

CPVO Case-Law Vol. II 2015–2020

You

case-law_2015-2020_vol_ii.pdf
PDF
/summary



AIT-StrategiX

The document "Case-Law 2015-2020 Vol. II" provides a comprehensive overview of decisions made by the Board of Appeal and the Court of Justice of the European Union, including both the General Court and the Court of Justice, from 2015 to 2020. These summaries of decisions are organized by the date on which each decision was made.

You
list them



AIT-StrategiX

The document "Case-Law 2015-2020 Vol. II" lists a significant number of decisions made by the Board of Appeal and the Court of Justice of the European Union. Due to the extensive nature of these summaries, which cover a five-year period, it is not feasible to list them all in this format. The decisions are detailed and include specific case numbers, parties involved, and outcomes.

However, here are some examples of the cases included:

Case A010/2013: The decision was reached on a specific date, including details like the appeal being dismissed and the appellant bearing a percentage of the costs.

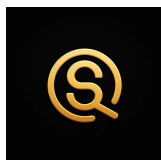
Case A007/2018: The decision includes specific outcomes like the appeal being rejected as inadmissible, with the appellant bearing the costs.

Case A004/2016 (Gala Perathoner): Detailed outcomes such as the decision being reached, with specific dates and actions ordered by the court.

Case A008/2018 (Stark Gugger): Includes decisions like dismissing the appeal and ordering the appellant to bear the costs.

The document contains a wealth of information on each case, including the date of the decision, the ruling, and any further actions or appeals. It serves as a comprehensive resource for legal professionals and researchers interested in the specifics of these decisions.

You
how many cases?



AIT-StrategiX

The document "Case-Law 2015-2020 Vol. II" indicates that since its inception, a total of 242 notices of appeal have been filed with the Board of Appeal (BoA). This number encompasses the entire duration of the BoA's operation, not just the 2015-2020 period covered by the document. It is important to note that this figure is a cumulative total since the establishment of the BoA, reflecting the total number of appeal cases handled over the years.

You
justify



AIT-StrategiX

Since its inception, the Board of Appeal (BoA) has recorded a total of 242 notices of appeal. This number represents the cumulative total of appeals filed with the BoA from the time it started operating in 1995 up to the present, as detailed in the "Case-Law 2015-2020 Vol. II" document.

You
where is that information in the document?



AIT-StrategiX

The information regarding the total number of 242 notices of appeal filed with the Board of Appeal (BoA) since its inception is found in the "Case-Law 2015-2020 Vol. II" document under the section titled "4. STATISTICS," specifically in subsection "4.1. Number of notices of appeal recorded in the Board of Appeal Registry since 1995".

You

/summary FOREWORD BY MARTIN EKVAD,



AIT-StrategiX

In the foreword of "Case-Law 2015-2020 Vol. II," Martin Ekvad, President of the Community Plant Variety Office (CPVO), reflects on the history and operations of the CPVO. He notes that since the CPVO's inception 25 years ago, the number of applications for EU-wide plant variety protection was initially high, exceeding 3,000 in the first year. This surge was due to the eagerness of breeders to gain EU-wide protection and the transitional regime allowing for EU-wide protection requests for varieties already protected in one or more Member States.

Ekvad points out that the first decision by the CPVO's Board of Appeal (BoA) was not made until 1999, and since then, the number of appeals per year has remained relatively low. This low number of appeals is interpreted as a sign of the CPVO's

effective and transparent operation, particularly in its formal substantive and technical examinations.

He discusses the role of the BoA in monitoring the CPVO's work and providing legal interpretation guidance. Ekvad highlights that appeals often occur in areas where rules allow for interpretation, noting the significant role of the Court of Justice of the European Union in developing jurisprudence related to the CPVO and the BoA's roles. The Court has underscored the scientific and technical complexities of the CPVO and the BoA's tasks, granting them broad discretion in their functions.

The CPVO and BoA are required to adhere to the principle of sound administration, meaning they must thoroughly and impartially examine all relevant aspects of an application for Community plant variety rights (CPVRs), ensuring proper conduct and effectiveness in their proceedings.

