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(2018/C 013/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 14 September 2017 by Allstate Insurance Company against the judgment of the General Court (First Chamber) delivered on 5 July 2017 in Case T-3/16: Allstate Insurance Company v European Union Intellectual Property Office

(Case C-542/17 P)

(2018/C 013/02)

Language of the case: English

Parties

Appellant: Allstate Insurance Company (represented by: G. Würtenberger, Rechtsanwalt, R. Kunze, Solicitor)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the General Court of 5 July 2017 in case T-3/16;

— grant the action for annulment brought by the appellant against the Board of Appeal's decision of 8 October 2015 in Case R 956/2015-2;

— order the respondent to bear the costs of the proceedings.

Pleas in law and main arguments

1. The appellant claims that the General Court infringed Articles 7(1)(c) and 7(2) EUTMR ([1]) by applying erroneous criteria in the assessment of the absolute ground of descriptiveness within the meaning of the aforementioned provision.

2. By not assessing the absolute ground of descriptiveness with regard to the actual goods and services seeking protection the General Court also failed to provide reasons for its decision and infringed Article 75 EUTMR.

3. Moreover, the General Court's decision under review is based on a distortion of facts in as much as the Court did not asses the absolute grounds for refusal on the basis of the applied-for goods and services but on the basis of a presumed specification claim being the result of an interpretation, i.e. distortion, of the actual specification of goods and services.

4. Had the General Court adhered to the fundamental principles of law, including the right to state reasons in support of a decision, it would have granted the action brought before it on account of the considerations made further below.

5. The errors committed are of substantial legal nature. Accordingly, the appellant will set out the reasons why the General Court would have had to conclude that the pleas in law raised before it were well founded on account of an infringement of acknowledged principles of due process of law as well as in light of the pertinent provisions of the EUTMR based on the facts given before the Board of Appeal.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009, L 78, p. 1).

Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 18 September 2017 — Mariusz Pawlak v Prezes Kasy Rolniczego Ubezpieczenia Społecznego

(Case C-545/17)

(2018/C 013/03)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Mariusz Pawlak

Respondent: Prezes Kasy Rolniczego Ubezpieczenia Społecznego

Questions referred

1. Must the first sentence of Article 7(1) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, (1) in conjunction with Article 8 thereof, be interpreted as meaning that rules of national procedural law, such as those laid down in Article 165(2) of the Law establishing the Code of Civil Procedure (Ustawa Kodeks postępowania cywilnego) of 17 November 1964 (consolidated text: *Dziennik Ustaw* of 2016, item 1822, as amended; hereinafter: 'the KPC'), under which only the posting of a procedural document at a national post office of the designated operator, that is to say, the operator required to provide a universal postal service, is equivalent to lodgement of that document with the court, and the possibility of according such effect to the posting of a procedural document at the post office of another postal operator which provides a universal service, but is not a designated operator, is excluded, constitute a special right?

2. If the answer to Question 1 is in the affirmative, must the first sentence of Article 7(1) of Directive 97/67/EC, in conjunction with Article 4(3) TEU, be interpreted as meaning that the benefits — arising from the conferral of a special right on the designated operator in breach of the first sentence of Article 7(1) of Directive 97/67/EC — must also accrue to other postal operators, with the result that the posting of a procedural document at a national post office of an operator which provides a universal service but is not the designated operator must be regarded as equivalent to lodgement of that document with the court, on the basis of rules corresponding to those arising from the judgment delivered by the Court of Justice of the European Union on 21 June 2007 in *Jonkman and Others*, C-231/06 to C-233/06, (ECLI:EU:C:2007:373)?

3. If the answer to Question 2 is in the affirmative, must the first sentence of Article 7(1) of Directive 97/67/EC, in conjunction with Article 4(3) TEU, be interpreted as meaning that a party to proceedings which is an emanation of a Member State can rely on the fact that a provision of national law, such as Article 165(2) of the KPC, is contrary to the first sentence of Article 7(1) of Directive 97/67/EC?

(1) OJ 1998 L 15, p. 14, as amended.

Appeal brought on 18 September 2017 by Basic Net SpA against the judgment of the General Court (Sixth Chamber) delivered on 20 July 2017 in Case T-612/15 Basic Net v EUIPO (Representation of three vertical stripes)

(Case C-547/17 P)

(2018/C 013/04)

Language of the case: Italian

Parties

Appellant: Basic Net SpA (represented by: D. Sindico, avvocato)

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

Form of order sought

— principally, set aside the judgment under appeal and give final judgment on the matter, upholding, in whole or in part, the pleas and arguments made in the appeal and assessing the evidence and documents submitted at the earlier instances of the case;

— alternatively, set aside the judgment under appeal and refer the matter back to the General Court, upholding, in whole or in part, the legal arguments set out in the appeal and assessing the evidence and documents submitted at the earlier instances of the case;

— in any case, order EUIPO to pay the costs at both instances (General Court and Court of Justice).

Pleas in law and main arguments

1. Infringement of Article 7(3) of Regulation No 207/2009

The General Court found the evidence of acquired distinctiveness insufficient and dismissed the action without giving any reasons as to why such proved and recognised distinctiveness was insufficient to allow registration of the trade mark applied for.

The General Court's judgment is inadequately reasoned and contrary to the abovementioned provision, because the criteria that must be fulfilled in order for registration as a mark to be allowed are that the representation of the sign be clear, precise, self-sufficient, easily accessible, comprehensible, durable and objective.

2. Infringement of Article 7(1)(b) of Regulation No 207/2009 — Intrinsic distinctiveness and registrability of the sign refused

No exhaustive and coherent examination of the documentation submitted was made at the earlier instances and the conclusions reached by the General Court are contradictory and not in accordance with the letter or the spirit of the regulation, or the past decisions of EUIPO and the Court of Justice. In particular, the General Court failed to carry out a global assessment of all the evidence, limiting itself to examining the pieces of evidence individually, in breach of Article 7(1)(b) of Regulation No 207/2009.

