Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

25 June 2020*

(Plant variety rights — Application for amendment of the date of expiry of the Community protection of plant variety rights in respect of the Siberia variety of the species *Lilium L.* — Appeal before the Board of Appeal of the CPVO — Inadmissibility — Obligation to state reasons — Article 75 of Regulation (EC) No 2100/94 — Effective judicial protection — Article 67(1) and Article 87 of Regulation No 2100/94 — Correction of patent mistakes — Article 53(4) of Regulation (EC) No 874/2009)

In Case T-737/18,

Siberia Oriental BV, established in 't Zand (Netherlands), represented by T. Overdijk, lawyer,

applicant,

v

Community Plant Variety Office (CPVO), represented by M. Ekvad, F. Mattina and O. Lamberti, acting as Agents,

defendant,

ACTION brought against the decision of the Board of Appeal of the CPVO of 15 October 2018 (Case A 009/2017), concerning an application for amendment of the date of expiry of Community protection of plant variety rights in respect of the Siberia variety of the species *Lilium L.*,

THE GENERAL COURT (Sixth Chamber),

composed of A. Marcoulli, President, C. Iliopoulos (Rapporteur) and R. Norkus, Judges,

Registrar: A. Juhász-Tóth, Administrator,

having regard to the application lodged at the Registry of the General Court on 17 December 2018,

having regard to the response lodged at the Court Registry on 1 April 2019,

further to the hearing on 23 January 2020,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 On 28 July 1995, the applicant, Siberia Oriental BV, applied to the Community Plant Variety Office (CPVO) for a Community plant variety right pursuant to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1). That application was registered under number 1995/0101.

2 The plant variety right for which Community protection was sought is the Siberia variety of the species *Lilium L.*

3 In its application for a Community plant variety right, the applicant stated that that variety had been sold for the first time on the territory of the European Union in January 1993. The first certificate of plant variety protection was issued on 8 April 1993 in the Netherlands, before Regulation No 2100/94 entered into force.

4 In its decision of 2 August 1996 ('the decision granting a plant variety right'), the CPVO granted a Community plant variety right for the variety 'Siberia', and set the date of expiry thereof at 1 February 2018. That expiry date was entered on the Register of Applications for Community Plant Variety Rights ('the Register') referred to in Article 87 of Regulation No 2100/94.

5 By email of 24 October 2011, the applicant requested that the CPVO provide clarifications as to the method that it had adopted in 1996 to calculate the duration of the Community plant variety right in respect of the Siberia variety. By email sent the next day, the CPVO supplied the applicant with the information requested.

6 From 2015 to 2017, the CPVO and the applicant continued their exchanges with regard to the calculation method for the duration of the plant variety right in respect of the Siberia variety.

7 On 24 August 2017, the applicant reiterated its view that the duration of the plant variety right in respect of the Siberia variety ought to have been calculated, first, on the basis of Article 19 of Regulation No 2100/94. Furthermore, according to the applicant, the CPVO ought, next, to have reduced the duration of the plant variety right in accordance with Article 116(4) of that regulation, by deducting the period between the time when the Siberia variety was first placed on the market and the entry into force of that regulation. Accordingly, the applicant requested that the CPVO amend the date of expiry of the plant variety right granted for the Siberia variety by replacing the date of 1 February 2018 with that of 30 April 2020.

8 In its decision of 23 October 2017, the CPVO declared inadmissible the application for amendment of the date of expiry of the plant variety right entered on the Register in respect of the Siberia variety. It considered, first, that the two-month time limit for bringing an appeal against the decision, provided for in Article 69 of Regulation No 2100/94, had already expired. It found, second, that Article 53(4) and (5) of Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation No 2100/94 as regards proceedings before the CPVO (OJ 2009 L 251, p. 3) did not apply in the case in point in so far as the decision of the CPVO was not vitiated by any linguistic errors, errors of transcription and patent mistakes. The CPVO held, third, that there was no legal basis for amending the date of entry of the Community plant variety right in the Register.

9 On 23 November 2017, on the basis of Article 67 of Regulation No 2100/94, the applicant brought an appeal before the Board of Appeal of the CPVO against the decision of 23 October 2017. That appeal also comprised an application for interlocutory revision in accordance with Article 70 of Regulation No 2100/94.

10 By decision of 8 December 2017, the CPVO refused the application for interlocutory revision under Article 70 of Regulation No 2100/94.