Ekvad concludes by expressing gratitude to those who have contributed to the BoA's work and achievements over the past five years, specifically thanking the Chair, Vice Chair, members of the BoA, and others involved in drafting the contents of the booklet.

You

/summary Case A001/2015, Mema GmbH landwirtsch. Ges. v CPVO



AIT-StrategiX

In Case A001/2015, Mema GmbH landwirtschaftliche Gesellschaft (Ges.) versus the Community Plant Variety Office (CPVO), the Board of Appeal (BoA) delivered its decision on 15th December 2015. This case involved the apple variety 'Braeburn 78', belonging to the species *Malus domestica* Borkh. The key issues were related to the common knowledge of the variety, its lack of distinctness, and the conditions of testing.

Background: Mema GmbH filed an application for a Community Plant Variety Right (CPVR) for 'Braeburn 78' in May 2009. However, in December 2014, the CPVO refused to grant the CPVR based on a Distinctness, Uniformity, and Stability (DUS) report. This report found that 'Braeburn 78' was not clearly distinct from the closest reference varieties known as 'Royal Braeburn' and 'X9466'. Mema GmbH filed an appeal in February 2015, challenging the technical examination's correctness and the appropriateness of the testing conditions, particularly in terms of their effect on the skin coloration of the variety.

Decision: The BoA recognized the influence of environmental factors on certain characteristics, noting this as a drawback of DUS testing. However, it found that the testing location met the entrustment requirements for CPVO examination offices, and the examination office had followed the appropriate protocol, including the timing of harvest. As a result, the BoA dismissed the appeal, finding it not well-founded, and ordered Mema GmbH to bear the costs of the appeal proceedings pursuant to Article 85(1) of Regulation (EC) No 2100/1994.

You

/q



AIT-StrategiX

To create a payoff matrix for the Case A001/2015 (Mema GmbH landwirtschaftliche Ges. v CPVO), we need to consider the key stakeholders and their potential strategies or choices.

Stakeholders:

- Mema GmbH landwirtschaftliche Ges. (Mema GmbH)
- Community Plant Variety Office (CPVO)
- Board of Appeal (BoA)

Strategies:

- Mema GmbH:
 - Appeal the CPVO's decision
 - Accept the CPVO's decision
- CPVO:
 - Uphold refusal to grant CPVR
 - Reconsider the decision to grant CPVR
- BoA:
 - Dismiss the appeal
 - Uphold the appeal

Based on the case summary, we can construct a simplified payoff matrix. The payoffs here are qualitative, representing the success or failure of achieving desired outcomes rather than quantifiable benefits or costs.

Based on the case summary, we can construct a simplified payoff matrix. The payoffs here are qualitative, representing the success or failure of achieving desired outcomes rather than quantifiable benefits or costs.

Mema GmbH / CPVO / BoA	Appeal / Uphold Refusal / Dismiss Appeal	Appeal / Uphold Refusal / Uphold Appeal	Accept / Reconsider / Dismiss Appeal	Accept / Reconsider / Uphold Appeal
Outcomes	Mema GmbH bears costs, no CPVR	CPVR granted to Mema GmbH	CPVR possibly reconsidered	CPVR granted without BoA involvement

You

/qs



AIT-StrategiX

The payoff matrix for Case A001/2015 (Mema GmbH landwirtschaftliche Ges. v CPVO) reflects the potential outcomes based on the strategic choices of the key stakeholders: Mema GmbH landwirtschaftliche Ges. (Mema GmbH), the Community Plant Variety Office (CPVO), and the Board of Appeal (BoA).

Mema GmbH's Strategies:

- Appeal the CPVO's decision
- Accept the CPVO's decision

CPVO's Strategies:

- Uphold the refusal to grant the Community Plant Variety Right (CPVR)
- Reconsider the decision and possibly grant the CPVR

BoA's Strategies:

- Dismiss the appeal
- Uphold the appeal

The resulting payoff matrix outlines the potential outcomes for each combination of strategies:

:

Mema GmbH bears the costs of the appeal, and the CPVR is not granted.
Appeal / Uphold Refusal / Uphold Appeal: The BoA upholds Mema GmbH's appeal, leading to the CPVR being granted to Mema GmbH.
Accept / Reconsider / Dismiss Appeal: This combination is less likely as Mema GmbH's acceptance of the decision negates the role of the BoA.