3. Failure to assess the applicant's prior EUTM 3971561

The applicant also claims that EUIPO and the General Court ought to have considered the reasons (thus considering such decisions not as binding precedents but as marks allowed on the grounds of the legally recognition of their registrability) that led to the grant of community trade mark No 3971561, which belongs to the applicant too, for the same goods and having a sign very similar to that of the sign refused.

4. Failure to assess other marks registered as 'colour combinations'

In the earlier stages of the present proceedings other EU trade marks that represent very important precedents with regard to the present case were mentioned.

Refusal of registration of the trade mark at issue appears, therefore, unreasonable, if not entirely groundless, and constitutes an error in law, if the earlier decisions are regarded not as binding precedents but rather as the expression of principles of law repeatedly affirmed by EUIPO and the General Court of the European Union.

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny we Wrocławiu (Poland) lodged on 26 September 2017 — Związek Gmin Zagłębia Miedziowego w Polkowicach v Szef Krajowej Administracji Skarbowej

(Case C-566/17)

(2018/C 013/05)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: Związek Gmin Zagłębia Miedziowego w Polkowicach

Defendant: Szef Krajowej Administracji Skarbowej

Question referred

Do Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]) and the principle of VAT neutrality preclude a national practice where the right is granted to a full deduction of input tax in connection with the purchase of goods and services used both for the purposes of a taxable person's transactions falling within the scope of VAT (taxed and exempted) and falling outside the scope of VAT, owing to the absence in national law of methods and criteria for apportioning the input tax in relation to those types of transaction?

([1]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 4 October 2017 — Martin Wächtler v Finanzamt Konstanz

(Case C-581/17)

(2018/C 013/06)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Martin Wächtler

Defendant: Finanzamt Konstanz

Question referred

Are the provisions of the Agreement of 21 June 1999 ([1]) between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, which entered into force on 1 June 2002, and in particular the preamble and Articles 1, 2, 4, 6, 7, 16 and 21 thereof and Article 9 of Annex I thereto, to be interpreted as precluding rules of a Member State under which, in order to prevent any element of the taxable basis from being lost, latent, as yet unrealised, appreciations in the value of company rights (without deferment) are charged to tax in the case where a national of that Member State with initially unlimited tax liability transfers his residence from that State to Switzerland and not to a Member State of the European Union or to a State to which the European Economic Area Agreement applies?

([1]) OJ 2002 L 114, p. 6.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 5 October 2017 — Finanzamt Linz, Finanzamt Kirchdorf Perg Steyr

(Case C-585/17)

(2018/C 013/07)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Finanzamt Linz, Finanzamt Kirchdorf Perg Steyr

Intervener: Dilly's Wellnesshotel GmbH

Questions referred

1. In a situation such as that in the present case, does an amendment to an approved aid scheme whereby a Member State elects no longer to use the approval of that aid in connection with a particular (separable) group of beneficiaries, and thus simply reduces the level of aid granted under an existing aid measure, constitute an alteration of an aid scheme which is subject (in principle) to the obligation to notify laid down in Article 108(3) TFEU?

2. In the event of a formal error in the application of Commission Regulation (EC) No 800/2008 ([1]) of 6 August 2008 (general block exemption regulation), is the standstill obligation laid down in Article 108(3) TFEU capable of rendering a restriction of an approved aid scheme inapplicable, with the result that the standstill obligation has the effect of compelling the Member State to pay aid to particular beneficiaries ('implementation obligation')?

3a. Does an energy tax rebate scheme such as that at issue here, under which the amount of the energy tax rebate is clearly determined by law on the basis of a calculation formula, fulfil the conditions laid down in Commission Regulation (EU) No 651/2014 ([2]) of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty?

3b. Does Article 58(1) of Commission Regulation (EU) No 651/2014 have the effect of exempting such an energy tax rebate scheme for the period from January 2011?

(1) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3.
(2) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance, OJ 2014 L 187, p. 1.

Action brought on 20 October 2017 — European Commission v Slovak Republic

(Case C-605/17)

(2018/C 013/08)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: J. Javorský, L. Nicolae and G. von Rintelen, acting as Agents)

Defendant: Slovak Republic

Form of order sought

— declare that, by failing to adopt by 1 January 2016 at the latest the laws, regulations and administrative provisions necessary to comply fully with Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, (1) or in any event by failing to inform the Commission of those measures, the Slovak Republic has failed to fulfil its obligations under Article 13 of that directive;

— impose on the Slovak Republic, in accordance with Article 260(3) TFEU, a penalty of EUR 10 036,80 for each day from the date of delivery of the judgment in the present case on the ground of failure to fulfil the obligation to notify the measures adopted to transpose Directive 2014/61/EU;

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

The period for adopting measures to transpose the directive expired on 1 January 2016.

1. The Member States are obliged under Article 13 of Directive 2014/61/EU to adopt the national measures necessary to transpose the directive by 1 January 2016 at the latest. Since the Commission did not receive confirmation from the Slovak Republic of the full transposition of Directive 2014/61/EU, it decided to bring an action before the Court of Justice.

2. By its action the Commission seeks for a daily penalty of EUR 10 036,80 to be imposed on the Slovak Republic. The amount of the penalty was calculated taking into account the seriousness and length of time of the infringement, and also the deterrent effect on the basis of the payment capacity of that Member State.

(1) OJ 2014 L 155, p. 1.

Request for a preliminary ruling from the Työtuomioistuin (Finland) lodged on 24 October 2017 — Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry v Hyvinvointialan liitto ry

(Case C-609/17)

(2018/C 013/09)

Language of the case: Finnish

Referring court

Työtuomioistuin

Parties to the main proceedings

Applicant: Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry

Defendant: Hyvinvointialan liitto ry

Other party: Fimlab Laboratoriot Oy

Questions referred

1. Does Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 ([1]) concerning certain aspects of the organisation of working time preclude a national provision in a collective agreement, or its interpretation, under which an employee who was incapacitated for work at the beginning of his annual leave or part thereof is not entitled, irrespective of any application by him, to carry over annual leave falling within the period in question and to which he is entitled under the collective agreement, if the employee's entitlement to four weeks of annual leave is not reduced by reason of the fact that the leave under the collective agreement is not carried over?

