulation (EU) 2015/408 ⁽⁴⁾ as regards the inclusion of the substance in the list of candidates for substitution.
 - Right of defence/ legitimate expectations/manifest error: Failure to follow and apply the requirements of candidate listing as per point 4 of the Annex II of Regulation 1107/2009: the defendant failed to conduct an exposure assessment in order to establish whether the exception of Point 4 of Annex II could apply to the Substance. In doing so, it infringed the applicable provisions of Regulation 1107/2009 as well as the applicant's right of defence/ legitimate expectation. In turn, the defendant also committed a manifest error of assessment.

⁽¹⁾ OJ 2017, L 295, p. 40

⁽²⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ 2011, L 153, p. 1)

⁽³⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009, L 309, p. 1)

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution (OJ 2015, L 67, p. 18)