11 The oral proceedings before the Board of Appeal were held on 24 September 2018. At the hearing, the applicant claimed, inter alia, that its appeal was admissible in so far as it was based on Articles 67 and 87 of Regulation No 2100/94. As the legal basis of its appeal, the applicant also relied on Article 53(4) of Regulation No 874/2009 and the CPVO's obligation to correct, of its own motion, any mistakes contained in the Register.

12 By decision of 15 October 2018 ('the contested decision'), the Board of Appeal of the CPVO dismissed the appeal as inadmissible.

13 In the first place, the Board of Appeal found that the appeal could not be based on Article 67 of Regulation No 2100/94, read in conjunction with Article 87 thereof, as, in its view, those provisions relate to the initial entry in the Register of the date of expiry of the Community plant variety right granted and not to the amendment of that entry.

14 In the second place, it found that nor could the appeal be based on Article 53(4) of Regulation No 874/2009. According to the Board of Appeal, the decision of the CPVO of 23 October 2017, whereby it rejected the application for amendment of the date of expiry, is not a decision open to appeal pursuant to Article 67(1) of Regulation No 2100/94. It is not, in particular, a decision relating to the entry or deletion of data on the Register, within the meaning of Article 87 of Regulation No 2100/94. The Board of Appeal stated that the same applied to the alleged refusal of the CPVO to exercise its power to correct, of its own motion, any mistakes in the Register.

15 In the third place, the Board of Appeal, endorsing the grounds of the decision of 23 October 2017, stated that a supposed error in the calculation of the date of expiry of the Community plant variety right cannot be considered a patent mistake, within the meaning of Article 53(4) of Regulation No 874/2009. It added that the fourth indent of Article 116(4) of Regulation No 2100/94 could, prima facie, be interpreted in several ways.

16 In the fourth and last place, the Board of Appeal found that the appeal was inadmissible on the ground that it had been lodged after the expiry of the two-month time limit laid down in Article 69 of Regulation No 2100/94. Having found the appeal to be inadmissible, the Board of Appeal did not rule on the interpretation of Article 116 of Regulation No 2100/94.

Forms of order sought

17 The applicant claims that the Court should:

– annul the contested decision;

– order the CPVO to enter the date of 30 April 2020 in the Register instead of the date of expiry currently set out therein.

18 The CPVO contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs incurred by the CPVO.

Law

Admissibility

Admissibility of the applicant's second head of claim

19 In its second head of claim, the applicant is asking the Court to order the CPVO to enter the date of 30 April 2020 in the Register instead of the date of expiry currently set out therein.

20 In its defence, the CPVO argues that this second head of claim is inadmissible.

21 It is settled case-law that, in an action brought before the Courts of the European Union against the decision of the Board of Appeal of the CPVO, the CPVO is required, under Article 73(6) of Regulation No 2100/94, to take the measures necessary to comply with judgments of those Courts. Accordingly, it is not for the General Court to issue directions to the CPVO, but for the CPVO to draw the appropriate inferences from the operative part and grounds of the judgments of the EU Courts (see, to that effect, judgment of 5 February 2019, *Mema* v *CPVO (Braeburn 78 (11078))*, T-177/16, EU:T:2019:57, paragraph 29; see also, by analogy, judgment of 11 July 2011, *El Corte Inglés* v *OHIM — Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)*, T-443/05, EU:T:2007:219, paragraph 20 and the case-law cited).

22 Accordingly, the second head of claim is inadmissible, in that it seeks a decision from the Court ordering the CPVO to amend the date of expiry of the Community plant variety right for the Siberia variety as currently set out in the Register.

Admissibility of the references made to arguments submitted before the bodies of the CPVO

23 The CPVO contends that the applicant's general references to the claims and pleadings submitted during the oral proceedings before the Board of Appeal of the CPVO are inadmissible.

24 In that connection, as regards the reference, in paragraph 5.24 of the application, to specific points in the observations submitted by the applicant during the administrative procedure before the CPVO — which it failed to produce as annexes to the application — it is appropriate to reject the arguments thus referred to as inadmissible.