2. Does Article 31(2) of the Charter of Fundamental Rights of the European Union have direct legal effect in an employment relationship between private legal subjects, that is to say, direct horizontal legal effect?

3. Does Article 31(2) of the Charter of Fundamental Rights of the European Union protect accrued leave, in so far as the duration of the leave exceeds the minimum annual leave of four weeks provided for in Article 7(1) of the Working Time Directive, and does that provision of the Charter of Fundamental Rights preclude a national provision in a collective agreement, or its interpretation, under which an employee who was incapacitated for work at the beginning of his annual leave or part thereof is not entitled, irrespective of any application by him, to carry over annual leave falling within the period in question and to which he is entitled under the collective agreement, if the employee's entitlement to four weeks of annual leave is not reduced by reason of the fact that the leave under the collective agreement is not carried over?

([1]) OJ 2003 L 299, p. 9.

Request for a preliminary ruling from the Työtuomioistuin (Finland) lodged on 24 October 2017 — Auto- ja Kuljetusalan Työntekijäliitto AKT ry v Satamaoperaattorit ry

(Case C-610/17)

(2018/C 013/10)

Language of the case: Finnish

Referring court

Työtuomioistuin

Parties to the main proceedings

Applicant: Auto- ja Kuljetusalan Työntekijäliitto AKT ry

Defendant: Satamaoperaattorit ry

Other party: Kemi Shipping Oy

Questions referred

(1) Does Article 7(1) of Directive 2003/88/EC ([1]) of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time preclude a national provision in a collective agreement, or its interpretation, under which an employee whose incapacity for work on account of illness commences during his annual leave, or a part thereof, is not entitled, irrespective of any application by him, to carry over the first six days of incapacity for work falling within the annual leave, where those days of absence on account of illness do not reduce the employee's entitlement to four weeks' annual leave?

(2) Does Article 31(2) of the Charter of Fundamental Rights of the European Union have direct legal effect in an employment relationship between private legal subjects, that is to say, direct horizontal legal effect?

(3) Does Article 31(2) of the Charter of Fundamental Rights of the European Union protect accrued leave, in so far as the duration of the leave exceeds the minimum annual leave of four weeks provided for in Article 7(1) of the Working Time Directive, and does that provision of the Charter of Fundamental Rights preclude a national provision in a collective agreement, or its interpretation, under which an employee whose incapacity for work on account of illness commences during his annual leave, or a part thereof, is not entitled, irrespective of any application by him, to carry over the first six days of incapacity for work falling within the annual leave, where those days of absence on account of illness do not reduce the employee's entitlement to four weeks' annual leave?

([1]) OJ 2003 L 299, p. 9.

Order of the President of the Second Chamber of the Court of 4 October 2017 (request for a preliminary ruling from the Judecătoria Câmpulung — Romania) — Dumitru Gavrilescu, Liana Gavrilescu v SC Banca Transilvania SA, formerly SC Volksbank România SA, SC Volksbank România SA — sucursala Câmpulung

(Case C-627/15) ([1])

(2018/C 013/11)

Language of the case: Romanian

The President of the Second Chamber has ordered that the case be removed from the register.

([1]) OJ C 165, 10.5.2016.

Order of the President of the Court of 17 October 2017 (request for a preliminary ruling from the Amtsgericht Stuttgart — Germany) — Staatsanwaltschaft Stuttgart v J. S. R

(Case C-2/16) ([1])

(2018/C 013/12)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 118, 4.4.2016.

Order of the President of the Sixth Chamber of the Court of 20 July 2017 (request for a preliminary ruling from the Amtsgericht Kehl) — C, in presence of Staatsanwaltschaft Offenburg

(Case C-346/16) ([1])

(2018/C 013/13)

Language of the case: German

The President of the Sixth Chamber has ordered that the case be removed from the register.

([1]) OJ C 335, 12.9.2016.

Order of the President of the Eighth Chamber of the Court of 24 October 2017 (request for a preliminary ruling from the Sąd Okręgowy we Wrocławiu — Poland) — Skarb Państwa reprezentowany przez Wojewodę Dolnośląskiego v Gmina Trzebnica

(Case C-19/17) ([1])

(2018/C 013/14)

Language of the case: Polish

The President of the Eighth Chamber has ordered that the case be removed from the register.

([1]) OJ C 161, 22.5.2017.

Order of the President of the Court of 28 September 2017 (request for a preliminary ruling from the Amtsgericht Düsseldorf — Germany) — Jonathan Heintges v Germanwings GmbH

(Case C-74/17) ([1])

(2018/C 013/15)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 151, 15.5.2017.

Order of the President of the Court of 22 September 2017 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Kathrin Meyer v TUIfly GmbH

(Case C-196/17) ([1])

(2018/C 013/16)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 231, 17.7.2017.

Order of the President of the Court of 22 September 2017 (request for a preliminary ruling from the Amtsgericht Hannover — Germany) — Michael Siegberg v TUIfly GmbH

(Case C-276/17) ([1])

(2018/C 013/17)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 239, 24.7.2017.

Order of the President of the Court of 30 October 2017 (request for a preliminary ruling from the Tribunalul Dolj — Romania) — Mihaela Iuliana Scripnic, Radu Constantin Scripnic, Alexandru Gheorghiță, Vasilica Gheorghiță v SC Bancpost SA, SC Bancpost SA — sucursala Dolj

(Case C-400/17) ([1])

(2018/C 013/18)

Language of the case: Romanian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 309, 18.9.2017.

Order of the President of the Court of 25 October 2017 (request for a preliminary ruling from the Amtsgericht Nürnberg — Germany) — Andreas Fabri, Elisabeth Mathes v Sun Express Deutschland GmbH

(Case C-418/17) ([1])

(2018/C 013/19)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 347, 16.10.2017.

