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EUROPEAN INTELLECTUAL PROPERTY CONSULTANCY

Right of in-house lawyers to litigate is curtailed

In a case that may have significant implications for European IP in-house lawyers, the General Court (GC) of the European Union in *Prezes Urzedu Komunikacji Elektronicznej ("UKE") v European Commission, Case T226/10* rejected an application from a Polish electronics communications company on the basis that it was made by one of its in-house lawyers.

The GC's decision is based on a perception that in-house lawyers are not as independent as those in private practice.

The decision from the General Court comes off the back of the earlier ruling by the higher Court of Justice of the European Union (CJEU) in *Akzo Nobel Case C-550/07* that legal professional privilege does not apply to in-house lawyers in anti-trust cases.

Also, in *EREF v Commission, Case C74/10*, a company director who was a lawyer was also refused a hearing.

TIERNEY IP recommends that companies contemplating proceedings before the courts of the European Union instruct external lawyers. Care must also be taken that strategic and sensitive legal advice is provided by external counsel to gain the protection of legal professional privilege.