

**DECISION
of the Fifth Board of Appeal
of 17 August 2026**

In case R 2411/2025-5

OpenAI OpCo, LLC

1455 3rd Street

94158 San Francisco

United States

EUTM Proprietor / Appellant

represented by Morgan, Lewis & Bockius LLP, 7 Rue Guimard, 1040 Brussels, Belgium

v

Century TAL Holding Pte. Ltd.

30 Cecil Street #19-08 Prudential Tower

049712 Singapore

Singapore

Invalidity Applicant / Defendant

represented by Bomhard Intellectual Property, S.L., Calle Bilbao 1, 5º, 03001 Alicante, Spain and Aurilex SELAS, 26 Avenue de la Grande Armée, 75017 Paris, France

APPEAL relating to Cancellation Proceedings No C 64 174 (European Union trade mark registration No 18 836 652)

THE FIFTH BOARD OF APPEAL

composed of V. Melgar (Chairperson), S. Rizzo (Rapporteur) and A. Pohlmann (Member)

Registrar: K. Zajfert

gives the following

Decision

Summary of the facts

- 1 By an application filed on 15 February 2023, OpenAI OpCo, LLC ('the EUTM proprietor' or 'the proprietor'), claiming priority of US trade mark application No 97 733 259, filed on 27 December 2022, sought to register the word mark

GPT

as a European Union trade mark (the 'EUTM') for the following list of goods and services:

Class 9: Downloadable computer programs and downloadable computer software for using language models; downloadable computer programs and downloadable computer software for the artificial production of human speech and text; downloadable computer programs and downloadable computer software for natural language processing, generation, understanding and analysis; downloadable computer programs and downloadable computer software for machine-learning based language and speech processing software; downloadable computer programs and downloadable computer software for the translation of text or speech from one language to another; downloadable computer programs and downloadable computer software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; downloadable computer programs and downloadable computer software for conversion of audio data files into text; downloadable computer programs and downloadable computer software for voice and speech recognition; downloadable computer programs and downloadable computer software for creating and generating text; downloadable computer programs and downloadable computer software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; downloadable computer programs and downloadable computer software for developing and implementing artificial neural networks.

Class 42: Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable software for the translation text or speech from one language to another; providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; providing online non-downloadable software for conversion of audio data files into text; providing online non-downloadable software for software for voice and speech recognition; providing online non-downloadable software for creating and generating text; providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze,

classify, and take actions in response to exposure to data; providing online non-downloadable software for developing and implementing artificial neural networks; application service provider featuring application programming interface (API) software; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.

- 2 The application was published on 14 April 2023 and the mark was registered on 22 July 2023.
- 3 On 11 February 2024, Century TAL Holding Pte. Ltd. ('the invalidity applicant' or 'the applicant'), filed a request for a declaration of invalidity of the registered mark for all the above goods and services.
- 4 The grounds of the request for a declaration of invalidity were those laid down in Article 59(1)(a) EUTMR in conjunction with Article 7(1)(b), (c) and (d) EUTMR.
- 5 By decision of 17 October 2025 ('the contested decision'), the Cancellation Division declared the contested EUTM invalid in its entirety.
- 6 It gave, in particular, the following grounds for its decision.

Summary of the parties' arguments

- The invalidity applicant argues that the trade mark 'GPT' is devoid of any distinctive character and is descriptive of characteristics of the goods and services. It argues that even if found that the mark 'GPT' was distinctive at the moment of filing, it has become customary in practice. It provides the meaning of the abbreviation GPT from dictionaries and explains that in trade practice, generative pre-trained transformers (GPT) are defined as 'a type of large language model ("LLM") with the ability to create human-like text and content (images, music, and more), and answer questions in a conversational manner. A user "feeds" the model with a sentence, and the transformer creates coherent paragraph-based information extracted from publicly available datasets. The technology can process any type of text, including guitar tabs or computer code'. It argues that in scientific literature, numerous scholars use 'GPT' as a generic term to designate generative pre-trained transformer technology and attaches evidence to substantiate this claim. It argues that all the registered goods and services are related to GPT (generative pre-trained transformer) technology based on large language software; therefore, the contested mark is descriptive of the characteristics of the registered goods and services since it indicates the kind of product or service offered by informing the public that the product or service functions on the basis of generative pre-trained transformer technology. Consequently, it is also devoid of any distinctive character and should be declared invalid. Finally, the applicant argues that – even assuming that the term 'GPT' should be considered as distinctive and non-descriptive – it has become a customary name in trade and designates any generative pre-trained technology, as shown by the literature and dictionary entries.

- To substantiate its claims, the applicant submits the following evidence.
 - Annex 1: an extract from the *Cambridge Advanced Learner's Dictionary & Thesaurus* (www.dictionary.cambridge.org) for the acronym 'GPT'. From this it can be seen that the word is 'an abbreviation for Generative Pretrained Transformer: a complex mathematical representation of text or other types of media that allows a computer to perform some tasks, such as interpreting and producing language, recognizing or creating images, and solving problems, in a way that seems similar to the way a human brain works':
 - GPT is a natural language system that can be used to answer questions, translate languages, and generate text in response to a prompt.
 - GPTs are not limited to natural language processing; you can use them for a variety of tasks depending on how you train the model.
 - One ethical concern is that GPT models can inadvertently generate offensive content.
 - Annex 2: an extract from Wikipedia, showing the entry for the wording 'Generative pre-trained transformer (GPT)'. It defines this as a type of large language model (LLM) and a prominent framework for generative artificial intelligence. According to the article, GPTs are based on the transformer architecture, pretrained on large data sets of unlabelled text, and able to generate novel human-like content. It states that, as of 2023, most LLMs have these characteristics and are sometimes referred to broadly as GPTs. It also states that the first GPT was introduced in 2018 by the EUTM proprietor but generative pre-training (GP) has been a long-established concept in machine-learning applications.
 - Annex 3: an undated printout from www.amazon.com, defining 'What is GPT?'. From this it can be seen that Generative Pre-trained Transformers, commonly known as GPTs, are a family of neural network models that use transformer architecture. They form a key advance in artificial intelligence (AI), powering generative AI applications such as ChatGPT. GPT models give applications the ability to create human-like text and content (images, music, and more), and answer questions in a conversational manner. Organisations across industries are using GPT models and generative AI for Q&A bots, text summarisation, content generation, and searches.
 - Annex 4: an undated printout from the website www.atelier.net, providing a description of 'generative pre-trained transformers'. It states that a GPT is a language model relying on deep learning that can generate human-like texts based on a given text-based input. According to the article, the user 'feeds' the model with a sentence, and the transformer creates coherent paragraph-based information extracted from publicly available datasets. The technology can process any type of text, including guitar tabs or computer code.
 - Annex 5: an article dated 15/08/2023, taken from the website www.sciencedirect.com and written by the author Spyros Kamnis, titled

‘Generative pre-trained transformers (GPT) for surface engineering’. The article was published in *Surface and Coatings Technology* and discusses the fact that the architecture of GPT models is based on the transformer introduced by Vaswani et al. in 2017. It further states that this architecture has become the foundation for many state-of-the-art Neuro-linguistic programming models.

- Annex 6: An article, dated 26/04/2020, written by several authors from the Center for Artificial Intelligence Research (CAiRE) and the Department of Electronic and Computer engineering (Hong Kong), titled ‘CAiRE: An Empathetic Neural Chatbot’. This mentions that a GPT (generative pre-trained transformer) is applied as their pre-trained language model. The article was published for the purposes of the 34th AAAI Conference on Artificial Intelligence (AAAI-20).
- Annex 7: An article written by M. J. (Singidunum University) and M. C. (employee of EVOTEK), titled ‘Generative Artificial Intelligence: Trends and Prospects’ and published in October 2022 by the IEEE Computer Society. The article contains a reference to an article published in 2020 which states that ‘GPT models generate text in different languages and can create human-sounding words, sentences and paragraphs on almost any topic and writing style from convincing news articles and essays to conversations in customer-service chatbots or characters in video games’. It states that GPTs have matured over several generations. It provides an example of a GPT model – namely the EUTM proprietor’s GPT-3.
- Annex 8: an article written by several authors employed at the Singapore Management University, titled ‘RecipeGPT: Generative Pre-training Based Cooking Recipe Generation and Evaluation System’ and published on 20/04/2020 by the US Association for Computing Machinery. The article discusses RecipeGPT, an online recipe generation and evaluation system comprising a generative pre-trained language model GPT-2, fine-tuned on a large cooking recipe dataset. It demonstrates the feasibility of generative pre-trained transformer (GPT) use in cooking recipe generation.
- Annex 9: an article written by several authors employed at universities, titled ‘NumGPT Improving Numeracy Ability of Generative Pre-trained Models’, (last revised on 13/10/2021), published in 2022 by the Association for the Advancement of Artificial Intelligence (www.aaai.org). This shows that pre-trained models (such as GPT) have made remarkable achievements in natural language processing. The article lists ‘GPT’ as an example of a baseline ‘generative pre-trained language model’ and presents ‘NumGPT’, a generative pre-trained model that explicitly models the numerical properties of numbers in texts. It also discusses the original ‘transformer’, a deep-learning architecture (proposed in 2014).
- Annex 10: an article written by several authors, titled ‘SymbolicGPT: A Generative Transformer Model for Symbolic Regression’, which was submitted on 27/06/2021. This mentions, inter alia, that ‘deep language models have made an enormous impact in the field of linguistics and natural language processing. With the advances in technology like Generative Pre-

trained Transformers, or GPT ...’. The article makes reference to other articles referring to generative pre-training, some of which date back to 2011, or at least 2018.

- Annex 11: official notification from the USPTO of 25/05/2023, regarding US application No 97733261 ‘CHATGPT’.
- The EUTM proprietor argues that the contested mark ‘GPT’ was distinctive at the time of filing and remains so today. It points out that the applicant in its Notice of Invalidity, only selected one ground for invalidity, namely Article 7(1)(c) EUTMR, and that it is not unequivocally clear that the Notice of Invalidity is also based on Article 7(1)(b) and (d) EUTMR. It states that the correct date for the assessment is 27 December 2022, which is the priority filing date from the US filing date. Furthermore, the fact that the ‘GPT’ mark became a common term used in trade for the goods and services is, in principle, irrelevant for the purposes of the invalidity action at issue. With regards to the relevant public, it states that the relevant goods and services belong to a highly specialised market sector. According to the EUTM proprietor, the relevant public is mainly composed of professionals, which require a higher level of attention and knowledge. It submits that the relevant public is the English-speaking consumer of the European Union. It disagrees that ‘GPT’ would be perceived as descriptive since in the present case there is no direct and specific relationship between the mark ‘GPT’ and the relevant goods and services. It argues that for an abbreviation to have a descriptive meaning, it is not sufficient that the term for which the abbreviation (in this case ‘generative pre-trained transformer’) is used descriptively. What must be shown is that the abbreviation itself is perceived as directly designating a characteristic of the goods or services in question. The only correct test is whether there is a sufficiently direct and specific link in the eyes of the relevant public between the mark ‘GPT’ and the relevant goods and services covered by the registration. The EUTM proprietor considers that, at the relevant date, the relevant public would not immediately perceive the term ‘GPT’ to have a direct and specific meaning in relation to the goods and services covered by the registration. Moreover, the applicant has failed to provide any convincing evidence to the contrary. The evidence submitted by the applicant is either dated outside of the relevant date or is plainly undated and therefore inadmissible due to lack of certainty and relevance. Therefore, according to the EUTM proprietor, the term ‘GPT’ is not sufficiently clear to allow a direct description of the characteristics of the goods and services in question. It further states that ‘GPT’ has several meanings – which could all be used in relation to the goods and services in Classes 9 and 42 – and is not a standard abbreviation for ‘generative pre-trained transformer’. The relevant public would not directly understand ‘GPT’ as meaning generative pre-trained transformer since this term indicates a very specific large language model, likely to be known to a very limited circle of professionals. The applicant did not prove that the acronym ‘GPT’ is used as an abbreviation for ‘generic pre-trained transformer’ and is understood accordingly by the relevant public, when used on a stand-alone basis. The words ‘generative pre-trained transformer’ do not appear within the registration, so the relevant public is not informed of its meaning. The EUTM proprietor concludes that the combination of the three letters ‘G’, ‘P’ and ‘T’ is an unusual construction and has no pre-defined meaning. Therefore, the

contested mark must be deemed inherently distinctive. This can also be seen in the fact that the proprietor's company was the first company to use 'GPT' in connection with artificial intelligence software and related services in Classes 9 and 45. In fact, it has been using the term 'GPT' since at least June 2018 and was the first to do so. The proprietor argues that the mark is also not devoid of any distinctive character. Finally, the EUTM proprietor argues that the applicant has advanced no legal submissions or arguments in support of its claim that the 'GPT' mark was customary in the course of trade at the relevant date. It argues that it has done everything in its power to prevent its 'GPT' mark from becoming generic and being used by third parties.

