

Intellectual Property and the Judiciary



Boards of Appeal of OHIM (the future EUIPO)

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The Boards of Appeal of the European Union Intellectual Property Office (ex OHIM)



Overview

1. The nature of the Boards of Appeal
2. Functional continuity
3. The review function of the Boards of Appeal
4. The filter function of the Boards of Appeal
5. Some conclusions

1. The nature of the Boards of Appeal



The EPO as „model“

Differences between EPO and EUIPO

The judicial or quasi-judicial nature of the Boards of Appeal

2. Functional continuity



Functional continuity between Boards of Appeal and the Office's decision-taking units (Examiners, Opposition Division, Cancellation Divisions, Register administration)

3. The review function of the Boards of Appeal



De novo examination or „review“

Scope of review competence

New facts and evidence

4. Filter function of the Boards of Appeal



4.1. The case load of the Boards of Appeal

4.2. The outcome of appeals

4.3. The appeals to the General Court

figures

standards of review

new facts and evidence

new arguments/issues

outcome

4.4. The appeals on points law (pourvoi) to the Court of Justice

4.1. Case load of the Boards of Appeal



Appealable decisions vs. appeals filed
(ex parte/inter partes)

2010	2570	396 / 2174
2011	2622	667 / 1955
2012	2339	644 / 1695
2013	2602	890 / 1712
2014	3284	1240 / 2044
2015	2611	946 / 1655

4.2. Outcome of appeals (2015)

Total number of decisions	2911
Ex parte	1113
Deemed not filed	98
Confirmed	785
Reversed in full	175
Reversed in part	55
Inter partes	1798
Deemed not filed	110
Confirmed	916
Reversed in full	329
Reversed in part	182
Settled	261



4.3. Appeals to the General Court



Figures (new cases – ex parte/inter partes)

2010	48 / 159
2011	42 / 178
2012	45 / 200
2013	52 / 244
2014	97 / 192
2015	60 / 215

4.3. Appeals to the General Court



Standards of review

New facts and evidence

New arguments/issues

Outcome

4.4. Appeals on points of law (pourvoi) to the Court of Justice



Figures (new cases – exparte/inter partes)

2010	11 / 20
2011	9 / 28
2012	1 / 36
2013	5 / 30
2014	5 / 28
2015	7 / 52

4.4. Appeals on points of law (pourvoi) to the Court of Justice



Standards of review

Outcomes

5. Some conclusions



The success story

The shortcomings

Improvements (speed vs. substantive and procedural „Sorgfalt“, transparency, Grand Board)

Comparative analysis – EPO, CPVO, TTAB, PTAB



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