Procedural Aspects of Appealing to the CFI from OHIM

by
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serle court

The Decision under appeal

- First instance decision, *e.g.* examination, opposition or cancellation division of OHIM
- Second instance decision of the BoA
- Since July 2006, a decision of the Grand Board of Appeal
- The appeal is from the (G)BoA's decision (the "Contested Decision"), not the first instance decision

Period in which to appeal

- The Contested Decision is now notified to the parties by fax only (Decision of the Presidium,10th May 2006).
- 2 months from notification, plus 10 days due to distance (CFI Rules art. 102(2)), plus “closed days”, for example:
  - decision dated the 24th Jul 06
  - decision faxed (only) 28th Jul 06 (and so notified on this day)
  - two months expire 28th Sep 06 (29th Jul to 28th Sept)
  - 10 days until 8th Oct 06 (Sunday) (29th Sep to 8th Oct, incl.)
  - and so, last day to file is Monday, 9th Oct 06 (2359 hrs)
- [*cf* EPO’s practice: T-2056/08: 10 days + 2 months]

Notice of Appeal

- The Parties
- Summary of Pleas in Law and Main Arguments
- History of the Application (Background)
- The Order sought (include costs if sought)
- Summary of Grounds
- Arguments

Formalities

- CFI Rules of Procedure, and Practice Direction
- Various Notes for the Guidance of Counsel
- Instructions to the Registrar
- Signature (at the end), by a “lawyer”
  - not a TM attorney (T-14/04)
  - nor PA Litigator (T-487/07)
  - *sed quaere* a TM&D litigator (C-59/09)
- Certified copies (by the lawyer)

Procedural Documents

- Language of the proceedings
- Certificate that the representative is authorised to practise before a Court of the Member State
- Proof of the existence in law of the appellant
- Power of Attorney
- Proof that the PoA has been properly conferred

Response(s)

- OHIM is the Respondent, even in *inter partes* cases
- Response from OHIM and (optionally) from the intervener
- The response time period is 2 months: it can be extended, but the application has to be made before the time period expires and supported by reasons/evidence

Further Interim Matters

- Normally, only one round of submissions for each party
- Exceptionally
  - allowed a rebuttal
  - in response to question(s) from the court, further submissions (and evidence)
- Rapporteur's report sent out for comment a few weeks before the hearing

Oral Hearing

- No need to attend
- But good opportunity to elaborate one's case and to deal with queries from the court
- V. short opening speeches (10 or 15 minutes)
- Questions from the court (often difficult and many)
- Intervener sits with OHIM (even if OHIM is not supporting the BoA's decision)

Afterwards

- Judgment (notified in advance, no need to attend)
- Appeal to the ECJ, but only on a point of law (strictly enforced)
- Costs