- The EUTM proprietor submits the following evidence:
 - Annex A: a printout from the EUIPO website, showing the priority date of the contested 'GPT' registration;
 - Annex B: an article titled 'Improving Language Understanding by Generative Pre-training', written by the OpenAI employee Mr. Alec Radford and other colleagues and published on the OpenAI website on 11/06/2018;
 - Annex C: a table of successful and ongoing opposition actions filed by OpenAI against third-party marks featuring the 'GPT' element and covering Classes 9, 42, or similar classes;
 - Annex D: the OpenAI Customer Brand Guidelines, mentioning that the use of 'GPT' in product or app names is not permitted;
 - Annex E: a letter, dated 08/07/2024, sent to the *Cambridge Dictionary* requesting that the 'GPT' entry be removed or, alternatively, that they include a (trade mark) logo to make it clear that it is a registered trade mark;
 - Annex F: a screenshot from the internet archive Wayback Machine (from 24/07/2023), showing the 'GPT' dictionary entry from the *Cambridge Dictionary* referencing OpenAI.
- In its reply, the invalidity applicant states that, even at the priority date (27 December 2022), the contested mark did not fulfil the conditions for registration in terms of Article 7(1)(b), (c) and (d) EUTMR. It argues that the US priority application (No 97 733 259) was refused by the USPTO for lack of distinctiveness and descriptiveness. It argues that since the contested mark is an abbreviation for 'generative pre-trained transformer', the relevant public will be the English-speaking public in the EU. It repeats that the relevant goods and services target both the general and professional publics in the relevant fields and the level of attention of the public for these goods and services varies from average to above average. It argues that, in any event, the fact that the relevant public can be a specialist one, and that its degree of attention is above average, cannot decisively influence the legal criteria used to assess the distinctive character of a sign. With regards to the EUTM proprietor's argument that the abbreviation has several meanings, it argues that in accordance with the settled case-law, the existence of the other possible meanings of the acronym does not

prejudice its descriptiveness as it is sufficient that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned. As the sign ‘GPT’ has at least the meaning of ‘generative pre-trained transformer’, which refers to the characteristics of an AI-based computer software and related services, it falls within the scope of Article 7(1)(c) EUTMR. It argues that the term ‘GPT’ has been used long before the priority date of the contested mark in scientific literature, being understood by professionals as ‘generative pre-trained transformer’. Moreover, because of the widely used tools, the abbreviation ‘GPT’ is also well known by the general public as referring to AI-based software and services. The applicant provides the dictionary definition of the abbreviation and argues that the meaning of ‘GPT’ was already known to the public at the relevant date. It states that, although the definition of ‘GPT’ found via the Wayback Machine only goes back to 23 July 2023, it is possible that earlier versions of the definition existed but are no longer available on the Wayback Machine. It states that the mere fact that the dictionary definition was published after the relevant date cannot exclude the evidence, because a definition is usually recorded much later than the time of the beginning of use of the term. Furthermore, the applicant states that other online dictionaries also contain the definition of ‘GPT’ as ‘generative pre-trained transformer’, which appeared before the priority date of the contested mark (i.e. some as early as 2015). As a result, the term ‘GPT’ is defined as ‘generative pre-trained transformer’ in the dictionaries. The applicant further argues that generative pre-trained transformers (GPT) are also defined as a type of large language model (‘LLM’) and a prominent framework for generative artificial intelligence in trade practice. Regardless of whether the first ‘GPT’ model was introduced on the market to the general public by the EUTM proprietor, the term ‘GPT’ is not monopolised by it and refers to a category of LLM used by many AI companies. In the relevant scientific and industrial literature, the term ‘GPT’ is widely used by professionals in the computer and AI industry to describe generative pre-trained transformers both long before the priority date of the contested mark and thereafter. The applicant provides examples of this use. It repeats that ‘GPT’ is a term widely used in the AI industry to describe a category of AI model. Any model based on artificial intelligence can be called a GPT model. The name ‘GPT’ is therefore descriptive of generative pre-trained transformer technology and should not be monopolised by a single company. The applicant states that the term is descriptive of the kind of good or service offered by signifying that the product or service functions on the basis of generative pre-trained transformer technology. The applicant points out that US application No 97 733 259 for the mark ‘GPT’ (upon which the contested mark claimed priority), was refused registration by the USPTO for being descriptive. Moreover, the applicant’s application for ‘CHATGPT’ has also been refused by the USPTO. All this, according to the applicant, indicates that the term ‘GPT’ is descriptive of the goods and services for which protection is sought. Moreover, the applicant states that German application No 3020232159003 ‘ChatGPT’ was also refused by the German Office of Patents and Trade Marks for descriptiveness and lack of distinctive character; and the EUIPO has refused applications containing ‘GPT’, because it considered that ‘GPT’ was descriptive of the goods and services in Classes 9 and 42 (i.e. ‘SENSIBLEGPT’,

‘HIREGPT’). The mark ‘GPT’ refers to generative pre-training, a kind of technology, and is not a sign of commercial origin. Consequently, it is devoid of any distinctive character. Finally, the applicant argues that even assuming that the term ‘GPT’ should be considered distinctive and non-descriptive, it has become a customary name in the practice of trade at the time of priority filing and designates any generative pre-trained technology, as shown by the literature and the dictionary entries.

- The invalidity applicant submits the following additional evidence:
 - Annex 12: official notification of the USPTO of 25/05/2023 regarding refusal of the application ‘CHATGPT’ No 97733261;
 - Annex 13: definition of ‘GPT’ on dictionary.com, according to which the definition was first recorded in 2015;
 - Annex 14: definition of ‘GPT’ from Wiktionary.
 - Annex 15: a printout from the Wayback Machine archive, showing the definition of ‘GPT’ in Wiktionary on 27/07/2022;
 - Annex 16: an extract from the trade mark register concerning German trade mark No 3020232159003 ‘ChatGPT’, and the respective translation;
 - Annex 17: EUIPO *ex officio* refusal of protection for ‘SENSIBLEGPT’, dated 18/04/2024;
 - Annex 18: EUIPO *ex officio* refusal of protection for ‘HIREGPT’, dated 28/05/2024.
- In its final reply, the EUTM proprietor argues that the applicant itself applied for the mark ‘MATHGPT’, which shows that the applicant itself does not believe that the term ‘GPT’ is descriptive or non-distinctive. The EUTM proprietor submits that its contested mark forms part of a family of marks owned by the EUTM proprietor, which share the common word element ‘GPT’. Therefore, consideration should also be given to the earliest priority date within the EUTM proprietor’s family of ‘GPT’ marks, namely 4 August 2020, which is the priority date claimed for EUTM No 1 585 550 ‘GPT-3’. It argues that all the evidence submitted by the applicant either relates to matters after the relevant date, or is not relevant to consumers in the EU, and should be disregarded. It argues that the evidence dated after the relevant date demonstrates only that the EUTM proprietor’s mark, and broader family of ‘GPT’ marks, have acquired a significant reputation through their use, and a number of companies are seeking to exploit that reputation. It states that, since the first filing of the mark that forms a family of ‘GPT’ marks claims a priority date of 04/08/2020, any evidence published after this date should be disregarded. In response to the statement that in some jurisdictions, the ‘GPT’ mark has been refused as descriptive and non-distinctive, the EUTM proprietor argues that there are also several jurisdictions where ‘GPT’ marks remain registered. It argues that although the goods and services covered by the contested mark may have been considered specialised to technical experts at some point, they were available to and used by the public at

large at the relevant date. Therefore, the goods and services target the public at large without any specific professional knowledge or expertise. The EUTM proprietor concludes that the applicant has failed to demonstrate that the contested mark is descriptive of any characteristics or qualities of the goods and services at issue. A small number of examples have been cited by the invalidity applicant for ‘GPT’ being used as an acronym for ‘generative pre-trained transformer’ before the relevant date. The relevant public would not have immediately perceived a direct descriptive message. Rather, there was a very significant cognitive step to be taken before the relevant public would have been able to make a link between the contested mark and the relevant goods and services. It argues that the existence of dictionary entries for ‘GPT’ that reference ‘generative pre-trained transformer’ are not evidence of descriptiveness. Trade marks are commonly included as dictionary entries. However, entries cited by the applicant should note that ‘GPT’ constitutes a registered trade mark and, as submitted in the evidence, the EUTM proprietor sought to address such an omission with a publisher.

Absolute grounds for invalidity – Article 59(1)(a) EUTMR in conjunction with Article 7 EUTMR

- The EUTM proprietor claimed that it is not clear from the notice of invalidity whether it is only based on Article 7(1)(c) EUTMR or also on Article 7(1)(b) and (d) EUTMR.
- In this respect, it should be remembered that according to Article 63(2) EUTMR, the application for cancellation has to be filed in writing. It is not obligatory to use the forms provided by the Office, as long as all the admissibility requirements are met. However, use of the official forms is highly recommended.
- Since in its observations attached to the application for cancellation, the applicant also referred to Article 7(1)(b) and (d) EUTMR, the EUTM proprietor’s claim must be set aside.

(i) Descriptiveness – Article 7(1)(c) EUTMR

- The EUTM proprietor argues that, contrary to the applicant’s view, the relevant date is the priority date from the US filing date, namely 27 December 2022. In addition, the EUTM proprietor points out that the contested mark forms part of a family of marks owned by the EUTM proprietor, sharing the common word element ‘GPT’. Therefore, consideration should also be given to the earliest priority date within the EUTM proprietor’s family of ‘GPT’ marks (i.e. 4 August 2020, when EUTM No 1 585 550 was filed). On the other hand, the applicant argues that the relevant date to assess the distinctive and non-descriptive character of the contested mark is the filing date (i.e. 15 February 2023). It points out that the US priority application (No 97 733 259) was refused registration on 25 May 2023 by the USPTO for lack of distinctiveness and descriptiveness.