GENERAL COURT

Judgment of the General Court of 23 November 2017 — Aurora v CPVO — SESVanderhave (M 02205)

(Case T-140/15) ([1])

(Plant varieties — Nullity proceedings — Sugar beet variety M 02205 — Article 20(1)(a) of Regulation (EC) No 2100/94 — Article 7 of Regulation No 2100/94 — Distinctness of the candidate variety — Technical examination — Procedure before the Board of Appeal — Obligation to analyse carefully and impartially all the elements relevant to the present case — Power to alter)

(2018/C 013/20)

Language of the case: English

Parties

Applicant: Aurora Srl (Finale Emilia, Italy) (represented: initially by L.-B. Buchman, lawyer, and subsequently by L.-B. Buchman, R. Crespi and M. Razou, lawyers)

Defendant: Community Plant Variety Office (CPVO) (represented: initially by F. Mattina, subsequently by M. Mattina and M. Ekvad, and finally by M. Mattina, M. Ekvad and A. Weitz, acting as Agents)

Other party to the proceedings before the Board of Appeal of the CPVO, intervener before the Court: SESVanderhave NV (Tirlemont, Belgium) (represented: initially by K. Neefs and P. de Jong and subsequently by P. de Jong, lawyers)

Re:

Action brought against the decision of the Board of Appeal of the CPVO of 26 November 2014 (Case A 010/2013) concerning nullity proceedings between Aurora and SESVanderhave.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 26 November 2014 (Case A 010/2013);*

2. *Dismisses the action as to the remainder;*

3. *Orders the CPVO to bear its own costs and pay those incurred by Aurora Srl;*

4. *Orders SESVanderhave NV to bear its own costs.*

([1]) OJ C 190, 8.6.2015.

Judgment of the General Court of 20 November 2017 — Petrov and Others v Parliament

(Case T-452/15) ([1])

(Member of the European Parliament — Refusal of access to the buildings of the Parliament — Third-country national — Article 21 of the Charter of Fundamental Rights — Discrimination on grounds of ethnic origin — Discrimination on grounds of nationality — Admissibility of a plea — Discrimination on grounds of political opinions — Equal treatment — Misuse of powers)

(2018/C 013/21)

Language of the case: German

Parties

Applicants: Andrei Petrov (Saint Petersburg, Russia), Fedor Biryukov, (Moscow, Russia) and Alexander Sotnichenko (Saint Petersburg) (represented by: P. Richter, lawyer)

Defendant: European Parliament (represented by: N. Görlitz and M. Windisch, acting as Agents)

Re:

Action under Article 263 TFEU seeking annulment of the Parliament's decision of 16 June 2015 refusing the applicants access to its premises.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Messrs Andrei Petrov, Fedor Biryukovand and Alexander Sotnichenko to bear their own costs and to pay those incurred by the European Parliament.*

([1]) OJ C 363, 3.11.2015.

Judgment of the General Court of 20 November 2017 — Voigt v Parliament

(Case T-618/15) ([1])

(Member of the European Parliament — Refusal to make Parliament premises available — Third-country nationals — Refusal of access to Parliament buildings — Article 21 of the Charter of Fundamental Rights — Discrimination on grounds of ethnic origin — Discrimination on grounds of nationality — Admissibility of a plea — Discrimination on grounds of political opinions)

(2018/C 013/22)

Language of the case: German

Parties

Applicant: Udo Voigt (Brussels, Belgium) (represented by: P. Richter, lawyer)

Defendant: European Parliament (represented by: N. Görlitz, S. Seyr and M. Windisch, acting as Agents)

Re:

Action under Article 263 TFEU seeking annulment of, firstly, the Parliament's decision of 9 June 2015 refusing to make a room available to the applicant for the purpose of holding a press conference on 16 June 2015 and, secondly, of the Parliament's decision of 16 June 2015 refusing Russian nationals access to its premises.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Udo Voigt to bear his own costs and to pay those incurred by the European Parliament, including those incurred in the proceedings before the Court of Justice.*

([1]) OJ C 106, 21.3.2016.

Judgment of the General Court of 20 November 2017 — Stada Arzneimittel v EUIPO — Urgo recherche innovation et développement (Immunostad)

(Case T-403/16) ([1])

(EU trade mark — Invalidity proceedings — Application for the EU word mark Immunostad — Earlier national word mark ImmunoStim — Relative ground for refusal — Similarity of the trade marks — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009 (now Article 8(1)(b) and Article 60(1)(a) of Regulation (EU) 2017/1001) — Non-negligible part of the relevant public — Obligation to state reasons — Article 75 of Regulation No 207/2009 (now Article 94 of Regulation 2017/1001))

(2018/C 013/23)

Language of the case: English

Parties

Applicant: Stada Arzneimittel AG (Bad Vilbel, Germany) (represented by: R. Kaase and J.-C. Plate, lawyers)

Defendant: European Union Intellectual Property Office (represented by: initially, D. Botis and, subsequently, D. Walicka, acting as Agents)

Other party to the proceedings before EUIPO, intervener before the General Court: Urgo recherche innovation et développement, formerly Société de développement et de recherche industrielle, then Vivatech (Chenôve, France) (represented by: A. Sion and A. Delafond-Nielsen, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 19 April 2016 (Case R 863/2015-5), relating to invalidity proceedings between Vivatech and Stada Arzneimittel.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Stada Arzneimittel AG to pay the costs.*

([1]) OJ C 335, 12.9.2016.

Judgment of the General Court of 20 November 2017 — Cotécnica v EUIPO — Visán Industrias Zootécnicas (cotecnica OPTIMA)

(Case T-465/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU figurative mark cotecnica OPTIMA — Earlier EU figurative mark visán Optima PREMIUM PETFOOD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 [now Article 8(1)(b) of Regulation (EU) 2017/1001])

(2018/C 013/24)

Language of the case: Spanish

Parties

Applicant: Cotécnica, SCCL (Bellpuig, Spain) (represented by: J.-B. Devaureix, J. Erdozain López and J. Galán López, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Palmero Cabezas and J. Crespo Carrillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Visán Industrias Zootécnicas, SL (Arganda, Spain) (represented by: P. Alesci Naranjo, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 13 June 2016 (Case R 229/2016-2), relating to opposition proceedings between Visán Industrias Zootécnicas and Cotécnica.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cotécnica, SCCL to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO);*

3. *Orders Visán Industrias Zootécnicas, SL to bear its own costs.*

([1]) OJ C 371, 10.10.2016.

