

MODEL COURTS OF JUSTICE 2019**COURTS OF JUSTICE OF THE EUROPEAN UNION****GENERAL COURT****HANDBOOK****THE CASE OF *REID V. EUROPEAN UNION INTELLECTUAL PROPERTY
OFFICE BOARDS OF APPEAL*****A. PROCEDURAL STAGE**

“The General Court shall exercise at first instance jurisdiction in disputes between the Union and its servants as referred to in Article 270 of the Treaty on the Functioning of the European Union, including disputes between all institutions, bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union.”

Article 50a of the Statute of the Court of Justice of the European Union

During Model Courts of Justice 2019, the Court of Justice of the European Union (General Court) shall be simulated. The Secretariat decided on the following clause in order to create a simulation atmosphere for the discussion of the cases.

Any challenges against the jurisdiction of the Court or the admissibility of the case shall be overruled by the Secretariat. Parties to the case are expected to acknowledge the jurisdiction of the Court. Thus, the jurisdiction of the Court shall be established pursuant to Article 50a of the Statute of the Courts of Justice of the European Union.

B. COMPOSITION OF THE COURT

The Courts of Justice of the European Union shall be composed of the President, Vice-President, Registrar, Judges, Applicants, Defendants and chambers

C. WRITTEN PROCEEDINGS: MEMORIAL & COUNTER-MEMORIAL

1. Remarks

Written Proceedings starts with the submission of the Memorial of the Applicant to the Secretariat via cjeu@modelcj.org The Secretariat shall then send it to the Defendant who is expected to write and submit a Counter-Memorial in accordance with Article 50a of the Rules of the Court. Detailed information regarding the deadlines shall be duly announced by the responsible Under-Secretary-General.

A memorial is a pleading that is submitted by the Applicant which contains a statement of the relevant facts and law and the submission; on the other hand, a counter-memorial is also a pleading that is submitted by the Defendant which contains an admission or denial of the facts which is stated in the memorial, additional facts, a statement of law in answer, (if deemed necessary) observation the statement of law in the memorial, and lastly the submission.

In the Model Courts of Justice, the procedure of replies will not be applied. A Memorial and a Counter-Memorial differs by the content. However, the form of pleadings is essentially the same.

a. Sample Memorial/Counter-Memorial:

Reid v. EUIPO Board of Appeals

MEMORIAL OF REID / COUNTER-MEMORIAL OF EUIPO BOARDS OF APPEAL

INTRODUCTION

A brief summary of the dispute will be given in this section. References to key developments of the dispute would be appreciated.

JURISDICTION

Both parties are expected to state their acceptance of the Jurisdiction of the Court here. Challenges will be overruled at this stage.

The Applicant is expected to apply to the Court by virtue the Statute of the Court of Justice of the European Union indicating the dispute and the Defendant.

All in all, the Model Courts of Justice 2019 Secretariat, adopts establishment on forum prorogatum basis.

FACTS

Facts that are found relevant to the case will be mentioned in this section. These facts may be related to political and historical issues. Bear in mind that this section will compose the factual bases of legal arguments. Defendants may challenge what is provided and propose their own claims. While preparing the statement of facts part of the Memorial/ Counter-Memorial, the best way is the inclusion of the facts which have relevance with the case before the Court.

APPLICABLE LAW

In this part, the legal basis for official claims regarding the cases will be given. You may refer to bilateral treaties, conventions, customary law, principles of law, relevant domestic law, case-law of the Courts of Justice of the European Union and CJEU General Court, legal literature by scholars or international organizations. Statute of the Courts of Justice of the European Union would lead you in basing your legal claims. This is the legal reflection of the previous section. Defendants may challenge what is provided and propose their own claims.

CLAIMS

In this section, parties are expected to make a synthesis of the facts and applicable law and, finally, state their official claims. The facts will be explained with the law. Defendants may challenge what is provided and propose their own claims.

SUBMISSION

A submission contains the request of the parties from the Court to act and decide in their favour; parties to the case should briefly describe what conclusion they hope the Court will reach. Applicants usually seek a declaration of the rights or duties they think exists between disputing parties, or ask the Court to direct the Defendant to reinstate the justice. They may ask the Court to render or a Verdict that orders a compensation to be paid by the Defendant, while Defendants requests dismissal of the case or seek counter relief against the Applicant.

Submitted respectfully, on behalf of Reid/EUIPO Board of Appeals

by (names of the advocates)

D. ORAL PROCEEDINGS

Parties are expected to submit material evidence before the Court. The Secretariat shall ensure that all of the Judges and the Opposing Party receive a copy of the materials during the Conference. In order to ensure this procedure, **the Advocates are expected to hand-in their materials which will be presented, to the Secretariat, before the Conference.** Detailed information regarding the deadlines shall be duly announced by the responsible Under Secretary-General. Such materials may include **maps, or any other visuals (videos and the like)** that would aid the presentation of the case.

The Secretariat allows the Judges to call upon a legal experts before the Court. Legal Experts will be responsible for their statements during Oral Proceedings. Detailed profiles of the Legal Experts will be given by the Secretariat.