- Without entering into the question of whether the EUTM proprietor’s ‘GPT’ registrations display characteristics that would give grounds for regarding them as forming part of a ‘family of marks’, it must be noted that the concept of the priority date applies to individual trade marks and not to a family of marks. Although a priority date of a family of marks could serve to support claims of acquired distinctiveness or the existence of a likelihood of confusion, it cannot serve the purpose of establishing the priority date of an individual mark. The effect of the right of priority is that the date of priority will count as the date of filing of the European Union trade mark application for the purposes of establishing which rights take precedence in *inter partes* proceedings. Consequently, this argument of the EUTM proprietor must be rejected.
- Regarding the applicant’s claim that the US priority application was refused, the Cancellation Division recalls herewith that the ‘convention priority’ right is a right limited in time, triggered by the first regular filing of a trade mark. A regular national filing is any filing that is adequate to establish the date on which the application was filed in the country concerned, **whatever the subsequent fate of the application** (Article 4A(3) Paris Convention). Therefore, the fact that the US trade mark application (first regular filing) from which priority was claimed has been provisionally refused does not affect the validity of the priority claim of the trade mark application concerned. The priority date of the US trade mark will still count as the date of filing of the European Union trade mark registration. Therefore, the relevant date for the purpose of assessing the distinctive and non-descriptive character of the contested mark is 27 December 2022. Evidence postdating the filing date may nevertheless be relevant to the extent that it allows conclusions to be drawn regarding the situation at the relevant date (23/04/2010, C-332/09 P, *Flugbörse*, EU:C:2010:225, § 41, 43).
- With regard to the relevant public, the applicant argues that the goods and services target both the general and professional public in the relevant fields. The level of attention of the relevant public varies from average to above average according to the applicant.
- The EUTM proprietor initially argues that since the relevant goods and services belong to a highly specialised market sector (i.e. artificial intelligence software products and services concern specialised and not mere inexpensive products), the relevant public comprises mostly professionals, who require a higher level of attention and knowledge. However, in its further submissions, the EUTM proprietor argues that, although the goods and services covered by the registration may have been considered specialised to technical experts historically, they are now available to and used by the public at large. It concludes that, given the relevant date, the goods and services target the public at large without any specific professional knowledge or expertise.
- The proprietor’s software related to artificial intelligence and machine learning in Class 9 target the general public who may use AI assistants, image generators, etc., as well as professionals in various economic sectors (e.g. legal, educational, e-commerce, and science). The degree of attention would vary from average to high depending on the specialised nature, purpose, and price of the

goods/services. For example, some AI tools are offered for free and can be accessed by everyone, whereas others are highly technical, costly, and play a critical role in the operations of businesses (17/01/2025, R 2530/2023-2, ‘mybooklink’, § 26). Furthermore, the contested services in Class 42 may vary from relatively simple software services to highly specialised ones. Therefore, in general the degree of attention of the general public and professional consumers is expected to vary according to the specialised nature, purpose and price of these services. For instance, *providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data* is expected to be tailored to business needs, requiring specialised skills and infrastructure, and is unlikely to be relevant for end consumers (17/01/2025, R 2530/2023-2, mybooklink, § 28).

- A higher level of attention and knowledge does not necessarily imply that a sign is less subject to absolute grounds for refusal. In fact, it may be quite the opposite (11/10/2011, T-87/10, PIPELINE, EU:T:2011:582, § 28; 07/05/2019, T-423/18, Vita, EU:T:2019:291, § 13-14). This is because specialists may more easily perceive relevant information included in a sign than the general public (20/07/2020, R 393/2019-2, Emotional freedom techniques eft, § 28; 08/06/2021, R 1353/2020-2, Econtrol, § 30; 18/01/2021, R 1483/2020-2, Zerobounce, § 19; 06/03/2024, R 2211/2023-2, ULTRA FAST 70 (fig.), § 29; 27/05/2024, R 1377/2023-2, Frutaria. (fig.), § 32). In reality, the question of the level of attention of the relevant public is irrelevant for the application of Article 7(1)(c) EUTMR (20/12/2023, T-779/22, Haus & Grund, EU:T:2023:854, § 40).
- The applicant based its arguments on the perception of the English-speaking part of the public because the contested EUTM comprises an acronym whose meaning is given in English. However, in a specialised field such as AI, a descriptive use on a major market such as the US is likely to be imported within the European Union. Furthermore, English is the language of IT/AI. In view of these facts, it is appropriate to define the relevant public as both the end consumer and the professional public throughout the EU.
- The contested mark consists of three letters – ‘G’, ‘P’ and ‘T’ – which, according to the applicant, form an acronym for the wording ‘generative pre-trained transformer’. The applicant argues that this acronym was already understood as such before the filing of the contested mark and before the priority date of the contested mark. It further argues that ‘GPT’ indicates the kind of good or service offered by signifying that the product or service functions on the basis of generative pre-trained transformer technology.
- On the other hand, the EUTM proprietor argues that the letters ‘G’, ‘P’ and ‘T’ may stand for very different words and that ‘GPT’ as such may have several meanings that are not related to the registered goods and services. This fact is, according to the EUTM proprietor, incompatible with the argument that the mark would be understood by the relevant public immediately and without further reflection.

- It is clear from the evidence submitted by both parties that ‘generative pre-trained transformer’ describes AI generative pre-trained transformer technology, and that this is descriptive for the goods and services in Classes 9 and 42. However, what must be proved by the invalidity applicant is whether the relevant public understood the contested sign ‘GPT’ in this descriptive way at the relevant date.
- Abbreviations of descriptive terms are in themselves descriptive if they are used in that way, and the relevant public recognises them as being identical to the full descriptive meaning. However, as indicated by the EUTM proprietor, the mere fact that an abbreviation is derived from a descriptive term is not sufficient (13/06/2014, T-352/12, Flexi, EU:T:2014:519).
- To show that the contested mark is descriptive, the applicant submits Annexes 1-18 (listed above under ‘Summary of the parties’ arguments’), including dictionary definitions of the wording ‘generative pre-trained transformer’ as well as the abbreviation ‘GPT’. It also provides articles where generative pre-trained transformers (GPT) are mentioned or described – sometimes just containing the term ‘GPT’. In its reply, the EUTM proprietor submits Annexes A-F, containing, inter alia, print-outs from the Wayback Machine to show that on 24 July 2023 the *Cambridge Dictionary* entry for the term ‘GPT’ contained a reference to the company OpenAI. It argued that the dictionary entries dated after the relevant date should not be taken into account as, generally speaking, any developments or events after the date of application or priority date will not be taken into consideration. Facts subsequent to the date of application can only be taken into account where, and to the extent that, they allow conclusions to be drawn regarding the situation at the date of application for the EUTM or its priority.
- It is clear that when a term or acronym appears in a dictionary, and the definition coincides with a description of a product or of one of the characteristics of a product, this is indicative of the fact that it is a descriptive term. By contrast, and in line with well-established case-law, if a term or an acronym does not appear in a dictionary is not necessarily determining for the conclusion of whether it is descriptive or not (23/10/2017, T-810/16, Mediline, EU:T:2017:749, § 31). There is no obligation to prove that the contested sign is included in dictionaries (22/06/2005, T-19/04, PAPERLAB, EU:T:2005:247, § 34; 23/10/2007, T-405/04, Caipi, EU:T:2007:315, § 42). In any event, apart from the dictionary definition(s), the applicant submitted articles showing the use of the acronym ‘GPT’ on the relevant market. This evidence may be important to demonstrate whether ‘GPT’ has been perceived by the relevant public in the sector as descriptive for the relevant goods and services.
- One of the dictionary entries (Annex 13) provided by the applicant, includes information that the term ‘GPT’, as such, was first recorded in 2015-20. Even more important is the fact that the remaining evidence shows that use of the term ‘GPT’ as well as the terms ‘generative pretraining’, GAN (generative adversarial networks), GAI (generative artificial intelligence), GDM (generative diffusion model) and ‘transformer’ have been in use in AI technology for much longer (Annexes 7-10). Although some of the articles refer to ‘GPT’ as a model belonging to the EUTM proprietor, they also refer to the term ‘GPT’ in a

descriptive manner,(to describe a technology that uses generative pre-trained transformers). It is not particularly relevant whether the website printouts refer to the EUTM proprietor (08/09/2015, T-714/13, *Mighty Bright*, EU:T:2015:600, § 21); what it is relevant is whether the use of the acronym ‘GPT’, was made in such a way that resulted in the relevant public perceiving it as a descriptive reference to a type of product/service.

- The evidence submitted by the applicant enables the Cancellation Division to conclude that, at the priority date of the contested EUTM (27 December 2022), the acronym ‘GPT’ (even when not accompanied by the descriptive combination of words ‘generative pre-trained transformer’) was directly understood by the relevant circles within the European Union (at least by the professional part of the relevant public) as ‘generative pre-trained transformer’ – a specific AI technology. Admittedly, not all of the articles submitted by the applicant were published before the relevant date. Moreover, even though some of the articles were indeed not targeting the public in the European Union, this does not imply that they cannot be taken into account. As already mentioned, in a specialised field such as AI, descriptive use on a major market such as the US is likely to be imported into the European Union, considering also that English is the language of IT. It has already been confirmed that to assess the influence on the perception of the relevant public of a technology likely to be disseminated, it cannot be excluded that the Office may take into account sources coming from territories outside the European Union. Indeed, given economic trends – as well as the foreseeable evolution of the behaviour of the target public – it can reasonably be envisaged that a new technology developed outside the territory of the European Union will spread within the European Union in the near future, and that it will be likely to directly influence the perception of the European public. Thus, if the Cancellation Division were to reject such evidence because of its origin outside the European Union, it would risk hindering the achievement of the aim of general interest pursued by Article 7(1)(c) EUMR (01/02/2023, T-319/22, *aquamation*, EU:T:2023:30, § 34; 21/01/2009, T-307/07, *Airshower*, EU:T:2009:13, § 31).
- At least, Annexes 7-9 – which are dated prior to the relevant date – confirm that before the priority date of the contested EUTM, the acronym ‘GPT’ had already been used denote a technology or AI system that involves ‘generative pre-trained transformers’. Moreover, it had been immediately recognised, at least by the professional part of the relevant public, as an acronym identical to the full descriptive meaning ‘generative pre-trained transformer’.
- The EUTM proprietor argues that its company was the first one to use the term ‘GPT’ and attaches Annex B, containing an article written by several authors (all employees of the EUTM proprietor), published in 2018, to prove this claim. The article uses the term ‘generative pre-training’, however, in a descriptive manner (i.e. ‘... We demonstrate that large gains on these tasks can be realized by generative pre-training of a language model on a diverse corpus of unlabeled text, followed by discriminative fine-tuning on each specific task ...’). It does not contain any reference to the term ‘GPT’ and does not mention that this is a term invented by the EUTM proprietor. Rather, it confirms that this terminology had already been established within the relevant circles at that point. It is true

that some of the evidence submitted by the applicant does contain references to ‘ChatGPT’, ‘GPT-2’ and ‘GPT-3’, and it is clear from the articles that these are all different generative pre-trained transformers developed by the EUTM proprietor. Notwithstanding, the articles are also able to confirm that the term ‘GPT’ as such referred to a type of AI technology on 27 December 2022 and even well before that date (i.e. Annex 7 provides the definition of ‘GPT’ taken from an article published in 2020: ‘Generative Pre-trained Transformer (GPT) models generate text in different languages and can create human sounding words, sentences, and paragraphs on almost any topic and writing style – from convincing news articles and essays to conversations in customer-service chatbots or characters in video games’). The articles show that ‘GPT’ was a common abbreviation understood at least by professional circles or, as the case may be, by IT/AI enthusiasts, who are normally the readers of the type of articles submitted by the applicant and form a large part of the relevant public. This evidence, together with the dictionary reference (Annex 13), is able to show the perception of the relevant public of the sign ‘GPT’. Therefore, it must be concluded that the term ‘GPT’ was commonly used in AI to describe models that generate text in any language by the professional public and at least a part of the public at large (mostly AI enthusiasts).