Judgment of the General Court of 22 November 2017 — von Blumenthal and Others v EIB

(Case T-558/16) ([1])

(Civil Service — Staff of the EIB — Reform of the system of remuneration and salary progression — Plea of illegality — Equal treatment — Liability)

(2018/C 013/25)

Language of the case: French

Parties

Applicants: Henry von Blumenthal (Bergem, Luxembourg), Marc D'Hooge (Luxembourg, Luxembourg), Giulia Gaspari (Luxembourg), Patrick Vanhoudt (Gonderange, Luxembourg) and Dalila Bundy (Cosnes-et-Romain, France) (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (EIB) (represented initially by: C. Gómez de la Cruz, G. Nuvoli and T. Gilliams, and subsequently by: T. Gilliams and G. Faedo, acting as Agents, and P.-E. Partsch, lawyer)

Re:

— Application on the basis of Article 270 TFEU seeking, firstly, annulment of the decisions, contained in the salary statements of April 2015 and thereafter, to apply to the applicants the decision of the Board of Directors of the defendant of 16 December 2014 and the decision of the Management Committee of the defendant of 4 February 2015, and of the notices drawn up in April 2015 concerning the performance rewards and, secondly, an order that the EIB pay the applicants, firstly, the difference between the remuneration resulting from the decisions cited above and that due in accordance with the obligations of the EIB and, secondly, damages in respect of the pecuniary harm, as a result of the loss of purchasing power, allegedly suffered by the applicants and compensation for the non-pecuniary harm allegedly suffered by the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Henry von Blumenthal, Mr Marc D'Hooge, Ms Giulia Gaspari, Mr Patrick Vanhoudt and Ms Dalila Bundy to pay the costs.*

([1]) OJ C 414, 14.12.2015 (case initially registered before the European Union Civil Service Tribunal under number F-99/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 23 November 2017 — PF v Commission

(Case T-617/16) ([1])

(Civil service — Officials — Promotion — 2015 promotion exercise — Articles 43 and 45(1) of the Staff Regulations — Duty to provide a statement of reasons — Consideration of comparative merits — Use of languages in the context of the duties performed by administrators assigned to linguistic duties and by administrators assigned to non-linguistic duties — Legitimate absences — Manifest error of assessment)

(2018/C 013/26)

Language of the case: French

Parties

Applicant: PF (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: G. Berscheid and C. Berardis-Kayser, acting as Agents)

Re:

Application under Article 270 TFEU seeking annulment of the Commission's decision not to promote the applicant to Grade AD 8 in the 2015 promotion exercise.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders PF to pay the costs.*

([1]) OJ C 371, 10.10.2016 (Case initially registered before the European Union Civil Service Tribunal as Case F-47/16 and transferred to the General Court of the European Union on 1 September 2016).

Judgment of the General Court of 22 November 2017 — HD v Parliament

(Case T-652/16 P) ([1])

(Appeal — Officials — Remuneration — Family allowances — Education allowance — Prohibition of overlapping allowances of the same type — Claim for recovery of undue payments — Protection of personal data — Obligation to state reasons)

(2018/C 013/27)

Language of the case: French

Parties

Appellant: HD (represented by: C. Bernard-Glanz, lawyer)

Other party to the proceedings: European Parliament (represented by: M. Ecker and L. Deneys, acting as Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 21 July 2016, *HD* v *Parliament* (F-136/15, EU:F:2016:169), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders HD to pay the costs.*

([1]) OJ C 419, 14.11.2016.

Judgment of the General Court of 22 November 2017 — Toontrack Music v EUIPO (EZMIX)

(Case T-771/16) ([1])

(European Union trade mark — Application for EU word mark EZMIX — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Equal treatment and principle of sound administration)

(2018/C 013/28)

Language of the case: Swedish

Parties

Applicant: Toontrack Music AB (Umeå, Sweden) (represented by: L.-E. Ström, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Söder and D. Hanf, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 27 July 2016 (Case R 2436/2015-5) concerning an application for registration of word mark EZMIX as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Toontrack Music AB to pay the costs.*

([1]) OJ C 14, 16.1.2017.

Order of the General Court of 9 November 2017 — Bowles v ECB

(Case T-564/16) ([1])

(Civil service — ECB Staff — Remuneration — Salary increase — Members of the Staff Committee — Eligibility — Action for annulment — No need to adjudicate — Action for damages — Action manifestly lacking any foundation in law)

(2018/C 013/29)

Language of the case: French

Parties

Applicant: Carlos Bowles (Frankfurt am Main, Germany) (represented by: initially by L. Levi and A. Tymen, and subsequently by L. Levi, lawyers)

Defendant: European Central Bank (ECB) (represented by: F. Malfrère and E. Carlini, acting as Agents, and by B. Wägenbaur, lawyer)

Re:

Application under Article 270 TFEU seeking, first, annulment of (i) the decision of 24 February 2015, communicated to staff on 13 March 2015, whereby the ECB refused to grant the applicant an additional salary increase for the year 2015 and (ii) the decision dismissing the special appeal of 9 July 2015, and, second, compensation for the damage which the applicant claims to have suffered.

Operative part of the order

1. *There is no longer any need to adjudicate on the claim for annulment.*

2. *The action is dismissed as to the remainder, as manifestly lacking any foundation in law.*

3. *Each party is ordered to bear its own costs.*

([1]) OJ C 16, 18.1.2016 (Case initially registered before the European Union Civil Service Tribunal as Case F-130/15 and transferred to the General Court of the European Union on 1 September 2016).