1. JUDGES AND THE REGISTRAR

a. Remarks for Preparation to Oral Proceedings

The Secretariat finds the objectivity of the Judges towards the case to be very important. Therefore Judges are recommended to read the Study Guide carefully. Within due time before

the Conference, the Secretariat will provide all of the Judges the Memorial and the Counter-Memorial. For judges, doing extra readings on the sources of law mentioned in the Study Guide, the Memorial or the Counter-Memorial would be in your benefit.

All in all, the Judges are expected to evaluate evidence material, obtain witness testimonies, listen to and thoroughly question Parties **and then** come to a conclusion on the prospective Verdict. In other words, as opposed to Advocates who need to make a strong preparation before the Conference; **the Judges have to save their full concentration to the sessions.**

The Registrar shall take copious notes of the sessions. He/she needs to be careful in this mission; as, in case any of the Judges misremember the testimonies of Witnesses or speeches of the Parties, the truth shall lie in the Report. By also taking the oaths of all Members and Witnesses, the Registrar's role is to ensure the credibility of the Oral Proceedings. The Registrar is therefore asked to read the Study Guide, the Memorial and the Counter-Memorial carefully; in order not to confuse terms and names in the Report. The Report shall be the basis of Sections II and III of the Verdict, while also aiding the precise reflection of the Deliberations.

b. Sample Verdict

COURTS OF JUSTICE OF THE EUROPEAN UNION-GENERAL COURT

Date of the Verdict

Judgement of the General Court on the case of

Reid v. EUIPO Board of Appeals

In case concerning the windshield design of "KineX4" model vehicle:

Reid is represented by agents (names of the Advocates);

v

EUIPO Board of Appeals represented by agents (names of the Advocates).

I. BACKGROUND TO THE DISPUTE

Under this chapter, a brief summary of the case and dispute should be written, previous developments regarding the case such as the date and the institution of proceedings before the Court should be mentioned. Brief information about the geography would be appreciated.

II. SUBMISSIONS OF THE APPLICANT PARTY

This section will be a summary of the Applicant's Memorial, Evidence Material and Statement of Legal Expert. The focus shall be the submission of the Applicant.

III. SUBMISSIONS OF THE DEFENDANT PARTY

This section will be a summary of the Defendant's Memorial, Evidence Material and Statement of Legal Expert. The focus shall be the submission of the Defendant.

IV. STATEMENT OF FACTS

● STIPULATIONS

If there was a stipulation made by the state parties during the stipulation phase, judges need to specify it in their verdicts, so as to go as follows:

“The Stipulation concluded by the parties of the dispute on (date of submission of the stipulation) reads as;”

● COURT'S FINDINGS

The evidence presented and the witness testimonies that form the material ground of the verdict will be indicated here. The Court is free to disregard any piece of evidence or testimony; the reasons shall be given in this section.

V. APPLIED LAW

Since the legal grounds are crucially important for the decision, the Court must determine the applicable law. Any legal ground within the domestic law of the member states and regulations of European Union according to the Statute of the CJEU applied by the Court shall be summarized in this section. If the Court decides to disregard a source of law presented by Parties, the reasons shall be indicated here.

VI. DECISION

This section makes a synthesis of the Facts and Applied Law and gives the final decision of the Court on the dispute. This section constitutes the core of the Verdict. This part is expected to be detailed and to continue with the phrase “the Court considers that” followed by an explanation thereby. After the Court comes to a conclusion, it needs a phrase before stating the decision such as “The Court concludes that,” should be written at the beginning of the main decision as a commencement phrase and the rest of the decision should be clear, and expected to be a whole sentence. If there is more than one decision, any other one should also be in the same format except the beginning since it is sort of an oppositional decision to the first. The final decision shall be in its traditional format;

For these reasons,

Courts of Justice of the European Union-General Court, with

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously)

1. Finds

JUDGES(Specify the President or Vice-President) (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

2. Decides

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

3. Rejects

DISSENTING OPINION OF JUDGE 1

If there are Judges in the minority, disagreeing with the Court; he/she may write a dissenting opinion. The dissent should cover Sections IV, V and VI from the Judge's perspective.

CONCURRING OPINION OF JUDGE 2

If there are Judges in the majority; who have arrived to the same conclusion with the majority but on different grounds; he/she might write a concurring opinion.

DECLARATION OF JUDGE 3

The Judges in the majority may make a declaration on how they assume the Verdict should be perceived and what should be kept in mind in the meantime; may write a declaration.

REMINDER FOR ALL PARTICIPANTS

Participants of Model Courts of Justice 2019 are kindly reminded that plagiarism in the Memorials or the Verdict shall not be tolerated by the Secretariat.

Parties are recommended the Oxford Referencing System in their submissions. Yet, the Secretariat is comfortable with any other method that is found to be more efficient by the participants as long as the Memorial is consistent in itself. A bibliography shall be appreciated.

As for evidence material, the sources must be shown in order not to face an objection of immaterial by the opposing Party or to eliminate the risk of the Judges to disregard the evidence. Participants are asked to keep in mind that fictional evidence that is not included as a fact in the Study Guide will be inadmissible.

The Secretariat is fully aware of the fact that the Verdict writing process in the Conference can be stressful. Therefore the Secretariat shall not seek a list of references. The evidence materials need not be referenced; yet a clear indication that those segments belong to the presented cases is necessary. The Court must give references to case-law and is recommended the Oxford Referencing System. Yet, the Secretariat is comfortable with any other method that is found to be more efficient by the participants as long as the Verdict is consistent in itself.