- Since the term ‘GPT’ is an acronym composed of English words, the above primarily applies to the English-speaking public. However, as explained above, in the field of technology, it is typical that English terms – and in particular their acronyms – are adopted in other languages without translating them. Professionals in the field of technology, regardless of their native tongue, are familiar with the English terms of their field as that is the internationally used language. Consequently, it is concluded that, at the relevant date, the term ‘GPT’ was used in a descriptive manner throughout the entire EU, at least from the perspective of English-speakers.
- Consequently, the evidence shows that, before the priority date of the contested mark, the relevant public had become acquainted with this acronym as an abbreviation of the descriptive term ‘generative pre-training transformer’, even when used in relation to the EUTM proprietor’s goods and services. The term ‘GPT’ was generally used together with the descriptive words ‘generative pre-training transformer’ and therefore the acronym was consistently used in a descriptive way.
- The EUTM proprietor argues that the acronym ‘GPT’ could have several meanings in relation to the goods and services. In this respect it must be remembered that, for a word mark to fall within the scope of Article 7(1)(c) EUTMR, it is sufficient that, from the point of view of the relevant public, at least one of its possible meanings identifies a feature of the goods or services concerned (23/10/2003, C-191/01 P, Doublemint, EU:C:2003:579, § 32; confirmed by 12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 97).
- For the purpose of applying Article 7(1)(c) EUTMR it is necessary to consider, on the basis of the relevant meaning of the word sign at issue, whether, from the viewpoint of the public concerned, there is a sufficiently direct and specific link between the mark and the goods or services (14/09/2022, T-498/21, Black Irish, EU:T:2022:543, § 32; 13/05/2020, T-532/19, Pantys, EU:T:2020:193, § 18;

06/11/2007, T-28/06, vom Ursprung her vollkommen, EU:T:2007:330, § 31). Contrary to the EUTM proprietor's view, from the point of view of the relevant public, there is a sufficiently direct and specific link between the word mark 'GPT' and the characteristics of the goods and services in respect of which registration is sought. The invalidity applicant has shown that the sign 'GPT', stands for 'generative pre-training transformer'. With regard to the relevant goods and services such as *software* in Class 9 and *SaaS* or the provision of software in Class 42, the relevant consumers would perceive the sign as describing an AI system that involves generative pre-trained transformers (i.e. complex methods used to interpret data). Therefore, the sign describes the kind, intended purpose and subject matter of all the goods and services.

- In light of the foregoing, it is concluded that the contested trade mark 'GPT' consists exclusively of an indication that may serve, in trade, to designate a characteristic of all the contested goods in Class 9 and services in Class 42 and that this situation existed at the time of filing of the contested mark as well as at the priority date of the contested mark. Therefore, the mark has been registered contrary to the provision of Article 7(1)(c) EUTMR.
- The EUTM proprietor relies on the fact that the word mark 'GPT' has been registered as a national trade mark in several jurisdictions (i.e. the UK, Switzerland, etc.) and as an international trade mark. According to the EUTM proprietor, those registrations constitute significant evidence that the mark applied for is not descriptive since the national bodies responsible for trade marks each have – as far as their respective area of jurisdiction is concerned – better knowledge than the Office of the terminology usually used in the various territories and language areas of the Community.
- However, the European Union trade mark regime is an autonomous system with its own set of objectives and rules peculiar to it; it is self-sufficient and applies independently of any national system. Consequently, the registrability of a sign as a European Union trade mark must be assessed by reference only to the relevant Union rules. Accordingly, the Office and, if appropriate, the Union judicature are not bound by a decision given in a Member State, or indeed a third country, that the sign in question is registrable as a national mark. (27/02/2002, T-106/00, Streamserve, EU:T:2002:43, § 47).

(ii) Non-distinctiveness – Article 7(1)(b) EUTMR

- A word mark which is descriptive of characteristics of the goods or services in an immediately discernible manner is, on that account, necessarily also devoid of any distinctive character (12/02/2004, C-265/00, Biomild, EU:C:2004:87, § 19). Therefore, since the contested mark was found descriptive, it also lacks distinctive character within the meaning of Article 7(1)(b) EUTMR as regards the contested services.

(iii) Customary Character – Article 7(1)(d) EUTMR

- The assessment of the alleged customary use of a sign must be carried out in relation to the goods or services for which the trade mark is registered and in

relation to the relevant public's perception of the sign (16/03/2006, T-322/03, *Weisse Seiten*, EU:T:2006:87, § 49). In addition, actual customary use, not mere potential use as in the case of descriptive character, must be established. Marks covered by Article 7(1)(d) EUTMR are excluded from registration not on the basis that they are descriptive, but on the basis of current usage in trade sectors covering trade in the relevant goods or services (16/03/2006, T-322/03, *Weisse Seiten*, EU:T:2006:87, § 51).

- The customary use of the sign must be proved at the relevant point in time, that is, the time of filing of the contested mark (14 July 2021).
- The Cancellation Division finds that the invalidity applicant has not provided clear evidence that the mark consists exclusively of words or indications that have become customary in the current language or in the bona fide and established practices of the trade concerning these goods. Therefore, the mark cannot be considered to have had a customary character at the time of filing in relation to relevant goods and services.
- As a result, the application must be rejected with respect to all of the goods and services insofar as it is based on Article 59(1)(a) EUTMR in conjunction with Article 7(1)(d) EUTMR.

Conclusion

- The contested mark was descriptive pursuant to Article 7(1)(c) EUTMR and non-distinctive pursuant to Article 7(1)(b) EUTMR in relation to all the contested services at the time of its filing (priority).
- The application is totally successful and the contested mark must be declared invalid in its entirety.

Acquired distinctiveness – Article 7(3) and Article 59(2) EUTMR

- The EUTM proprietor invoked the claim of acquired distinctiveness as a subsidiary claim. The Cancellation Division acknowledges this claim and, in view of its subsidiary character, will only decide on the inherent distinctiveness of the contested trade mark in this decision. Once this decision has become final, proceedings will be resumed for the examination of the subsidiary claim of acquired distinctiveness.
- 7 On 17 December 2025, the EUTM proprietor filed an appeal requesting that the contested decision be entirely set aside.
 - 8 On 17 February 2026, the statement of grounds of the appeal was received.
 - 9 In its response received on 30 April 2026, the invalidity applicant requested that the appeal be dismissed.

Submissions and arguments of the parties

10 The arguments raised in the statement of grounds may be summarised as follows.

Article 7(1)(c) EUTMR – Descriptiveness

- The Cancellation Division concluded that the relevant date for the assessment of the contested mark is the priority date claimed by the registration. However, the EUTM proprietor's mark forms part of a family of marks owned by the EUTM proprietor, which share the common 'GPT' word element. If it proves necessary to pursue a claim of acquired distinctiveness, the EUTM proprietor will file further arguments to support its claim that consideration should be given to the earliest priority date within the EUTM proprietor's family of 'GPT' marks: that of EUTM No 1 585 550 'GPT-3', which has a priority date of 4 August 2020.
- The relevant public for the goods and services claimed by the registration is the general public, assessed through the perspective of the average consumer. The Cancellation Division concluded that the goods and services target both average and professional consumers. However, this does not reflect the market reality. Although some of the goods and services covered by the registration may have historically been used by technical specialists, such services are now widely available to, and routinely used by, the public at large – including countless non-specialist members of the public – through mainstream consumer-facing interfaces. As the goods and services target the public at large, without any specific technical knowledge or expertise, the relevant public should be deemed to be the average consumer. At most, technical specialists may form a subset of users, but they do not define the primary benchmark for the relevant analysis.
- The Cancellation Division has determined that the invalidity applicant provided sufficient evidence to demonstrate that, at the relevant date, the relevant public understood the contested mark to mean 'generative pre-trained transformer'. However, it is by no means clear that the relevant public by a single-step process would have linked the goods and services at issue to the contested mark. Instead, there was a very significant cognitive step to be taken before the relevant public would have been able to make a link between the contested mark and the goods and services claimed by the registration.
- The evidence provided by the invalidity applicant does not demonstrate that the relevant public would have understood the contested mark as the Cancellation Division has concluded. In particular, the contested decision has been reached on the basis of certain evidence filed by the invalidity applicant, in which the Cancellation Division has failed to take into account the key deficiencies, which are discussed below.
- The Cancellation Division has concluded that the articles provided in Annexes 7 and 8 to the invalidity action are central to its determination that, at least within the professional public, 'GPT' was understood as a descriptive term meaning 'generative pre-trained transformer'. The contested decision states: 'What is even more important is that some of the remaining evidence shows that the term

GPT ... [has] been used in AI technology for much longer (i.e Annexes 7 and 8).'

- The EUIPO Guidelines, Part A, Section 10 (4.8.2), state ‘... the probative value of publications to show the success of the relevant mark depends on whether they are merely promotional or are the result of independent, objective research. If articles appear in prestigious publications with rigorous quality standards or are written by independent professionals, they may have a high probative value.’ Whilst this guidance is in reference to the ‘success of the relevant mark’, by extension, the quality and reach of the articles should also be considered in the context of invalidity proceedings. Use of ‘GPT’ in a publication outside of the European Union, without evidence of its reach in the European Union, or evidence of the quality of the publication, should not be sufficient to demonstrate that the contested mark was perceived as descriptive by the relevant public.
- The invalidity applicant has provided no supporting evidence for either article regarding the readership, distribution or quality of the publications in which these articles appeared. The contested decision states that evidence published outside of the European Union may be considered because ‘use on a major market such as the US is likely to be imported to within the European Union’. The EUTM proprietor submits that the legal test remains the perception of the relevant consumer in the European Union and, if the Cancellation Division wished to consider use of ‘GPT’ in foreign jurisdictions, this should have been supported by a volume of conclusive evidence. The contested decision has instead been based on two articles, which the EUTM proprietor argues have both been attributed disproportionate weight. The EUTM proprietor addresses each of these articles in turn.
- Annex 7 is an article titled ‘Generative Artificial Intelligence: Trends and Prospects’, authored by Mlađan Jovanović and Mark Campbell, dated 10 October 2022 and published in *Computer*. The authors are based respectively in Serbia (as a researcher at Singidunum University) and the United States (as Chief Innovation Officer of EVOTEK, a company based in California).
- The IEEE Computer Society is the publisher of *Computer*. This is an organisation based in Washington DC, United States. Without supporting evidence to demonstrate a readership amongst relevant consumers in the European Union, there is no evidence that enables the Cancellation Division to conclude that any element of the relevant public will have consumed, or even been aware of, this article. Moreover, even on a global basis, no evidence has been provided to support the scale of readership for this publication.
- Furthermore, the article references five ‘GPTs’. An extract of this information is included in the contested decision. The ‘GPTs’ referenced are: GPT-1, GPT-2, GPT-3, Dall-E and LaMDA. GPT-1, GPT-2, GPT-3 and Dall-E were all developed by the EUTM proprietor. Therefore, the only third-party ‘GPT’ identified in the article is LaMDA, which was developed by Google. Importantly, the article’s inclusion of LaMDA is erroneous: LaMDA is described by Google as ‘conversation technology’, not a ‘generative pre-trained transformer’ or ‘GPT’. Supporting evidence for Google’s description of its product is provided in Exhibit 1. Given that Google does not describe its own

product as a ‘generative pre-trained transformer’ or ‘GPT’, it indicates the article has inaccurately used the term ‘GPT’. Rather than supporting the invalidity applicant’s position, this inaccuracy instead serves to demonstrate that the term ‘GPT’, used correctly, refers only to the EUTM proprietor’s products. It is not a category term used across the market. This supports the EUTM proprietor’s position that ‘GPT’, at the time of publication, was inherently distinctive and would only be correctly used in reference to the EUTM proprietor’s products.

