

Case T-159/97 R

Luis Manuel Chaves Fonseca Ferrão

v

Office for Harmonization in the Internal Market (trade marks and designs)

(Office for Harmonization in the Internal Market (trade marks and designs) —
Decision of the President of the Office concerning the organization of the
Boards of Appeal — Risk of harm in the event of delay — None)

Order of the President of the Court of First Instance, 19 June 1997 II - 1051

Summary of the Order

Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Meaning — Onus of proof
(EC Treaty, Art. 185; Rules of Procedure of the Court of First Instance, Art. 104(2); Council Regulation No 40/94)

The urgency of the adoption of interim measures must be considered by examining whether the implementation of the contested measures, prior to the adoption of the decision of the Community judicature on the main issue, is such as to give rise, for the

party requesting the measures, to serious and irreversible damage which could not be made good if the contested decision were annulled or which, despite its interim nature, would be disproportionate to the defendant's interest in having the measures implemented,

even when they are the subject of legal proceedings. It is for the applicant to prove that those conditions are satisfied.

by the contested decision for the members of the Boards of Appeal of the Office could have an adverse effect on their independence throughout the duration of their term of office, causing serious and irreparable damage.

An application for interim measures seeking suspension of the operation of a decision, adopted in connection with the implementation of Regulation No 40/94, whereby the President of the Office for Harmonization in the Internal Market (trade marks and designs) fixed the rules for the organization of the Boards of Appeal must be rejected where the applicant has failed to adduce any evidence to support his claims to the effect that the hierarchical subordination laid down

If there has been no act of the Office adopted pursuant to the contested decision which actually impairs the independence of the applicant and the applicant has not adduced any evidence which might demonstrate the existence of such a risk, suspension of the operation of the contested decision is not in any way a matter of urgency.