Accept / Reconsider / Uphold Appeal: Again, less likely due to Mema GmbH's acceptance of the decision, making the BoA's role redundant. This matrix simplifies the complex legal and procedural interactions into a structured overview, highlighting the possible outcomes based on the strategic decisions of the involved parties.



AIT-StrategiX

<newperspective>

- The Case A001/2015, Mema GmbH landwirtschaftliche Ges. v CPVO, primarily revolves around the legal and technical aspects of plant variety rights. However, adopting a new perspective, it's essential to consider the broader implications and context of such cases.

Innovation and Breeding Efforts: This case underscores the critical balance between protecting breeders' rights and encouraging innovation in plant breeding. While the legal focus is on distinctness and technicalities, the underlying issue is about fostering an environment conducive to developing new varieties. Ensuring a fair and effective system for recognizing breeders' efforts is essential for continuous innovation in agriculture.

Environmental Adaptation and Agricultural Diversity: The case touches upon the technicalities of distinctness in plant varieties, which has broader implications for biodiversity and environmental adaptation. Each new variety, like 'Braeburn 78', potentially offers unique traits that could be crucial for adapting to changing climate conditions or specific agricultural needs. Legal and procedural frameworks should thus also consider the ecological and agricultural value of new varieties.

Global Food Security: The broader impact of decisions regarding plant variety rights can extend to issues like global food security. Each new variety of a crop like apples could have attributes such as higher yield, disease resistance, or adaptability to different climates, contributing to the diversification and resilience of food systems.

Interplay Between Local and Global Regulations: The case highlights the interaction between local (national) and broader (EU-level) regulatory

frameworks. It brings into focus the complexities involved in navigating different legal systems and the importance of harmonization in regulations for the benefit of breeders operating in multiple jurisdictions.

Public Perception and Trust in Regulatory Bodies: Lastly, cases like this shape public perception of regulatory bodies like the CPVO. Transparency, fairness, and effectiveness in decision-making processes are crucial for maintaining trust among stakeholders, including breeders, farmers, and consumers.

This new perspective suggests that while legal and technical aspects are vital, understanding the broader implications of such cases is equally important for a holistic approach to plant variety rights and agricultural innovation.

You

/summary Case A002/2015, Hortibreed NV v CPVO



AIT-StrategiX

In Case A002/2015, Hortibreed NV v CPVO, the Board of Appeal (BoA) made a significant decision on 15th December 2015. The case revolved around the application for a Community Plant Variety Right (CPVR) for the variety 'Hort 04' of Rhododendron simsii Planch by Hortibreed NV.

Key Points:

Issue of Uniformity: The CPVO initially informed Hortibreed NV of a problem concerning the uniformity of the flower color of 'Hort 04'. Hortibreed NV attributed this lack of uniformity to climatic factors and premature pinching during the technical examination. Despite being granted a second examination cycle, the lack of uniformity persisted in the samples provided by Hortibreed NV, leading the CPVO to reject the application.

Appeal by Hortibreed NV: Hortibreed NV filed an appeal against this decision, requesting an additional growing cycle and providing additional cultivation guidelines. The CPVO sought to dismiss the appeal, contending that the examination office had adhered to the growing conditions as specified by the appellant.

Decision of the BoA: The BoA acknowledged the significant influence of the cultivation method on the expression of the variety's characteristics. It noted that Hortibreed NV initially did not specify the correct cultivation conditions, which were provided only after the final negative report. The BoA observed that the testing complied with the CPVO protocol as no special growing conditions were initially requested by Hortibreed NV in their technical questionnaire.