- The article cites 29 separate supporting sources. These citations have not been provided in evidence, nor have they been considered by the Cancellation Division as part of these proceedings. It is not reasonable for the invalidity applicant to file a single article and benefit from the evidence contained in each underlying source. Given that no evidence has been provided to establish the credibility or authenticity of the publication, the underlying source material cited in the article is essential for the credibility of the article to be evaluated. In light of this deficiency, the article should have been afforded little or no weight in the contested decision.
- Annex 8 is an article titled ‘RecipeGPT: Generative Pre-training Based Cooking Recipe Generation and Evaluation System’ published in April 2020 by the Association for Computing Machinery. The authors are based in Singapore (holding positions at Singapore Management University).
- The Association for Computing Machinery is an organisation based in Washington DC, United States and there is no supporting evidence to demonstrate any readership amongst relevant consumers in the European Union. The research referenced in the article is funded by the National Research Foundation, Prime Minister’s Office, Singapore. This also fails to support the idea that the audience for the article includes the relevant public in the European Union. Even on a global basis, no evidence has been provided to support the scale of readership for this publication.
- The nature of the article is academic research. Whilst the EUTM proprietor does not agree with the Cancellation Division’s position that the relevant public should include professionals, it is not accurate to characterise the professional public as academics. Furthermore, the invalidity applicant has not provided any evidence to show that they would commonly engage with, or consume, academic material. Without clear evidence of the article being consumed by the relevant public, the Cancellation Division has incorrectly attributed substantive value to it.
- The Cancellation Division has also attributed significant weight to Annex 13, which consists of an entry from the website www.dictionary.com. The entry incorrectly states that ‘GPT’ was first used in 2015, but it cites no basis or source material to support this date, and the 2015 date is clearly incorrect: the EUTM proprietor released its first ‘GPT’-branded natural language and code processing foundational model in June 2018. the EUTM proprietor therefore considers there is no basis to attribute value – let alone evidentiary weight – to this evidence.
- Furthermore, in respect of the dictionary entries provided by the invalidity applicant, artificial intelligence is one of the fastest developing fields of

technology and as a result, the associated linguistics are developing at equal pace. Accordingly, dictionary entries published after the relevant date are incapable of reflecting the linguistic position at the relevant date or the developments that have occurred in the interim. Given the rapid developments in this field, dictionary entries published after the relevant date should be disregarded. To proceed otherwise in a rapidly-developing field would be to assess the position at the priority date with hindsight. Instead, the Office should focus on the state of the evidence as of the priority date. Therefore, in attributing value to the supporting evidence, unless a dictionary entry is dated prior to the relevant date, it should be disregarded in the context of these proceedings.

- It is entirely consistent that dictionary entries after the relevant date may include definitions for ‘GPT’. The existence of dictionary entries does not provide conclusive evidence regarding the perception of the relevant consumer and trade mark terms are commonly included as dictionary entries. For example, the *Cambridge University Press* dictionary entry for ‘GPT’ clearly indicates that the word is protected as a trade mark (see Exhibit 2).
- Despite a substantial volume of evidence being filed by the invalidity applicant, the contested decision only cites a very small portion of evidence in support of its conclusions. Each piece of supporting evidence cited in the contested decision has been addressed in this statement of grounds of appeal. The invalidity applicant’s evidence was insufficient to support the grounds of invalidity under Article 7(1)(c) EUTMR. In reaching the contested decision, the Cancellation Division has incorrectly attributed value to evidence that is insufficient to meet the necessary legal test.
- the EUTM proprietor’s mark does not designate the quality and/or characteristics of the relevant services and is not therefore descriptive.

Scope of the contested decision

- The contested decision determined that the relevant public included all European Union consumers on the basis of an English-speaker’s understanding, as ‘English is the language of IT/AI’. The invalidity applicant’s evidence exclusively relates to an English-speaking public. The contested decision has primarily been reached on the basis of articles in academic and professional publications. There is no evidence for ‘GPT’ being used outside of this context. Such articles are inherently linguistically complex. Therefore, these articles cannot be reasonably considered to have been read by non-English-speaking consumers in the European Union – even those within the professional public.
- Whilst the EUTM proprietor accepts that English is the language of the internet, in determining the descriptiveness of the EUTM proprietor’s mark this approach can only be reasonably applied to a narrow range of vocabulary; namely, those words or terms used ubiquitously in the field of information technology. The EUTM proprietor maintains that its mark was not descriptive at the relevant date. Moreover, it is also evident that ‘GPT’ was not a ubiquitous term. It would be illogical that mere use of a mark in the field of information technology would result in all consumers (including non-English-speaking consumers) being

attributed an equal level of understanding of the English language in determining the mark's descriptive character.

- the EUTM proprietor's mark is not descriptive. In the alternative, the Cancellation Division should have limited the contested decision to the English-speaking public only.

Article 7(1)(c) EUTMR – Distinctiveness

- the EUTM proprietor has demonstrated that the relevant public will not perceive its mark as having a descriptive meaning in relation to the goods and services covered by the registration.
- With this consideration in mind, at the relevant date, the relevant public did not associate the EUTM proprietor's mark with any of the goods and services covered by the registration. Therefore, a lack of distinctive character cannot be based on this premise.

Subsidiary claim – acquired distinctiveness through use

- the EUTM proprietor maintains a subsidiary claim pursuant to Article 59(2) EUTMR that its mark has acquired distinctiveness through the use made of it within the meaning of Article 7(3) EUTMR (subject to the decision on the grounds of invalidity invoked by the applicant) (See EUIPO Trade Mark Guidelines, Part D, Section 2.3.2).

Conclusion

- The Cancellation Division was incorrect in upholding the invalidity application. In particular, the EUTM proprietor has demonstrated that the Cancellation Division attributed substantial weight to evidence that fails to conclusively establish the grounds for invalidity filed against the contested mark.
- The EUTM proprietor's mark was not descriptive of the goods and services covered by the registration at the relevant date; and as the mark did not have a descriptive meaning at the relevant date, a lack of distinctive character cannot be based on this premise. The EUTM proprietor's mark is therefore distinctive for the goods and services at issue.
- It is therefore requested that the contested decision is annulled, the appeal upheld, and the invalidity application refused in its entirety. In the alternative, the annulment of that part of the contested decision – and the refusal of that part of the invalidity application – for which it is shown that grounds for annulment/refusal exist, is requested.

11 The arguments raised in response to the appeal may be summarised as follows.

- The proprietor appears to object to the correct determination of the relevant date for assessing the descriptiveness and lack of distinctive character of the contested mark.

- This is a futile attempt to undermine the extensive and compelling evidence submitted by the applicant with its invalidity action by artificially shifting the relevant date backwards, so that the evidence appears to post-date it and can be disregarded as being irrelevant. That attempt fails for two reasons.
- First, as correctly noted by the Cancellation Division, and in accordance with the applicable laws, guidelines and case-law, the relevant date is the priority date claimed by the contested mark, namely 27 December 2022.
- The fact that the proprietor owns other trade marks with an earlier priority date is simply irrelevant according to the law. What matters is the date of the trade mark in question. The ‘family of marks’ argument has no basis in the law.
- Second, settled case-law confirms that even evidence post-dating the filing date, or in this case the priority date, remains relevant where it allows conclusions to be drawn about the situation at the relevant date (23/04/2010, C-332/09 P, *Flugbörse*, EU:C:2010:225, § 41 and 43).
- That is particularly true for dictionary entries. Words do not just appear in dictionaries overnight. They are included only once their use and meaning have been established over time (25/11/2015, T-223/14, *VENT ROLL*, EU:T:2015:879, § 39)
- The Cancellation Division was entirely correct to define the relevant public for AI-related goods and services as comprising both end consumers and professionals across the EU.
- Given that the Class 9 goods cover software related to AI and machine learning (ML), and the Class 42 services involve software as a service (SaaS) in the field of AI and data processing, the relevant public is made up of both the end consumer and the professional public.
- On this point, however, the proprietor has not been consistent. In its first submission before the Cancellation Division, it argued that the relevant public consists of professionals with a higher level of attention and knowledge. In a following submission, it took the opposite position, alleging that the relevant public is the public at large without any specific expertise.
- In its appeal, the proprietor appears to keep the latter position, arguing that that the registered goods and services in Classes 9 and 42 are ‘widely available to, and routinely used by, the public at large including countless non-specialist members of the public through mainstream consumer-facing interfaces’ while acknowledging that ‘technical specialists may form a subset of users’.
- In doing so, the proprietor endorses the Cancellation Division’s conclusion that the relevant public comprises both average consumers and professionals. It is therefore unclear on what basis it challenges the contested decision. Whether professionals represent 20 %, 30 %, 60 % or 80 % of the relevant public is beside the point. What matters is that they form part of it, alongside non-specialist consumers.

- In any event, it is sufficient that a sign be descriptive for at least a part of the relevant public for a trade mark to be refused under Article 7(1)(c) EUTMR (14/06/2017, T-659/16, Second Display, EU:T:2017:387, § 24 and the case-law cited). This is particularly relevant where terms that may not be immediately clear to the average consumer are readily understood by a professional audience, especially where the mark consists of elements relating to the field in which this specialised audience is active (11/10/2011, T-87/10, Pipeline, EU:T:2011:582, § 27-28).
- The Cancellation Division also correctly found that, given the role of English as the language of IT and AI, the relevant public consists of both end consumers and professionals across the EU.
- The proprietor disputes this on two grounds, namely (a) the acronym ‘GPT’ was not widely used at the relevant time; and (b) the academic and professional publications submitted by the applicant cannot reasonably be assumed to have been read by non-English-speaking consumers, such that the assessment should have been limited to the English-speaking public.
- Those arguments do not undermine the Cancellation Division’s findings. The definition of the relevant public does not depend on how frequently that public has been exposed to a given term. What matters is which public, given the nature of the goods and services, is in a position to understand the sign. In the present case, it is not disputed that English is the common language of the IT and AI sectors.
- As a result, at least the professional public across the entire European Union can reasonably be expected to understand the acronym ‘GPT’ without difficulty, regardless of their native language. The same is true for the average, non-specialist consumers; although they may not know the exact meaning of the abbreviation, they will nevertheless associate it with AI technology (05/12/2024, R 1460/2024-4).
- The contested mark is entirely descriptive under Article 7(1)(c) EUTMR.
- The proprietor’s criticism essentially comes down to two points: first, that the evidence submitted is allegedly insufficient; and second, that there is no direct and immediate link between ‘GPT’ and the contested goods and services to support a finding of descriptiveness under Article 7(1)(c) EUTMR.
- The applicant submitted with its application 18 annexes demonstrating both the descriptive nature of ‘GPT’ and its descriptive use before, as well as after, the relevant period.
- The Cancellation Division did not base its conclusion ‘on two articles’ but on the entire body of evidence.
- The Cancellation Division placed particular emphasis on Annexes 7, 8 and 9, as these showed that the acronym ‘GPT’ was already understood before the relevant time.

