

Position of the Board of Appeal in the legal protection system for Community plant variety rights

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Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights

Article 47

Independence of the members of the Boards of Appeal

1. (...)
2. (...)
3. The members of the Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions.
4. The members of the Boards of Appeal may not be members of the Committees referred to in Article 35 nor perform any other duties in the Office. The function of the members of the Boards of Appeal may be a part-time function.
5. The members of the Boards of Appeal may not be removed from office nor from the list respectively, during the respective term, unless there are serious grounds for such removal and the Court of Justice of the European Communities, on application by the Commission after obtaining the opinion of the Administrative Council takes a decision to this effect.

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Article 48

Exclusion and objection

1. Members of the Boards of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.
2. If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.
3. Members of the Boards of Appeal may be objected to by any party to the appeal proceedings for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.
4. (...)

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Article 70

Interlocutory revision

1. If the body of the Office which has prepared the decision considers the appeal to be admissible and well founded, the Office shall rectify the decision. This shall not apply where the appellant is opposed by another party to the appeal proceedings.
2. If the decision is not rectified within one month after receipt of the statement of grounds, for the appeal, the Office shall forthwith:
 - decide whether it will take an action pursuant to Article 67 (2), second sentence, and
 - remit the appeal to the Board of Appeal.

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Article 71

Examination of appeals

1. (...)
2. When examining the appeal, the Board of Appeal shall as often as necessary invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

**Commission Regulation (EC) No. 874/2009 of 17 September 2009
establishing implementing rules for the application of Council
Regulation (EC) No. 2100/94 as regards proceedings before the
Community Plant Variety Office**

Article 51

Examination of appeals

Unless otherwise provided, the provisions relating to proceedings before the Office shall apply to appeal proceedings *mutatis mutandis*; parties to proceedings shall in that regard be treated as parties to appeal proceedings.

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Article 76

Examination of the facts by the Office of its own motion

In proceedings before it the Office shall make investigations on the facts of its own motion, to the extent that they come under the examination pursuant to Articles 54 and 55. It shall disregard facts or items of evidence which have not been submitted within the time limit set by the Office.

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Article 72

Decision on appeal

The Board of Appeal shall decide on the appeal on the basis of the examination carried out pursuant to Article 71. The Board of Appeal may exercise any power which lies within the competence of the Office, or it may remit the case to the competent body of the Office for further action. The latter one shall, in so far as the facts are the same, be bound by the ratio decidendi of the Board of Appeal.

Thank you!

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