25 Under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that Statute, as well as under Article 177(1)(d) of the Rules of Procedure of the General Court, all applications initiating proceedings are to include, inter alia, a summary of the pleas raised. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the General Court to decide the case. The same considerations also apply to all claims, which must be accompanied by pleas and arguments enabling both the defendant and the Court to assess their validity. Thus, the essential elements of fact and of law on which the action is based must be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents cannot make up for the absence of the essential arguments in law, which must appear in the application. Similar requirements apply where a claim or an argument is relied on in support of a plea in law (see judgment of 11 April 2019, *Fomanu* v *EUIPO — Fujifilm Imaging Germany (Representation of a*

butterfly), T-323/18, not published, EU:T:2019:243, paragraph 17 and the case-law cited). Furthermore, it is not for the Court to take on the role of the parties by seeking to identify the relevant material in the documents to which they refer (see judgment of 9 March 2018, *Recordati Orphan Drugs* v *EUIPO — Laboratorios Normon (NORMOSANG)*, T-103/17, not published, EU:T:2018:126, paragraph 24 and the case-law cited).

26 In the present case, in paragraph 5.24 of the application, the applicant merely refers to 'Notice of Appeal of 23 November 2017 (paragraph 4.4 which deals with the merits of the case) as well as the hearing/pleading notes submitted at the hearing of 24 September, 2018 (paragraphs 3 and 4)' and claims that the arguments put forward in the proceedings before the Board of Appeal of the CPVO must also be considered as forming part of the arguments developed in the context of the present action. However, apart from the fact that the pleading and the hearing/pleading notes to which the applicant refers were not annexed to the application, the reference made cannot remedy the absence of the essential elements of the legal arguments which must be included in the application.

27 It follows from the foregoing that the reference, in paragraph 5.24 of the application, to arguments contained in documents submitted by the applicant in the course of the administrative procedure before the CPVO is not admissible in the present action.

Substance

28 In support of its action, the applicant relies on two pleas in law, alleging, first, infringement of essential procedural requirements due, in essence, to a failure to state reasons and, second, infringement of Regulation No 2100/94 or of any rule of law relating to its application, including the EU Treaty and the FEU Treaty. The applicant submits, in particular, that its action before the Board of Appeal was admissible.

29 It is appropriate to examine the second plea first, followed by the first plea.

The second plea in law, alleging that the Board of Appeal of the CPVO erred in law in declaring the action before it inadmissible.

30 The second plea is divided into two parts, by which the applicant challenges the CPVO's finding that the appeal is inadmissible.

– The first part of the second plea in law, alleging, in essence, infringement of Article 67 of Regulation No 2100/94, read in conjunction with Article 87 thereof, and a limitation of the remedies available to holders of Community plant variety rights against patent mistakes

31 The applicant submits that the Board of Appeal erred in considering that the action could not be based on Article 67 of Regulation No 2100/94, read in conjunction with Article 87 thereof, since, according to the Board of Appeal, those provisions relate to the initial entry in the Register of the date of expiry of the Community plant variety right granted and not to the amendment of such an entry. The applicant claims that, in its reasoning, the Board of Appeal makes an artificial distinction between the initial entry of the expiry date of the Community plant variety right and the amendment of such an entry.

32 In the view of the applicant, the decision refusing the application to correct the expiry date of the Community plant variety right as currently set out in the Register clearly falls within the scope of 'the entering or deletion of information in the Register' within the meaning of Article 87 of Regulation

No 2100/94. In the applicant's submission, the contested decision results in an unjust restriction of the remedies available to Community plant variety right holders against patent mistakes made when entering information in the Register.

33 The CPVO disputes the applicant's arguments.

34 It must be recalled that legal certainty is one of a number of general principles recognised by EU law. The definitive nature of an administrative decision, which is acquired upon expiry of the reasonable time limits for legal remedies or by exhaustion of those remedies, contributes to that certainty and it follows that EU law does not require that an administrative body be, in principle, under an obligation to reopen an administrative decision which has become final (judgments of 13 January 2004, *Kühne & Heitz*, C-453/00, EU:C:2004:17, paragraph 24; of 12 February 2008, *Kempter*, C-2/06, EU:C:2008:78, paragraph 37; and of 4 October 2012, *Byankov*, C-249/11, EU:C:2012:608, paragraph 76). Moreover, the periods within which applications must be lodged are intended to safeguard legal certainty by preventing EU measures which involve legal effects from being called in question indefinitely (judgment of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 16).

35 In the present case, it must be noted that the remedies available and the periods within which an appeal may be brought are laid down in Regulation No 2100/94.