- The key point is that independent sources do have evidential value, and when several such sources point in the same direction, as they do here, they give a clear picture of the consumer’s perception at the relevant time period when taken together.
- The proprietor alleges that the readership of those publications within the EU has not been established, on the basis that they were written by non-EU authors and published by US organisations.
- The proprietor keeps blurring the line between the standards applicable to evidence of genuine use or reputation and those relevant to assessing whether a term is descriptive.
- However, as the Cancellation Division correctly noted, it is well established case-law that the Office may also rely on evidence originating outside the EU when assessing the descriptiveness of a term, given the economic trends and how quickly information and terminology spread.
- For the same reason, figures such as the number of views, readership or distribution of the articles in the EU are irrelevant when assessing descriptiveness. What matters under Article 7(1)(c) EUTMR is how the term could potentially be understood by the relevant public, not how widely it was used or even whether it was actually in use at the time. As follows from the wording of Article 7(1)(c) EUTMR, it is enough that the sign may serve to describe characteristics of the goods or services (23/10/2003, C-191/01 P, Doublemint, EU:C:2003:579, § 33).
- Moreover, the allegation that dictionary entries published after the relevant date should be disregarded is incorrect. As noted above, post-dated evidence remains relevant where it helps to establish consumer perception at the relevant time. This is particularly true for dictionaries, which only include terms once their meaning and usage have become established over time (25/11/2015, T-223/14, VENT ROLL, EU:T:2015:879, § 39; 30/06/2017, R 1985/2016-5, 08/04/2025, R 2466/2024-2).
- Finally, the limitations included in certain dictionaries, such as the *Cambridge Dictionary* highlighted by the proprietor, suggesting that the term ‘GPT’ is protected as a trade mark should be viewed with caution. Such indications may simply reflect a request by the proprietor, potentially relying on Article 12 EUTMR (or the corresponding principles under UK trade mark law), in relation to the contested mark (or a UK equivalent).
- As the Board of Appeal has previously recognised, dictionary publishers are often inclined to comply with such requests from trade mark proprietors to avoid litigation, as they generally have little incentive to resist these requests. The fact that ‘GPT’ is presented as a ‘trade mark’ in the *Cambridge Dictionary* does not, in itself, call into question the finding that the contested mark is descriptive (24/05/2022, R 2158/2021-5).
- Taking into account the registered Class 9 goods (downloadable AI software for language and speech processing) and the Class 42 services (software as a service

(SaaS) and development services relating to AI software for language and speech processing), together with the meaning of ‘GPT’, the relevant consumer will immediately understand the sign as purely descriptive of those goods and services, rather than as an indication of commercial origin. In particular, it will be understood as indicating that the goods and services relate to an AI system that involves generative pre-trained transformers.

- As the Cancellation Division correctly found, the sign describes the kind, intended purpose and subject matter of all these goods and services.
- As the abbreviation ‘GPT’ was understood (and already descriptively used) at the relevant time, its meaning is clear and there is a direct and immediate link between the sign ‘GPT’ and the registered Class 9 goods and Class 42 services.
- The Cancellation Division’s conclusion regarding Article 7(1)(c) is correct.
- The Cancellation Division was also correct in finding that, since the contested mark is descriptive within the meaning of Article 7(1)(c) EUTMR, it is, for that reason alone, necessarily devoid of distinctive character in relation to the same goods and services within the meaning of Article 7(1)(b) EUTMR.
- The appeal must therefore be dismissed on this point too.
- The applicant therefore requests that the contested decision be confirmed.

Reasons

- 12 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

Scope of the appeal

- 13 The EUTM proprietor appealed the contested decision in its entirety. Therefore, the Board will assess the legality of the contested decision in full.

Admissibility of the evidence submitted for the first time before the Board

- 14 Along with the statement of grounds for the appeal, the EUTM proprietor submitted the following documents:
 - Exhibit 1: an extract from Google’s summary of ‘LaDMA’;
 - Exhibit 2: the *Cambridge University Press* dictionary entry for ‘GPT’.
- 15 As the Court has held, it results from the wording of Article 95(2) EUTMR that, as a general rule and unless otherwise specified, the submission of facts and evidence by the parties remains possible after the expiry of the time limits to which such submission is subject under the provisions of the EUTMR. Moreover, the Office is in no way prohibited from taking account of any facts and evidence submitted or produced late; that is to say, after the time limit provided by the Regulation and, as the case may be, for the first time before the Board of Appeal (13/03/2007,

C-29/05 P, Arcol, EU:C:2007:162, § 42; 18/07/2013, C-621/11 P, Fishbone, EU:C:2013:484, § 22).

- 16 In stating that the latter ‘may’, in such a case, decide to disregard evidence, Article 95(2) EUTMR grants the Office broad discretion to decide, while giving reasons for its decision in that regard, whether or not to take such evidence into account (13/03/2007, C-29/05 P, Arcol, EU:C:2007:162, § 43; 18/07/2013, C-621/11 P, Fishbone, EU:C:2013:484, § 23).
- 17 That discretion is circumscribed by Article 27(4) EUTMDR, which provides that facts or evidence submitted for the first time before the Board may be taken into account only if two cumulative conditions are satisfied. Firstly, such facts or evidence must be *prima facie* relevant for the outcome of the case. Secondly, it must be established that they were not produced in due time for valid reasons, in particular where they merely supplement relevant facts or evidence already submitted in due time or are filed to contest findings made or examined by the first instance of its own motion.
- 18 It follows that, although the Board enjoys a broad discretion under Article 95(2) EUTMR, that discretion must be exercised within the limits laid down by Article 27(4) EUTMDR and on the basis of an objective and reasoned assessment of the circumstances of the case.
- 19 In the present case, the evidence submitted by the EUTM proprietor for the first time before the Board is relied on to contest findings made by the Cancellation Division. They therefore supplement and challenge matters already debated before the Cancellation Division and are *prima facie* relevant for the assessment of whether the evidence, taken as a whole, established the descriptive meaning of ‘GPT’ at the relevant date.
- 20 Moreover, the invalidity applicant was afforded the opportunity to examine and comment on the evidence submitted by the EUTM proprietor with the statement of grounds.
- 21 In those circumstances, having regard to the *prima facie* relevance of the pieces of evidence in question, their close connection with the factual framework already submitted at first instance, and the fact that they serve, *inter alia*, to update that framework or to contest the findings of the Cancellation Division, the Board considers it appropriate to exercise its discretion pursuant to Article 95(2) EUTMR and Article 27(4) EUTMDR in favour of taking the evidence submitted by the EUTM proprietor into account.
- 22 Accordingly, the evidence submitted by the EUTM proprietor for the first time before the Board is admissible.
- 23 However, the fact that such evidence is admitted does not prejudice its probative value, which will be assessed, where relevant, in the substantive examination of the appeal.

Article 59(1)(a) EUTMR in conjunction with Article 7(1) EUTMR

- 24 Pursuant to Article 59(1) EUTMR, the invalidity of an EU trade mark is to be declared, on application to the EUIPO, where the EU trade mark has been registered contrary to the provisions of Article 7 of that Regulation. Where the grounds of invalidity apply for only some of the goods and services for which the European Union trade mark is registered, the latter will be declared invalid only for those goods or services. It follows from Article 7(2) EUTMR that Article 7(1) EUTMR applies notwithstanding that the grounds of non-registrability obtain in only part of the European Union.

- 25 The purpose of this provision is to review the validity of the registration of a mark and to adopt, where necessary, a position that it should have adopted of its own motion in accordance with Article 37(1) EUTMR (30/05/2013, T-396/11, Ultrafilter international, EU:T:2013:284, § 20).

- 26 Pursuant to Article 59 EUTMR, the legislature has provided that proceedings for a declaration of invalidity are to take the form of *inter partes* proceedings, which may be brought only by an application in accordance with Article 63 EUTMR and which may not be pursued *ex officio* where the application for a declaration of invalidity is withdrawn during the proceedings.

- 27 In addition, a European Union trade mark that is the subject of proceedings for a declaration of invalidity on absolute grounds has already undergone a stringent and full examination in which the Office has excluded *ex officio* all grounds for refusal under Article 7 EUTMR (09/09/2010, C-265/09 P, *α*, EU:C:2010:508, § 45; 06/05/2003, C-104/01, Libertel, EU:C:2003:244, § 59).

- 28 Therefore, as regards the invalidity proceedings, the Board of Appeal cannot be called upon to carry out afresh the examination that the examiner conducted – of their own motion – of the relevant facts that could have led the examiner to apply the absolute grounds for refusal. It follows from the provisions of Articles 59 and 62 EUTMR that the European Union trade mark is regarded as valid until it has been declared invalid by the Office following invalidity proceedings. It therefore enjoys a presumption of validity, which is the logical consequence of the review carried out by the Office in the examination of an application for registration (02/06/2021, T-854/19, MONTANA, EU:T:2021:309, § 39; 29/03/2019, T-611/17, REPRESENTATION D'UNE SEMELLE DE CHAUSSURE (3D), EU:T:2019:210, § 44; 10/06/2020, T-105/19, DEVICE OF A CHEQUERBOARD PATTERN (fig.), EU:T:2020:258, § 22; 21/04/2015, T-359/12, Device of a checked pattern (maroon & beige), EU:T:2015:215, § 60 and the case-law cited).

- 29 Concerning the burden of proof in invalidity proceedings, the Board recalls that, as the registered EU trade mark is presumed to be valid, it is for the person who has filed the application for a declaration of invalidity to produce the specific arguments and facts that call the validity of that trade mark into question (02/06/2021, T-854/19, MONTANA, EU:T:2021:309, § 40; 12/06/2012, T-165/11, College, EU:T:2012:284, § 26; 13/09/2013, T-320/10, Castel, EU:T:2013:424, § 28; 23/11/2015, T-766/14, FoodSafe, EU:T:2015:913, § 33; 28/09/2016, T-476/15, FITNESS, EU:T:2016:568, § 48, 49). Accordingly, Article 95(1), last sentence, EUTMR, which consolidates the Court's previous case-law (13/09/2013, T-320/10,

Castel, EU:T:2013:424, § 28), provides that, in invalidity proceedings pursuant to Article 59 of that Regulation, the Office is to limit its examination to the grounds and arguments submitted by the parties (02/06/2021, T-854/19, MONTANA, EU:T:2021:309, § 40; 10/06/2020, T-105/19, DEVICE OF A CHEQUERBOARD PATTERN (fig.), EU:T:2020:258, § 23 and the case-law cited). A further examination of the absolute grounds for refusal as part of the official investigation will therefore not be carried out in cancellation proceedings (28/09/2016, T-476/15, FITNESS, EU:T:2016:568, § 47, 49; 13/09/2013, T-320/10, Castel, EU:T:2013:424, § 27, 28).

- 30 However, while the presumption of validity of the registration restricts the Office's obligation to examine the relevant facts, it does not, however, preclude it – in particular as regards the matters put forward by the party challenging the validity of the contested mark – from relying on well-known facts (02/06/2021, T-854/19, MONTANA, EU:T:2021:309, § 42; 29/03/2019, T-611/17, REPRESENTATION D'UNE SEMELLE DE CHAUSSURE (3D), EU:T:2019:210, § 46; 10/06/2020, T-105/19, DEVICE OF A CHEQUERBOARD PATTERN (fig.), EU:T:2020:258, § 24); that is, facts that are likely to be known to anyone or may be learnt from generally accessible sources (22/06/2004, T-185/02, Picaro, EU:T:2004:189, § 29; 13/04/2011, T-523/09, Wir machen das Besondere einfach, EU:T:2011:175, § 41; 20/07/2016, T-11/15, SUEDETIROL, EU:T:216:422, § 40).
- 31 Article 59(1) EUTMR provides that a declaration of invalidity requires that the registration was made contrary to the provisions of Article 7(1) EUTMR. That means that any factual development negatively affecting the conditions for registrability after the date of registration is irrelevant under Article 59(1), EUTMR, but would fall under a ground for revocation pursuant to Article 58(1)(b) or (c) EUTMR. Furthermore, according to the case-law (03/06/2009, T-189/07, Flugbörse, EU:T:2009:172, § 19; confirmed by 23/04/2010, C-332/09 P, Flugbörse, EU:C:2010:225; 06/03/2014, C-337/12 P & C-340/12 P, Surface covered with circles, EU:C:2014:129, § 59), the relevant date is the filing date (or, where applicable, the priority date) of the contested EUTM, so that changed circumstances after that date will not go to the detriment of the EUTM proprietor.
- 32 As 27 December 2022 is the priority date of the contested EUTM, that is the relevant date.
- 33 In the framework of Article 59(1)(a) EUTMR, the invalidity applicant invoked the prohibitions laid down in Article 7(1)(b), (c) and (d) EUTMR, as correctly held in the contested decision and not disputed by the EUTM proprietor on appeal.
- 34 For reasons of procedural economy, the Board will examine whether the Cancellation Division rightly declared the invalidity of the contested EUTM for all the contested services on the basis of Article 7(1)(c) EUTMR and will analyse the request for a declaration of invalidity on the basis of the remaining grounds invoked by the invalidity applicant only if necessary.

