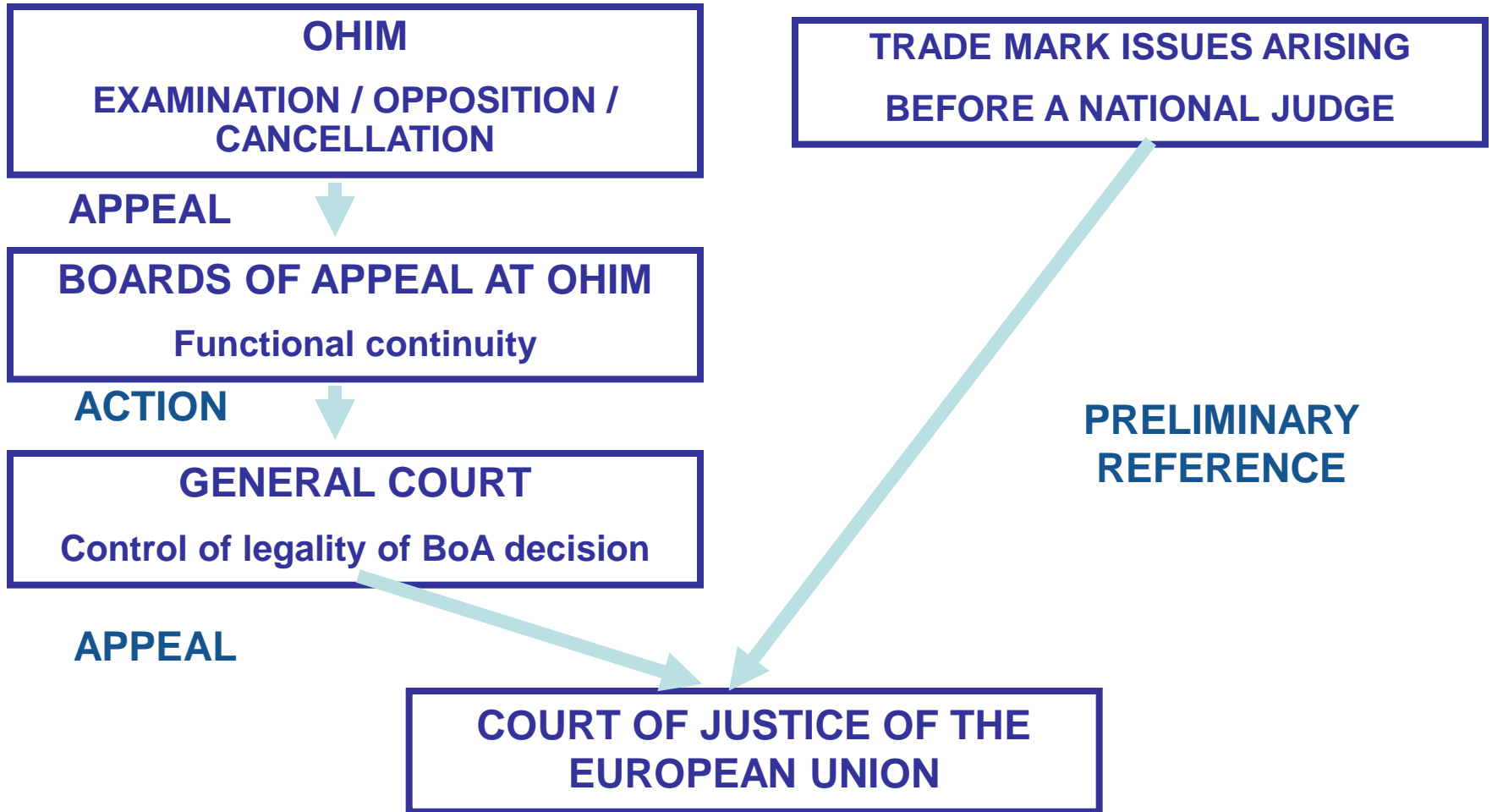




# CJ – When your case gets up!

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## The origin of particularities

**Article 136 CTMR: Independence of the members of the Boards of Appeal:**

**Members of BoA are not bound by any instructions**

**Members of BoA may not be part of ED, OD, ATM, LD, CD**

**Article 133 (2) Rules of Procedure GC**

**The application shall be served on the Office, as defendant, and on the parties to the proceedings before the BoA other than the applicant.**

## Who are the real parties?

- “Extended EPO model” leads to switch of roles in particular in inter partes proceedings. OHIM switches from quasi-judge to respondent.
- May the Office act as amicus curiae?

**Attention:** Office cannot reach a friendly settlement because it would undermine the independence of the BoA. However, the Office is not obliged to defend the decision of the BoA (see CFI judgments T-107/02 Biomate, T-379/03 Cloppenburg and T-209/10 Deutscher Ring).

## A special form of intervention

- The parties to the proceedings before the BoA other than the applicant may participate as interveners.
- The interveners have the same procedural rights as the main parties (Article 134 versus Article 115 of the Rules of Procedure); however, no accumulation of different types of intervention (see T-143/11).
- Does this principle also apply to successors in title (see T-569/11)? And in appeal proceedings before the CJ?

Attention: Costs of the proceedings can be imposed on an intervener (contrary to Article 87 (2) Rules of Procedure).

## Application for alteration Article 65(3) CTMR

### A complicated head of claim:

- Jurisdiction of the Court to alter decisions operates to the effect that the Court adopts the decision which the Board of Appeal ought to have taken (cf. Order in Case T-285/08 Natur-Aktien-Index): compatible with Article 261 TFEU?
- BoA does not have jurisdiction to hear and determine an application that it register a Community trade mark. Nor is it for the Court to hear and determine an application for alteration which requests that it amend the decision of a Board of Appeal to that effect (see T-569/10). In the context of appeals brought against decisions of the Opposition Division, a Board of Appeal can be called on to rule only on the outcome of any opposition to an application.

## Scope of judicial review

### Article 135 (4) of the Rules of Proceedings.

- The parties' pleadings may not change the subject-matter of the proceedings before the BoA.
- The Court does not review new factual submissions which the BoA had no opportunity to examine (cf. T-188/04 form of a bottle); exception: T-57/03 Hooligan/Olly Gan and T-36/07 Zipcar/Cicar (“examples of points contained in decision and common knowledge”)
- The Court may not annul or alter the decision against which an action has been brought on grounds which came into existence subsequent to its adoption (Case C-416/04 P Sunrider v OHIM).
- Limitation of the list of goods and services will not be taken into consideration (unless to be interpreted as partial withdrawal, cf. T-130/09 eliza/elise)

## Discontinuance of proceedings

- **Withdrawal of the application/opposition following a friendly settlement during the Court proceedings**
- **Two procedural options:**
  - **Withdrawal of the application (discontinuance Article 99 Rules of Procedure) or**
  - **Declaration that the Action has become devoid of purpose (Article 113 Rules of Procedure).**
- > **Consequences for decision on costs.**
- > **Impact on the legal existence of the Board of Appeal decision/GC judgment?**



**And finally:**

**Never forget to sign!**

**CJ: C-426/10 P, WATCH: The failure to submit the signed original of the application is not one of the defects capable of being regularised under Article 44(6) of the Rules of Procedure.**



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**Thank You for your Attention!**