36 Indeed, Article 67(1) of Regulation No 2100/94 provides that 'an appeal shall lie from decisions of the [CPVO] which have been taken pursuant to Articles 20, 21, 59, 61, 62, 63 and 66, as well as on decisions related … to the entering or deletion of information in the Register pursuant to Article 87 …'.

37 Under Article 69 of Regulation No 2100/94, such an appeal must be lodged in writing 'within two months of the service of the decision where addressed to the appealing person, or, in the absence thereof, within two months of the publication of the decision …'.

38 In addition, under Article 87(2)(e) of Regulation No 2100/94, the CPVO keeps a register of Community plant variety rights which, after the grant of a Community plant variety right, shows, inter alia, the date on which the Community plant variety right begins and ends.

39 First, it follows from those factors that Article 67(1) of Regulation No 2100/94, read in the light of Article 87(2)(e) thereof, provides for an appeal only against decisions of the CPVO which, in the context of the grant of a Community plant variety right, set the date on which that right begins and ends. The decision of the CPVO contested before the Board of Appeal, which rejects the application for correction submitted by the applicant, is not covered by those provisions.

40 Second, it should be recalled that, by decision of 2 August 1996, the CPVO granted a Community plant variety right for the variety Siberia, setting the date of expiry of that protection at 1 February 2018. Next, it is common ground that the applicant was aware of the decision granting a plant variety right which set the contested expiry date and that it did not appeal within two months of being served with that decision. Both in paragraph 4.4 of its application and at the hearing before the Court, the applicant expressly acknowledged that it had not appealed within the period prescribed in Article 69 of Regulation No 2100/94. Although it could have challenged that decision under Article 67(1) of Regulation No 2100/94 (see, by analogy, judgment of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 24), it did not do so within the time limit applicable to the remedies which were made available to it under Regulation No 2100/94. The decision granting a plant variety right therefore became final upon expiry of the time limit prescribed (see, by analogy, judgment of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 13).

41 In that context, the applicant cannot be allowed to reopen the period for appeal by arguing that its application for correction of 24 August 2017 relates to 'the entering or deletion of information in the Register pursuant to Article 87 [of Regulation No 2100/94]'. To allow the applicant to bring an action under Article 67 of Regulation No 2100/94, read in conjunction with Article 87 thereof, after it has submitted an application for correction of the date of expiry of the Community plant variety right and the CPVO has rejected that application, would have the effect of undermining the definitive nature of the decision granting that right. Any holder of a Community plant variety right could circumvent the period for appeal laid down in Article 69 of Regulation No 2100/94 by applying after the expiry of that period, as did the applicant, for an amendment to the Register and by appealing against the CPVO's refusal decision. Such circumvention of the time limit for an appeal cannot be accepted (see, by analogy, judgment of 21 March 2014, *Yusef* v *Commission*, T-306/10, EU:T:2014:141, paragraphs 54 and 55).

42 Admittedly, it is settled case-law that the existence of new material facts may justify the submission of a request for re-examination of a decision which was not contested within time (see judgment of 21 March 2014, *Yusef* v *Commission*, T-306/10, EU:T:2014:141, paragraph 60 and the case-law cited). However, the applicant does not allege the existence of such new material facts which could support its application for amendment of the date of expiry of the Community plant variety right.

43 In that regard, the applicant cannot usefully argue that, several years after the decision granting a plant variety right, doubts arose as to the correctness of the expiry date. Nor does the information provided by the CPVO, at the applicant's request, on the calculation of the term of Community plant variety rights constitute new facts allowing the applicant, which failed to make timely use of the remedies made available to it under Regulation No 2100/94, to appeal against the CPVO's refusal to amend the contested date and thus to circumvent the time limit within which an appeal against the decision granting a plant variety right must be brought (see, by analogy, judgment of 14 June 2018, *Spagnolli and Others* v *Commission*, T-568/16 and T-599/16, EU:T:2018:347, paragraph 131).

44 Furthermore, the judgment of 20 December 2017, *Incyte* (C-492/16, EU:C:2017:995), relied on by the applicant in support of its position, does not invalidate the above findings. Indeed, in the case which gave rise to that judgment, the expiry date of a supplementary protection certificate granted for a medicinal product by a national body had proved to be incorrect, having regard to a subsequent judgment of the Court of Justice on a reference for a preliminary ruling (judgment of 20 December 2017, *Incyte*, C-492/16, EU:C:2017:995, paragraphs 23, 48 and 49). That means that, in that case, a new material fact had arisen, namely the judgment of the Court of Justice specifying the method of calculation of the duration of protection. That is not the case here and the case-law relied on by the applicant cannot therefore apply.