Order of the General Court of 15 November 2017 — Pilla v Commission and EACEA

(Case T-784/16) ([1])

(Action for annulment and damages — Provisional measures — Application for legal aid submitted after an action had been brought — Creative Europe Programme (2014-2020) — Call for proposals on support for a preparatory action — Decision rejecting candidature due to failure to respect an eligibility criterion — Grants available only to legal persons — Disregard of the formal requirements — Acts not attributable to EACEA — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2018/C 013/30)

Language of the case: Italian

Parties

Applicant: Rinaldo Pilla (Venafro, Italy) (represented by: A. Silvestri, lawyer)

Defendant: European Commission (represented by: A. Aresu and C. Gheorghiu, acting as Agents) and Education, Audiovisual and Culture Executive Agency (EACEA) (represented by: H. Monet and V. Sansonetti, acting as Agents)

Re:

First, application based on Article 263 TFEU seeking annulment of the Commission decision of 2 September 2016 rejecting the candidature submitted by the applicant in the call for proposals 'EAC/S05/2016 — Support for a preparatory action to create an EU Festival Award and an EU Festival Label in the field of Culture: EFFE (Europe for Festivals — Festivals for Europe)' of 26 April 2016, secondly, application seeking, principally, a declaration by the Court that the applicant's candidature is admissible or, in the alternative, annulment of the 'selection procedure itself', thirdly, application seeking suspension of the selection procedure and, fourthly, application based on Article 268 TFEU seeking compensation in respect of the harm allegedly suffered by the applicant by reason of the rejection of his candidature.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible in so far as it is directed against the Education, Audiovisual and Culture Executive Agency (EACEA).*

2. *The action is dismissed in part as manifestly inadmissible and in part as manifestly lacking any foundation in law in so far as it is directed against the European Commission.*

3. *The application for legal aid is rejected.*

4. *Mr Rinaldo Pilla la shall pay the costs.*

([1]) OJ C 6, 9.1.2017.

Order of the President of the General Court of 13 November 2017 — Romania v Commission

(Case T-391/17 R)

(Interim measures — Institutional law — European citizens' initiative — Protection of national and linguistic minorities and enhancement of cultural and linguistic diversity in the Union — Principle of conferral — Application for suspension of operation of a measure — No urgency)

(2018/C 013/31)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: R.-H Radu, C.-M. Florescu, E. Gane and L. Lițu, acting as Agents)

Defendant: European Commission (represented by: H. Krämer and L. Radu Bouyon, acting as Agents)

Re:

Application based on Articles 278 and 279 TFEU seeking suspension of the operation of Commission Decision (EU) No 2017/652 of 29 March 2017 on the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' (OJ 2017 L 92, p. 100).

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Action brought on 8 September 2017 — Activa Minoristas del Popular v ECB and SRB

(Case T-618/17)

(2018/C 013/32)

Language of the case: Spanish

Parties

Applicant: Activa Minoristas del Popular. Asociación para la tutela de los inversores minoristas afectados por la resolución, supervisión y gestión del Banco Popular (Madrid, Spain) (represented by: C. Arredondo Diaz, lawyer)

Defendants: European Central Bank and Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare the present action admissible;

— Declare that the defendant has a right of access to the file on which the contested resolutions are based;

— Annul the contested decision of the Single Resolution Board and declare that it is null and void as from the date of its adoption and, in the alternative, if annulment is impossible, declare that the applicant is entitled to compensation for the harm caused by that decision;

— Order the defendants to pay the costs incurred by the applicant, as well as the costs that it may incur up to the General Court's final ruling.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos* v *Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL* v *Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde* v *Commission and Single Resolution Board*, T-483/17, *García Suárez and Others* v *Commission and Single Resolution Board*, T-484/17, *Fidesban and Others* v *Single Resolution Board*, T-497/17, *Sáchez del Valle and Calatrava Real State 2015* v *Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda* v *Commission and Single Resolution Board*.

Action brought on 13 October 2017 — Spinoit v Commission and Others

(Case T-711/17)

(2018/C 013/33)

Language of the case: French

Parties

Applicant: Bernard Spinoit (Charleroi, Belgium) (represented by: H. Hansen, lawyer)

Defendants: European Commission and European External Action Service

Form of order sought

The applicant claims that the Court should:

— declare the present application admissible and well-founded;

accordingly,

— annul the undated decision signed electronically on 3 August 2017, entitled 'Request for replacement of senior expert No 3 of contract ENPI/2016/381-920 SOFRECO "Technical assistance recruitment for the programme to support the implementation of the Association Agreement (P3A III)"';

— declare that full compensation is necessary for the material and non-material damage caused to the claimant by the serious violation of the right to good administration consisting in the adoption of the undated decision signed electronically on 3 August 2017, entitled 'Request for replacement of senior expert No 3 of contract ENPI/2016/381-920 SOFRECO "Technical assistance recruitment for the programme to support the implementation of the Association Agreement (P3A III)"';

— order the defendants jointly and severally to pay the applicant the amount of EUR 209 950,00 for material damage and the amount of 15 000,00 for non-material damage;

in any event,

— order the defendants to pay the entirety of the costs;

— reserve to the applicant all other rights, dues, pleas in law and actions.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of essential procedural requirements, to the extent that, first, the applicant had not been heard prior to the adoption of the contested decision and had not had access to the file concerning him and, second, the reasoning contained in that decision did not allow the applicant to understand the facts alleged against him.

Action brought on 13 October 2017 — Chioreanu v ERCEA

(Case T-717/17)

(2018/C 013/34)

Language of the case: Romanian

Parties

Applicant: Nicolae Chioreanu (Oradea, Romania) (represented by: D.-C. Rusu, lawyer)

Defendant: European Research Council Executive Agency (ERCEA)

Form of order sought

The applicant claims that the Court should:

— annul the decision rejecting the application for review of Proposal No 741797-NIP, ERC-2016-ADG;

— order the European Research Council Executive Agency to review the research proposal.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of Commission Decision C(2015) 4975 on the European Research Council rules for submission of proposals and the related evaluation, selection and award procedures relevant to the specific programme of Horizon 2020.

Action brought on 17 October 2017 — The Vianel Group v EUIPO — Viania Dessous (VIANEL)

(Case T-724/17)

(2018/C 013/35)

Language in which the application was lodged: English

Parties

Applicant: The Vianel Group LLC (Dover, Delaware, United States) (represented by: V. Perrichon, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Viania Dessous GmbH (Mössingen, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the word mark 'VIANEL' — Application for registration No 1 181 484

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 July 2017 in Case R 285/2017-5

Form of order sought

The applicant claims that the Court should:

— uphold the applicant's application;

— annul the contested decision;

— order the Opponent to pay the Applicant's costs of this Application and the proceedings before the Office.

