

**General Court: 'apparatus for reproduction of sound and images' not sufficiently precise and narrow**  
European Union - Bugnion SpA

**Cancellation  
International procedures**

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- **Board of Appeal erred in finding that 'apparatus for reproduction of sound and images' had clear and specific content**
- **Board erred in inferring that proof of genuine use had been adduced for such goods**
- **Decision confirms that narrow descriptions result in more certainty**

In *Sony Interactive Entertainment Europe v European Union Intellectual Property Office* (EUIPO) (Case T-879/16), the General Court has considered whether the definition of the term 'apparatus for the reproduction of sound and images' was sufficiently precise and narrow, and whether proof of use had been adduced for such goods.

On November 14 2011 Sony Interactive Entertainment Europe filed an application for the revocation of the following EU trademark (Registration No 1790674) pursuant to Article 51(1)(a) of [Regulation 207/2009](#).



The Cancellation Division dismissed the application for revocation for the following goods: "loudspeakers, loudspeaker systems, sound amplifiers" and "computers, video screens, apparatus for the reproduction of sound and images, television sets, record players". The Second Board of Appeal of the EUIPO confirmed the decision, finding that the mark had been put to genuine use in connection with the above-mentioned goods in Class 9.

However, in its judgment of December 10 2015, *Sony Computer Entertainment Europe v OHIM* (Case T-690/14), the General Court found that, contrary to what was stated by the Board of Appeal, it could not be held that the term 'apparatus for the reproduction of sound and images' had been defined sufficiently "precisely and narrowly". Moreover, The General Court noted that, when requested at the hearing to state what that term covered, the EUIPO had not been able to give any conclusive answer at all. The court also held that that term, understood in its natural and usual sense, was likely to include a wide array of audiovisual and electronic equipment, including equipment for which the Cancellation Division had considered that proof of genuine use had not been adduced. Consequently, in Paragraph 69 of the December 10 2015 judgment, the court stated that it was necessary to annul the decision of the Board of Appeal insofar as it found that genuine use of the contested mark had been proven for "apparatus for the reproduction of sound and images".

The action was sent back to the Fourth Board of Appeal (Case R-1010/2016-4).

The Board of Appeal first stated that, following the partial annulment of its first decision by the judgment of December 10 2015, it had to determine whether the contested trademark had been put to genuine use for "apparatus for the reproduction of sound and images" during the relevant period. In addition, the Board of Appeal stated that the first decision was definitive in relation to "loudspeakers, loudspeaker systems, sound amplifiers, computers, video screens, television sets [and] record players" and that, accordingly, genuine use of the contested mark for those goods had been proven. It added that the term 'apparatus for the reproduction of sound and images' was sufficiently clear and precise.

This finding was subject to a new action, and the General Court gave its decision on February 8 2018.

In summary, Sony asked the General Court to annul the decision of the Board of Appeal, while the EUIPO contended that the court should dismiss the action and confirm the Board of Appeal's findings.

In support of its action, Sony put forward a plea alleging breach of the principle that the applicant shall

identify the goods or services for which protection is sought with sufficient clarity and precision. The General Court found at Paragraph 33 that:

*“as regards ‘apparatus for the reproduction of sound and images’, it is apparent from Paragraphs 63 to 68 of [the judgment of December 10 2015] that [such a] term did not designate a precise and narrowly-defined category of goods, as stated by the Board of Appeal in Paragraph 46 of the first decision, but a large category of audiovisual and electronic equipment. Therefore,[...] the proof of genuine use of the contested mark had not been adduced for that equipment.”*

Although the decision is based on Article 65(6) of Regulation 207/2009 and the finding that the Board of Appeal did not comply with the “operative” part of the judgment nor the reasoning of the General Court which led to it, the main issue highlighted in this decision concerns the requirement of clarity in the description of goods. The General Court confirmed that narrow descriptions result in certainty for the rights claimed.

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