45 In the light of the foregoing, the first part of the second plea in law must be rejected as unfounded.

– Second part of the second plea, alleging, in essence, infringement of Article 53(4) of Regulation No 874/2009

46 According to the applicant, the Board of Appeal incorrectly held, in point II.A.3 of the contested decision, that the action could not be based on Article 53(4) of Regulation No 874/2009. In support of its position, the applicant puts forward a number of arguments.

47 In the first place, the applicant claims that the provision referred to establishes an obligation upon the CPVO to correct patent mistakes. Moreover, a refusal to do so by the CPVO is open to appeal under Article 67 of Regulation No 2100/94, since it concerns the entering or deletion of information in the Register in accordance with Article 87 of that regulation. According to the applicant, even if Article 67 of Regulation No 2100/94 were applied to the letter and such a decision were therefore not open to appeal, it must be possible to lodge an appeal under the general principle of EU law that 'any

person must be able to obtain effective judicial review of decisions which may infringe a right conferred by the Treaties', which must be deemed to include an instrument such as Regulation No 2100/94.

48 In the second place, the applicant submits that the amendment of the date of expiry of the Community plant variety right, as currently set out in the Register, is less likely to infringe the principle of legal certainty than more material amendments which may result from a review of a decision. In support of its argument, the appellant relies on the judgment of 20 December 2017, *Incyte* (C-492/16, EU:C:2017:995). In addition, it submits that the entry in the Register of essential information relating to Community plant variety rights of registered plant varieties is intended to create a reliable source of information and thus ensure the legal certainty necessary for the protection of the interests of third parties. Accordingly, a mistake in the Register should be corrected, regardless of the time that has passed since the mistake was made.

49 In the third place, the applicant submits that the correction of patent mistakes within the meaning of Article 53(4) of Regulation No 874/2009 should not be subject to any time limit. Regulation No 874/2009 does not contain any provisions in that regard. In support of its argument, the applicant relies on the judgment of the Raad van State (Council of State, Netherlands) of 18 February 2015 in the case between Syngenta and the Netherlands Patent Office. It notes that, in the case which gave rise to that judgment, the relevant provision of EU law in the applicable regulation did not provide for any time limit for the correction of an error and submits that the same applies to Article 53(4) of Regulation No 874/2009.

50 The CPVO disputes the applicant's arguments.

51 Without it even being necessary to rule on whether a decision of the CPVO under Article 53(4) of Regulation No 874/2009 is open to appeal under Article 67 of Regulation No 2100/94, the mistake alleged by the applicant must be deemed to fall outside the scope of Article 53(4) of Regulation No 874/2009.

52 Under Article 53(4) of Regulation No 874/2009, linguistic errors, errors of transcription and patent mistakes in decisions of the CPVO are to be corrected. It is apparent from that wording that the only legitimate purpose of corrections made on the basis of that provision is to correct spelling mistakes or grammatical errors, errors of transcription — such as errors relating to the names of the parties — or errors which are so obvious that nothing but the wording as corrected could have been intended (see, by analogy, judgment of 9 September 2011, *dm-drogerie markt* v *OHIM — Distribuciones Mylar (dm)*, T-36/09, EU:T:2011:449, paragraph 73).

53 In view of the importance of the binding nature of the operative part of a definitive decision made by a competent authority and in observance of the principle of legal certainty, the rule enabling, in exceptional circumstances, subsequent corrections to be made to such a decision is to be interpreted strictly. Accordingly, the concept of 'patent mistakes' is limited to obvious formal mistakes, such as clerical mistakes, whose incorrectness is clear from the body of the decision itself and which do not affect the scope and substance of the decision taken, as characterised by its operative part and its grounds. By contrast, the concept of 'patent mistakes', within the meaning of Article 53(4) of Regulation No 874/2009, cannot include errors vitiating the legality of the substance of the contested decision (see, by analogy, judgments of 14 December 2006, *Gagliardi* v *OHIM — Norma Lebensmittelfilialbetrieb (MANŪ MANU)*, T-392/04, not published, EU:T:2006:400, paragraph 55, and of 18 October 2011, *Reisenthel* v *OHIM — Dynamic Promotion (Hampers, crates and baskets)*, T-53/10, EU:T:2011:601, paragraph 35).