Article 7(1)(c) EUTMR

- 35 Article 7(1)(c) EUTMR provides that trade marks that consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity,

intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service are not to be registered (12/03/2025, T-307/24, SHORTS, EU:T:2025:247, § 15; 29/03/2023, T-308/22, Decotec, EU:T:2023:165, § 28).

- 36 The fact that the EU legislature chose to use the word ‘characteristic’ highlights the fact that the signs referred to in Article 7(1)(c) EUTMR are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or services in respect of which registration is sought (12/03/2025, T-307/24, SHORTS, EU:T:2025:247, § 46; 25/06/2020, T-133/19, OFF-WHITE (fig.), EU:T:2020:293, § 36).
- 37 For a sign to be caught by the prohibition set out in that provision, there must be a relationship between the sign and the goods or services in question that is sufficiently direct and specific to enable the relevant public immediately to perceive, without further thought, a description of the goods and services in question or of one of their characteristics (12/03/2025, T-307/24, SHORTS, EU:T:2025:247, § 17; 29/03/2023, T-308/22, Decotec, EU:T:2023:165, § 30; 26/01/2022, T-233/21, Clustermedizin, EU:T:2022:27, § 16).
- 38 Furthermore, although it is irrelevant whether such a characteristic is commercially essential or ancillary, a characteristic, within the meaning of Article 7(1)(c) EUTMR (23/05/2024, T-330/23, READYPACK, § 61), must nevertheless be objective and inherent to the nature of that product or service and intrinsic and permanent with regard to it (12/03/2025, T-307/24, SHORTS, EU:T:2025:247, § 47; 25/06/2020, T-133/19, OFF-WHITE (fig.), EU:T:2020:293, § 37).
- 39 The existence of the abovementioned relationship must be assessed, first, in relation to the goods or services for which registration of the sign is sought and, second, in relation to the perception of the section of the relevant public targeted, which is composed of the consumers of those goods or services (12/03/2025, T-307/24, SHORTS, EU:T:2025:247, § 18; 05/10/2022, T-539/21, airframe (fig.), EU:T:2022:597, § 23).

The relevant public

- 40 The Board notes, as a preliminary matter, that the EUTM proprietor has characterised the relevant public differently at different stages of the proceedings. Before the Cancellation Division, it initially submitted that the goods and services belonged to a highly specialised sector and primarily targeted professionals displaying a high degree of attention. It subsequently argued that the goods and services targeted the public at large and that the relevant public was therefore the average consumer. In the statement of grounds of appeal, it maintains the latter position, while accepting that technical specialists may constitute a subset of users.
- 41 The Board is not bound by the parties’ characterisation of the relevant public. That public must be determined objectively, having regard to the goods and services as registered and to their natural and usual meaning. The specification covers, in essence, downloadable and non-downloadable software, language models, artificial intelligence, natural language processing, artificial production of speech and text, machine-learning-based language and speech processing, datasets for machine

learning and predictive analytics, audio-to-text conversion, voice and speech recognition, creation and generation of text, learning algorithms, artificial neural networks, APIs, SaaS, software research and software development.

- 42 They therefore target both the general public – insofar as certain AI-based tools and language-model applications may be used through consumer-facing interfaces – and professionals users, including AI researchers, machine-learning specialists, natural-language-processing specialists, software developers, data scientists, IT professionals and undertakings or institutions developing, integrating or deploying AI-based software systems.
- 43 For the purposes of the present assessment, it is sufficient to examine whether the sign was descriptive for a non-negligible part of that relevant public. Article 7(1)(c) EUTMR precludes registration where the descriptive meaning is perceived by a non-negligible part, or a substantial part, of the relevant public. In particular, the Board may take into account a narrower circle within the public, consisting of persons for whom the goods or services are primarily intended or who have specialised knowledge enabling them to understand certain terms or technical concepts more readily. It is not necessary, once such descriptiveness is established, to examine whether all other consumers belonging to the relevant public would also perceive the sign descriptively (03/07/2024, T-597/22, Sw Sophienwald (fig.), EU:T:2024:432, § 62-63; 28/02/2024, T-746/22, COMPTON, EU:T:2024:134, § 53, 56; 28/02/2024, T-747/22, Compton (fig.), EU:T:2024:135, § 53, 56; 26/07/2023, T-22/23, MARKT-PILOT, EU:T:2023:439, § 16-17).
- 44 In the present case, the professional public active in artificial intelligence, machine learning, natural language processing and related software-development fields constitutes a non-negligible part of the relevant public for the goods and services as registered. That public is directly concerned by goods and services relating to language models, NLP, machine-learning-based speech and language processing, datasets, APIs, neural networks, SaaS and AI software research and development. It cannot therefore be treated as marginal, hypothetical or negligible.
- 45 The fact that the contested sign consists of letters relied upon as an acronym of an English technical expression does not preclude an assessment extending beyond consumers whose mother tongue is English. It is settled case-law that, in appropriate circumstances, the relevant public may include consumers or professionals in the Union who understand the relevant language or terminology, even where that language is not their mother tongue. Specific knowledge of English may, in particular, be attributed to professional circles where English terms form part of their professional vocabulary. In the fields of artificial intelligence, machine learning, natural language processing and software development, English technical terminology is commonly used in academic, technical and commercial contexts. The assessment may therefore properly be carried out from the standpoint of the professional public in the European Union active in those fields and capable of understanding English technical terminology used therein (14/09/2022, T-795/21, Li-SAFE, EU:T:2022:550, § 29, 31; 26/09/2012, T-301/09, Citigate, EU:T:2012:473, § 41; 29/03/2012, T-242/11, eXam (3D), EU:T:2012:179, § 26).
- 46 The EUTM proprietor's argument that some goods and services are used by the public at large does not alter that conclusion. Even assuming that average consumers

without technical knowledge also form part of the relevant public and that some of them did not know the precise technical expansion of ‘GPT’ at the relevant date, Article 7(1)(c) EUTMR applies where a sign is descriptive for a non-negligible part of the relevant public. The relevant question is therefore whether, at the relevant date, at least a substantial part of the professional public active in artificial intelligence, machine learning, natural language processing and related software-development fields in the European Union would have perceived the sign ‘GPT’, immediately and without further thought, as designating a characteristic of the goods and services at issue.

- 47 The level of attention of that public does not alter the legal test under Article 7(1)(c) EUTMR. The question of whether the relevant public’s degree of attention is low, average or high is not decisive for the application of that provision. Nor does the fact that the relevant public is specialist or particularly attentive mean that a weaker descriptive message is required, or that the sign is more likely to be distinctive. On the contrary, specialist knowledge may make it easier for the professional public to understand the descriptive connotations of a sign (20/12/2023, T-779/22, Haus & Grund, EU:T:2023:854, § 40; 14/07/2021, T-562/20, Everlasting Comfort, EU:T:2021:464, § 37; 07/05/2019, T-423/18, vita, EU:T:2019:291, § 14; 11/10/2011, T-87/10, Pipeline, EU:T:2011:582, § 28).

The meaning of the sign and its descriptiveness in relation to the relevant goods and services

- 48 The contested EUTM is the word mark ‘GPT’.
- 49 The invalidity applicant submits that ‘GPT’ is the acronym of the English expression ‘generative pre-trained transformer’. The Cancellation Division found that ‘generative pre-trained transformer’ describes a specific AI technology and that ‘GPT’ was, at the relevant date, understood by at least the professional public as the acronym of that expression.
- 50 Abbreviations and acronyms require particular care. The fact that a full expression is descriptive does not automatically mean that its abbreviation is descriptive. The mere fact that an abbreviation is derived from a descriptive term is not sufficient. It must be established that the abbreviation itself is used or understood in such a way that the relevant public recognises it as corresponding to the full descriptive meaning or to a descriptive technical concept. Nevertheless, where that recognition is established, an abbreviation or acronym may be descriptive even if it is not descriptive when taken in isolation (31/01/2024, T-188/23, IU International University of Applied Sciences, EU:T:2024:46, § 34, 36, 38-39; 14/09/2022, T-795/21, Li-SAFE, EU:T:2022:550, § 29).
- 51 It follows that the decisive question is not whether the expression ‘generative pre-trained transformer’ is descriptive in the abstract, nor whether ‘GPT’ can be expanded retrospectively into that expression. The legal question is whether, at the relevant date, the sign ‘GPT’ itself was liable to be perceived by a non-negligible part of the relevant public – namely the professional public active in AI, machine learning, natural language processing and related software-development fields in the European Union – as the acronym of ‘generative pre-trained transformer’ or of generative pre-

trained transformer / language model technology and, as such, as designating a characteristic of the goods and services at issue.

- 52 The Board agrees with the EUTM proprietor that post-priority evidence cannot, by itself, establish that the relevant public perceived ‘GPT’ descriptively on 27 December 2022. That is particularly important in a rapidly developing technical field such as artificial intelligence. Accordingly, post-priority dictionary entries and other post-priority materials are not treated as independent proof of the perception of the sign at the relevant date. They may be used only to corroborate earlier technical use or to confirm that a meaning evidenced before the relevant date continued to be recorded afterwards. The following finding is therefore not dependent on post-priority dictionary evidence.
- 53 The same applies to Wikipedia evidence. Information derived from Wikipedia is, by its nature, capable of being modified and cannot, by itself, be decisive. It may, however, have confirmatory value where it corroborates information from more reliable sources, such as scientific studies, extracts from technical publications, press articles, or statements from professionals, traders or consumers (01/02/2023, T-319/22, aquamation, EU:T:2023:30, § 28; 23/09/2020, T-738/19, Wi-Fi Powered by The Cloud (fig.), EU:T:2020:441, § 38; 25/09/2018, T-180/17, EM, EU:T:2018:591, § 79). Consequently, Annex 2 is treated only as corroborative and is not relied upon as the decisive basis for the finding of descriptiveness.
- 54 The pre-priority evidence is, however, probative. Annex 7 is an article from October 2022 entitled ‘Generative Artificial Intelligence: Trends and Prospects’. It refers to GPT models as generative pre-trained transformer models that generate text in different languages and create human-sounding words, sentences and paragraphs on almost any topic and in almost any writing style. This evidence predates the relevant date and is directly concerned with the AI field to which the specification belongs. Its probative value lies not in establishing quantified EU consumer exposure, but in showing that, before the relevant date, the abbreviation ‘GPT’ was used in a technical context as corresponding to generative pre-trained transformer models.
- 55 Annex 8, published in April 2020, concerns ‘RecipeGPT’. It refers to a generative pre-trained language model (GPT-2), fine-tuned on a cooking-recipe dataset, and states that the work demonstrates the feasibility of generative pre-trained transformer technology in that context. That document is relevant for two reasons. First, it predates the relevant date by more than two years. Secondly, it shows use of ‘GPT’ within the name of a specialised AI model and in connection with generative pre-trained transformer technology, rather than merely as an arbitrary sequence of letters.
- 56 Annex 9, revised on 13 October 2021 and published in 2022, refers to ‘GPT’ as an example of a baseline generative pre-trained language model and to ‘NumGPT’ as a generative pre-trained model. This evidence is again pre-priority and concerns technical literature in the AI and language-model field. It supports the conclusion that before 27 December 2022, ‘GPT’ functioned in professional AI discourse as a technical acronym or model-type designation linked to generative pre-trained language-model technology.