Plea in law

— The Board of Appeal infringed the applicable provisions of the European Trade Mark Regulation when it assessed the relevance of the evidence of use filed by the opponent, the similarity of the goods and of the signs in question, and the risk of confusion.

Action brought on 24 October 2017 — Clestra Hauserman v Parliament

(Case T-725/17)

(2018/C 013/36)

Language of the case: French

Parties

Applicant: Clestra Hauserman (Illkirch-Graffenstaden, France) (represented by: J. Gehin, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Parliament set out in its letter of 24 August 2017 notifying the applicant of the rejection of the tender that it had submitted for Lot 55 in the context of call for tenders INLO–D–UPIL–T–16–AO8 relating to the project to extend and modernise the [Konrad Adenauer] Building in Luxembourg ('the rejection decision') and the decision awarding that lot to another tenderer ('the award decision');

— order the European Parliament to pay to the applicant damages amounting to EUR 1 000 893 in respect of non-contractual liability, and in any event the amount of EUR 50 000 in respect of the cost of preparing the tender submitted in the context of call for tenders No 2014/S 123 218302;

— order the European Parliament to pay all costs in the case.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging irregularities in the decision to eliminate the Clestra Hauserman company in so far as that decision is based on a second procurement procedure that was improperly initiated under contract notice No 2016/S 215-391081 of 8 November 2016 following the first procurement procedure, which had resulted in the applicant company being awarded the contract.

2. Second plea in law, alleging an absence of explanation as to the admissibility of the tender of the undertaking that won the contract pursuant to the provisions of the Specifications relating to the financial and technical capacities of that undertaking (Articles 12 and 13 of the Tender Specifications) and the documents required in the Invitation to Tender (Articles I to VI.G).

3. Third plea in law, alleging the inadmissibility of the tender of the undertaking that won the contract in so far as the impropriety of that tender ought to have been established in view of its abnormally low price and, for that reason, its selection constitutes a manifest error of assessment.

4. Fourth plea in law, alleging an infringement of the principle of equal treatment and transparency with regard to the procedure in the second call for tenders.

Action brought on 24 October 2017 — Commune de Fessenheim and Others v Commission

(Case T-726/17)

(2018/C 013/37)

Language of the case: French

Parties

Applicants: Commune de Fessenheim (Fessenheim, France), Communauté de communes Pays Rhin-Brisach (Volgelsheim, France), Conseil départemental du Haut-Rhin (Colmar, France) and Conseil régional Grand Est Alsace Champagne-Ardenne Lorraine (Strasbourg, France) (represented by: G. de Rubercy, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of 10 August 2017 (GESTDEM 2017/2593) refusing to communicate to the applicants the letter from the European Commission of 22 March 2017 to the French authorities regarding the protocol for the compensation of the EDF Group in respect of the repeal of the permit to operate the Fessenheim Nuclear Power Plant;

— order the European Commission to communicate that letter of 22 March 2017 to the applicants;

— order the European Commission to pay all of the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging infringement of the last subparagraph of Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

2. Second plea in law, alleging infringement of Article 42 of the Charter of Fundamental Rights of the European Union relating to the right of access to documents.

3. Third plea in law, alleging infringement of Article 47 of the Charter of Fundamental Rights of the European Union relating to the right to an effective remedy.

Action brought on 27 October 2017 — Evropaïki Dynamiki v Commission

(Case T-730/17)

(2018/C 013/38)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: M. Sfyri and C.-N. Dede, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 22 August 2017 (C(2017) 5879 final) of the Secretary- General on behalf of the European Commission, rejecting the applicant's confirmatory application for access to European Commission documents relating to an exhaustive list of all the specific contracts signed between the Commission and a specific supplier during the last six years and to a copy of all requests for quotation related to those specific contracts;

— order the Commission to provide this information in a clear and complete manner in order to allow the public and the applicant to calculate the number of person-days that the specific supplier invoiced to the Commission per year;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging a failure by the defendant to carry out an individual assessment in relation to the requested documents, in breach of Article 4(6) and Article 6(3) of Regulation No 1049/2001. ([1])

2. Second plea in law, alleging that none of the exceptions to disclosure under Regulation No 1049/2001 applies in the present case and that the Commission has failed to substantiate the disproportionate burden that it claims would result from a full examination and disclosure of the requested documents.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001, L 145, p. 43).

Action brought on 27 October 2017 — Dreute v Parliament

(Case T-732/17)

(2018/C 013/39)

Language of the case: French

Parties

Applicant: Olivier Dreute (Brussels, Belgium) (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Parliament

Form of order sought

— Declare the present action admissible and well founded;

Consequently:

— Annul the decision of 30 January 2017 of the Secretariat General of the European Parliament transferring the applicant from the Cabinet of the President of the European Parliament to the Directorate-General European Parliamentary Research Service, Library Directorate, of the European Parliament with effect at 17 January 2017;

— Annul the decision of the Appointing Authority of 20 July 2017 rejecting the applicant's appeal of 28 April 2017;

— If necessary, annul the decision of the Secretary General of 12 July 2017 seconding the applicant, in the interest of the service, to the Commission from 24 May 2017 to 31 December 2017, insofar as that decision is the consequence of the decisions of 30 January and 20 July 2017;

— Award the sum of EUR 20 000 as damages in respect of the non-pecuniary harm suffered;

— Order the defendant to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging the lack of jurisdiction of the author of the contested decision, in that, in the view of the applicant, the authority with the power to decide upon his new post was the current President of the European Parliament and not the Secretary General of the Parliament.

2. Second plea in law, raised in the alternative, alleging infringement of the right to be heard and of the decision of 24 September 2015, PERS-DGD(2015)44042 concerning the movement of posts within one Directorate General or between Directorates General.

3. Third plea in law, raised in the alternative, alleging infringement of the principle of legal certainty.

4. Fourth plea in law, raised in the alternative, alleging a misuse of power.

5. Fifth plea in law, raised in the alternative, alleging infringement of the principle of sound administration and the duty of care.