54 In the present case, the applicant seeks an amendment to the date of expiry of the Community plant variety right for the variety Siberia. However, such an amendment would affect the scope and substance of the decision granting a plant variety right which set the term of that protection. To make

such an amendment presupposes that it is first determined how Regulation No 2100/94 is to be interpreted, in particular its provisions relevant to the calculation of the term of protection. Moreover, the applicant and the CPVO could not agree on that interpretation, despite their correspondence over a period of a number of years. It follows that the applicant's application for amendment cannot be regarded as an application for correction of a linguistic error, an error of transcription or a patent mistake within the meaning of Article 53(4) of Regulation No 874/2009.

55 Since the conditions for the application of Article 53(4) of Regulation No 874/2009 are not met in the present case, the applicant's arguments that its action is admissible under that provision must be rejected.

56 In the light of the foregoing, the second part of the second plea in law must be rejected as unfounded and, accordingly, the second plea in law as a whole.

The first plea in law, alleging, in essence, breach of the obligation to state reasons, in that the Board of Appeal of the CPVO failed to reply to an argument put forward before it

57 The applicant submits, in essence, that the Board of Appeal of the CPVO failed to fulfil its obligation to state reasons since it did not examine the applicant's argument relating to the CPVO's obligation to correct, of its own motion, mistakes in the Register.

58 The CPVO disputes the applicant's arguments.

59 It must be borne in mind that, under Article 75 of Regulation No 2100/94, decisions of the CPVO are to be accompanied by statements of the grounds on which they are based. That obligation has the same scope as that laid down in Article 296 TFEU (see, to that effect, judgment of 5 February 2019, *Braeburn 78 (11078)*, T-177/16, EU:T:2019:57, paragraph 43). In accordance with settled case-law concerning Article 296 TFEU, the obligation to state reasons has the dual purpose of enabling interested parties to know the justification for the measure taken so as to be able to defend their rights and of enabling the Courts of the European Union to exercise their jurisdiction to review the legality of the decision (see, to that effect, judgments of 10 May 2012, *Rubinstein and L'Oréal* v *OHIM*, C-100/11 P, EU:C:2012:285, paragraph 111; of 30 June 2010, *Matratzen Concord* v *OHIM — Barranco Schnitzler (MATRATZEN CONCORD)*, T-351/08, not published, EU:T:2010:263, paragraph 17; and of 27 March 2014, *Intesa Sanpaolo* v *OHIM — equinet Bank (EQUITER)*, T-47/12, EU:T:2014:159, paragraph 24)

60 The obligation to state reasons may be satisfied without it being necessary expressly and exhaustively to address all the arguments raised by an applicant, provided that the CPVO has set out the facts and the legal considerations having decisive importance in the context of the decision (see judgment of 23 February 2018, *Schniga* v *CPVO (Gala Schnico)*, T-445/16, EU:T:2018:95, paragraph 28 (not published) and the case-law cited).

61 As is also clear from settled case-law, the requirement to state reasons must be assessed by reference to the circumstances of the case. It is not necessary for the reasoning to go into all of the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 150 and of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission*, C-131/15 P, EU:C:2016:989, paragraph 47).

62 In the present case, it is apparent from a reading of the contested decision that the Board of Appeal took the view that, assuming that the CPVO has the power to correct, of its own motion, mistakes in the Register, no appeal lies from a refusal to exercise that power, within the meaning of Article 67 of

Regulation No 2100/94. The Board of Appeal added that nor does such a refusal constitute a decision related to the entering or deletion of information in the Register pursuant to Article 87 of that regulation. It also concluded that Article 53(4) of Regulation No 874/2009 did not apply to such a case.

63 It follows that the Board of Appeal stated adequate grounds for its decision.

64 The first plea in law must therefore be rejected as unfounded and, in consequence, the action must be dismissed in its entirety.

Costs

65 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

66 Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the CPVO.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Siberia Oriental BV to bear its own costs and to pay the costs incurred by the Community Plant Variety Office (CPVO).**

Marcoulli Iliopoulos Norkus

Delivered in open court in Luxembourg on 25 June 2020.

E. Coulon
Registrar

S. Papasavvas
President