Conclusion:

The BoA decided to uphold the appeal and annulled the CPVO's decision. It directed the CPVO to organize a third examination period, taking into account the newly provided cultivation guidelines by Hortibreed NV. The BoA also ordered Hortibreed NV to bear the costs of the appeal proceedings as per Article 85(2) of the BR.

You

/q



AIT-StrategiX

Creating a payoff matrix for Case A002/2015 (Hortibreed NV v CPVO) involves analyzing the strategic decisions of the key stakeholders: Hortibreed NV and the Community Plant Variety Office (CPVO), with the Board of Appeal (BoA) as the deciding authority.

Stakeholders:

- Hortibreed NV
- CPVO
- Board of Appeal (BoA)

Strategies:

- Hortibreed NV:
 - Request an additional growing cycle (Appeal)
 - Accept CPVO's initial decision
- CPVO:
 - Uphold the initial decision (Reject Appeal)
 - Reconsider the decision (Grant Appeal)
- BoA:
 - Uphold CPVO's decision
 - Annul CPVO's decision and order a new examination

The payoff matrix will consider these strategies and their potential outcomes:

Hortibreed NV / CPVO / BoA	Appeal / Uphold Decision / Uphold CPVO	Appeal / Uphold Decision / Annul CPVO	Accept / Reconsider / Uphold CPVO	Accept / Reconsider / Annul CPVO
Outcomes	Application rejected, costs borne by Hortibreed NV	New examination ordered, costs borne by Hortibreed NV	Application rejected, no further action	New examination without appeal, costs unclear

You
/qs



AIT-StrategiX

The payoff matrix for Case A002/2015 (Hortibreed NV v CPVO) provides a structured overview of the potential outcomes based on the strategic decisions of Hortibreed NV, the Community Plant Variety Office (CPVO), and the Board of Appeal (BoA).

Stakeholders and Their Strategies:

Hortibreed NV:

- Appeal for an additional growing cycle
- Accept the CPVO's initial decision

CPVO:

- Uphold the initial decision (Rejecting Appeal)
- Reconsider the decision (Granting Appeal)

BoA:

- Uphold CPVO's decision
- Annul CPVO's decision and order a new examination

Resulting Payoff Matrix:

Appeal / Uphold Decision / Uphold CPVO: Hortibreed NV's application is rejected, and they bear the costs.

Appeal / Uphold Decision / Annul CPVO: The BoA annuls CPVO's decision, orders a new examination, and Hortibreed NV bears the costs.

Accept / Reconsider / Uphold CPVO: Less likely as Hortibreed NV's acceptance makes the BoA's decision redundant.

Accept / Reconsider / Annul CPVO: Also less likely due to the acceptance of the initial decision by Hortibreed NV.

This matrix simplifies the complex legal and procedural interactions into a structured overview, highlighting the potential outcomes based on the strategic decisions of the involved parties.

You

<newperspective>



AIT-StrategiX

<newperspective> In the context of Case A002/2015 (Hortibreed NV v CPVO), a novel perspective to consider is the role of environmental factors and their impact on the distinctness and uniformity of plant varieties, especially in the context of climate change. As climate conditions fluctuate and become more unpredictable, the criteria used for evaluating plant varieties, particularly in relation to uniformity and stability, may need to be re-evaluated.

This perspective brings into focus the need for potentially revising the technical protocols used for the examination of plant varieties. Such revisions could account for varying climatic conditions and their impact on plant growth and expression. It also underscores the importance of flexible and adaptive testing procedures that can accommodate unexpected environmental influences.

From a broader standpoint, this perspective highlights the intersection between intellectual property rights in agriculture (such as CPVRs) and environmental sustainability. It opens up discussions about how plant variety protection systems can evolve to support agricultural resilience in the face of climate change, ensuring that the criteria for granting rights remain relevant and effective in a changing world.

Furthermore, this approach emphasizes the importance of collaboration between plant breeders, examination offices, and regulatory bodies in addressing these challenges. It advocates for ongoing research and dialogue to understand better how environmental factors influence plant characteristics and how this should be reflected in plant variety rights legislation and practice.