Action brought on 2 November 2017 — GMPO v Commission

(Case T-733/17)

(2018/C 013/40)

Language of the case: English

Parties

Applicant: GMP-Orphan (Paris, France) (represented by: M. Demetriou, QC, E. Mackenzie, barrister, L. Tsang and J. Mulryne, solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 5 of Commission Implementing Decision of 5 September 2017 granting marketing authorisation under Regulation (EC) No 726/2004 ([1]) for 'Cuprior-trientine', a medicinal product for human use;

— order the defendant to provide that Cuprior be classified as an orphan medicinal product and the Community Register of Orphan Medicinal Products updated accordingly; and

— order the defendant to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that Article 5 of the contested decision was based upon an erroneous interpretation of the term 'significant benefit' in Article 3(1)(b) of Regulation (EC) 141/2000 ('the Orphan Regulation').

   — The Committee for Orphan Medical Products (COMP)/Commission erred by failing to recognise — in line with the aims of the harmonised pharmaceutical legislation as a whole, and the wording of the Orphan Regulation specifically — that the greater availability of Cuprior across the EU constituted a significant benefit for the purposes of the legislation.

2. Second plea in law, alleging that the COMP/Commission misdirected itself in law and/or committed a manifest error of assessment in applying Article 3(1)(b) of the Orphan Regulation.

   — The COMP/Commission failed to recognise that any problem with the availability of trientine in the EU would automatically result in patients having unmet needs or suffering harm (although it was not in fact necessary for the applicant to demonstrate patient harm under the applicable guidance).

3. Third plea in law, alleging an error in law and/or a breach of the principles of legitimate expectations and/or procedural fairness in applying later guidance to the designation and review of Cuprior.

   — The applicant alleges that the COMP/Commission acted unfairly and/or breached the applicant's legitimate expectations by in substance applying the guidance of 2016 rather than that of 2003.

4. Fourth plea in law, alleging that the COMP/Commission committed a manifest error of assessment in evaluating and rejecting the evidence put forward by the applicant as to the lack of availability of trientine.

(1) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance) (OJ 2004 L 136, p. 1).

Action brought on 30 October 2017 — Lincoln Global/EUIPO (FLEXCUT)

(Case T-736/17)

(2018/C 013/41)

Language of the case: English

Parties

Applicant: Lincoln Global, Inc. (Santa Fe Springs, California, United States) (represented by: K. Piepenbrink, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'FLEXCUT' — Application for registration No 15 111 198

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 30 August 2017 in Case R 2225/2016-4

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 Articles 7(1)(b) and (c) Regulation No 207/2009.

Action brought on 30 October 2017 — Trasys International and Axianseu Digital Solutions v EASA

(Case T-741/17)

(2018/C 013/42)

Language of the case: French

Parties

Applicants: Trasys International GEIE (Brussels, Belgium) and Axianseu Digital Solutions SA (Lisbon, Portugal) (represented by: L. Masson and G. Tilman, lawyers)

Defendant: European Aviation Safety Agency (EASA)

Form of order sought

The parties claim that the Court should:

— annul the decision taken on 28 August 2017 for the European Aviation Safety Agency by its director, in the context of the contract entitled 'EASA.2017.HVP.08: IT Application & Infrastructure Management Services — ITAIMS' …;

— consequently, annul the implied decision not to award the various framework contracts to the applicants;

— order the EASA to pay the entire costs of the proceedings.

Pleas in law and main arguments

In support of its action, the applicants rely on a single plea in law, alleging failure to state reasons in the contested decision, with a price which appears to be abnormally low.

Action brought on 9 November 2017 — Kim and Others v Council

(Case T-742/17)

(2018/C 013/43)

Language of the case: English

Parties

Applicants: Il-Su Kim (Pyongyang, North Korea), Song-Sam Kang (Hamburg, Germany), Chun-Sik Choe (Pyongyang), Kyu-Nam Sin (Pyongyang) and Chun-San Pak (Pyongyang) (represented by: M. Lester, QC, S. Midwinter, QC, T. Brentnall and A. Stevenson, solicitors)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul Council Regulation 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007, insofar as it applies to them;

— order the Defendant to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging that the Defendant has failed to give adequate or sufficient reasons for including the Applicants.

2. Second plea in law, alleging that the Defendant has manifestly erred in considering that any of the criteria for listing in the contested measures were fulfilled in the Applicants' case; there is no factual basis for their inclusion.

3. Third plea in law, alleging that the Defendant has breached the Applicants' right to equal treatment.

4. Fourth plea in law, alleging that the Defendant has breached the Applicants' rights of defence by failing to provide them with the evidence on which the Defendant relies before re-listing the Applicants.

5. Fifth plea in law, alleging that the Defendant has breached data protection law.

6. Sixth plea in law, alleging that the Defendant has infringed, without justification or proportion, the Applicants' fundamental rights, including their right to protection of his property, business, and reputation.

Action brought on 9 November 2017 — Bischoff v EUIPO — Miroglio Fashion (CARACTÈRE)

(Case T-743/17)

(2018/C 013/44)

Language in which the application was lodged: French

Parties

Applicant: Bischoff GmbH (Muggensturm, Germany) (represented by: D. Régnier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Miroglio Fashion Srl (Alba, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Miroglio Fashion Srl

Trade mark at issue: European Union word mark 'CARACTÈRE' — European Union trade mark No 7 061 922

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 20 July 2017 in Case R 328/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in that it dismissed the appeal of the company Bischoff seeking a declaration of invalidity of the mark No 007061922 for the goods and services in Classes 14, 18, 24, 25 and 35;

— order EUIPO and the company Miroglio Fashion to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 7(1) of Regulation No 207/2009.

Order of the General Court of 14 November 2017 — Oy Karl Fazer v EUIPO — Kraft Foods Belgium Intellectual Property (MIGNON)

(Case T-437/17) ([1])

(2018/C 013/45)

Language of the case: English

The President of the Ninth Chamber has ordered that the case be removed from the register.

([1]) OJ C 300, 11.9.2017.

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