- 57 Annex 10, submitted on 27 June 2021, refers expressly to ‘Generative Pre-trained Transformers, or GPT’. This is particularly probative because it directly identifies the relationship between the full technical expression and the acronym before the relevant date. It therefore supports the inference that the professional public exposed to AI technical literature would understand ‘GPT’ not as an arbitrary sign requiring reconstruction, but as an established abbreviation of the relevant technical expression.
- 58 Taken together, Annexes 7 to 10 show consistent pre-priority use of ‘GPT’ in independent technical and academic AI contexts as an acronym corresponding to ‘generative pre-trained transformer’ or as a designation of generative pre-trained language-model technology. The evidence does not consist of a single isolated occurrence. It shows repeated use over a period preceding the relevant date, in sources directed to, or naturally consulted by, the relevant professional circles.
- 59 The EUTM proprietor’s criticism that the invalidity applicant did not provide figures concerning EU readership, distribution or actual exposure to Annexes 7 and 8 is not without force. Such absence reduces the value of those annexes if they were relied upon to establish the perception of the entire EU public or mass-market consumer awareness. However, Article 7(1)(c) EUTMR does not require, in circumstances such as the present, proof by readership statistics comparable to evidence filed for reputation or genuine use. The question is whether the sign may serve in trade to designate a characteristic of the goods or services and whether a non-negligible part of the relevant public would understand it in that way. Where the relevant public includes a professional technical public, consistent use in technical and academic publications may be probative of the meaning of a specialised acronym for that public.
- 60 That conclusion is particularly justified in the present sector. Artificial intelligence, machine learning and natural language processing are fields in which professional terminology is disseminated through scientific articles, preprints, technical papers, model documentation and developer-oriented publications. Professionals active in those fields are expected to encounter and understand such terminology as part of their professional vocabulary. Accordingly, the absence of quantified EU readership figures does not deprive the pre-priority technical evidence of probative force, provided that the evidence is assessed cumulatively and with appropriate caution.
- 61 The Board also takes note of the EUTM proprietor’s criticism of Annex 7 concerning the allegedly inaccurate reference to LaMDA, supported by Exhibit 1 on appeal. Even if that criticism were accepted, it would affect the weight to be attached to that particular aspect of Annex 7. It would not neutralise the remaining, independent pre-priority evidence showing use of ‘GPT’ as a technical acronym in AI contexts. The Board therefore attaches limited weight to Annex 7 insofar as it concerns the disputed LaMDA reference, but continues to take account of its broader use of ‘GPT’ in relation to generative pre-trained transformer models, in conjunction with Annexes 8, 9 and 10.
- 62 The EUTM proprietor’s argument that it may have been the first undertaking to use ‘GPT’ for its own models, including GPT-2 and GPT-3, is not decisive for the assessment under Article 7(1)(c) EUTMR. That provision concerns the intrinsic capacity of the sign to designate characteristics of the goods or services from the

viewpoint of the relevant public. Prior or concurrent use of the sign by the proprietor, including use as a mark or model name, does not preclude a finding of inherent descriptiveness if, at the relevant date, the sign was perceived by the relevant public as an abbreviation of a technical expression designating a type of AI technology. Such use by the proprietor may be relevant, if properly substantiated, to acquired distinctiveness under Article 7(3) or Article 59(2) EUTMR. It does not, however, alter the inherent descriptiveness assessment under Article 7(1)(c) EUTMR (29/09/2021, T-60/20, Mastihacare, EU:T:2021:629, § 44-46).

- 63 Nor is the existence of other possible meanings of the acronym ‘GPT’ decisive. It is sufficient for Article 7(1)(c) EUTMR to apply that at least one of the possible meanings of the sign designates a characteristic of the goods or services concerned. This applies a fortiori where the meaning relied upon is not remote, arbitrary or unrelated, but belongs precisely to the technical field covered by the specification (10/02/2021, T-153/20, Lightyoga, EU:T:2021:70, § 54-55).
- 64 The Board is not persuaded by the argument that the relevant public would have needed a very significant cognitive step to connect ‘GPT’ with the goods and services. For the professional public active in AI, machine learning, natural language processing and related software-development fields, the evidence shows that ‘GPT’ was not merely a random three-letter sequence from which a meaning had to be reconstructed. It was used before the relevant date in technical contexts as an acronym or technical designation corresponding to generative pre-trained transformer or generative pre-trained language-model technology.
- 65 When that public encounters ‘GPT’ in relation to software for language models, natural language processing, machine-learning-based language and speech processing, artificial generation of text or speech, voice recognition, predictive analytics, neural-network development, APIs, SaaS or AI research and software development, the semantic link is direct and technical. The sign informs that public that the goods or services use, implement, provide access to, concern, develop, integrate, support or research GPT technology. That message does not require an interpretative detour. It concerns the kind, technological nature, intended purpose, mode of operation, technical subject matter or field of the goods and services.
- 66 The characteristic designated is objective and inherent. It is not a vague laudatory message, a subjective impression or a merely allusive reference. The technological architecture, model type or AI technique on which software is based, or to which software-development services relate, is a technical property capable of being recognised by the relevant professional public. In relation to AI software, language-model software, NLP software, neural-network software, APIs, SaaS and AI-related software research and development, the use, implementation, provision, development or support of generative pre-trained transformer / language model technology constitutes an objective technical characteristic of those goods or services. It is sufficiently intrinsic to the nature, purpose or subject matter of the goods and services where they are specified in terms that expressly cover AI, language models, NLP, machine learning, speech and text generation, datasets, algorithms and neural networks.
- 67 It is irrelevant that such a characteristic may not be commercially decisive for every purchasing decision. A characteristic within the meaning of Article 7(1)(c) EUTMR

need not be economically essential, provided that it is objective, inherent, intrinsic and permanent with regard to the goods or services concerned, or where the sign designates one of the possible intended purposes of those goods or services that the relevant public is liable to take into account (26/03/2025, T-314/24, FRAUD FIGHTERS, EU:T:2025:340, § 33; 12/06/2024, T-130/23, FOOTWARE, EU:T:2024:373, § 60-68; 23/05/2024, T-330/23, READYPACK, § 61; 21/12/2022, T-777/21, ECO STORAGE (fig.), EU:T:2022:846, § 53).

- 68 The goods in Class 9 may be assessed together because they form a sufficiently homogeneous category for the purposes of the present ground. They are not grouped merely because they fall within the same Nice Class, nor because they are software in a broad abstract sense. They are all specified as downloadable computer programs or software for, or expressly concerned with, language models, artificial production of speech and text, NLP, generation, understanding and analysis of language, machine-learning-based language and speech processing, translation, datasets for machine learning and predictive analytics, audio-to-text conversion, voice and speech recognition, creation and generation of text, learning algorithms and artificial neural networks.
- 69 That common link is precisely the field in which the evidence shows pre-priority use of ‘GPT’ as an acronym or technical designation for generative pre-trained transformer / language model technology. For those goods, the sign ‘GPT’ directly describes the kind, technological basis, intended purpose, mode of operation or technical subject matter of the software, namely software using, implementing, developing or concerning GPT technology. The relationship between the sign and the goods in Class 9 is therefore sufficiently direct and specific.
- 70 That conclusion is not undermined by the fact that some items in Class 9 may be worded broadly, such as *computer programs* or *software*. Where a sign is descriptive for a subset of goods falling within a broader category, and the registration is not limited so as to exclude those goods, the descriptive finding may apply to the broader category. Otherwise, the proprietor could use the sign for goods within that category in relation to which it is descriptive (28/02/2024, T-747/22, Compton (fig.), EU:T:2024:135, § 42; 23/03/2022, T-113/21, Beverage Analytics, EU:T:2022:152, § 47-48, 50-51, 59; 17/03/2021, T-226/20, MobileHeat, EU:T:2021:148, § 39).
- 71 The services in Class 42 may likewise be assessed by appropriate sub-grouping. The SaaS services mirror the Class 9 software goods in non-downloadable form and concern the same AI, language-model, NLP, machine-learning, speech/text, translation, dataset, voice-recognition, algorithmic and neural-network functions. For those services, ‘GPT’ informs the relevant professional public that the service provides access to, operates by means of, deploys, integrates or supports GPT technology. The descriptive link is immediate because SaaS services are defined by the software functionality made available to users.
- 72 The application service provider services featuring API software are also directly linked to the provision and technical integration of software functionality. APIs are the means through which software functions, including AI or language-model functions, may be accessed, integrated or called by other software systems. In relation to API software and application service provider services in the AI/NLP field, ‘GPT’ therefore designates the technical subject matter or functionality made accessible

through the API, namely GPT-based language-model technology. The sign does not merely allude to a remote commercial context; it describes what such services provide, connect to or technically enable.

- 73 *Research and development services in the field of artificial intelligence and research, design and development of computer programs and software* are broad but, as registered, directly cover services whose purpose is the research, design or development of GPT-based AI software, generative pre-trained transformer models or related language-model technology. For such services, the sign ‘GPT’ indicates the field, object or technical subject matter of the service. The descriptive assessment is therefore not confined to software already incorporating the technology. It also extends to services whose purpose is to research, design, develop, improve, test, implement or support that technology.
- 74 This approach does not amount to an over-generalisation. The common link is not that all software, all APIs or all research services are necessarily GPT-related. The common link is that the contested specification is centred on AI, language models, NLP, machine learning, speech and text generation, predictive analytics, datasets, algorithms, voice recognition and neural networks. Those are precisely the technical fields in relation to which the evidence shows that ‘GPT’ was used before the relevant date as an acronym or technical designation for generative pre-trained transformer / language model technology.
- 75 Nor is it necessary that ‘GPT’ is the only possible designation for the relevant technology, or the most usual term, or that the sign appear in dictionaries before the relevant date. Article 7(1)(c) EUTMR does not require that the sign is the only way of designating the characteristic in question. Nor does it require dictionary inclusion or common everyday usage, provided that the relevant public will understand the descriptive meaning (26/03/2025, T-314/24, FRAUD FIGHTERS, EU:T:2025:340, § 21, 37-38; 05/03/2025, T-89/24, Matjesfilethappen nach ‘Kolberger Art’, EU:T:2025:209, § 38; 23/05/2024, T-330/23, READYPACK, § 32, 34; 08/05/2024, T-501/23, Silent Loop, EU:T:2024:300, § 45).
- 76 Conversely, the fact that a post-priority dictionary entry may record ‘GPT’ together with a trade mark indication is not determinative of inherent distinctiveness. Dictionary entries are therefore assessed only in context and cannot override the pre-priority technical evidence.
- 77 The EUTM proprietor’s evidence of enforcement activity, brand guidelines and correspondence with dictionary publishers is likewise not capable of altering the assessment of inherent descriptiveness. Such evidence may show that the proprietor sought to preserve trade mark significance in the market. However, it does not disprove that, at the relevant date, the professional public identified and understood ‘GPT’ as a technical acronym or designation in relation to the relevant AI software and services. If the proprietor maintains that the sign, although inherently descriptive, acquired distinctive character through use, that issue should be examined under Article 59(2) EUTMR in the separate subsidiary stage identified by the Cancellation Division.
- 78 Finally, decisions of non-EU or national authorities relied upon by either party cannot be determinative. The European Union trade mark system is autonomous.

Registrability must be assessed exclusively by reference to the EUTMR and the perception of the relevant public in the European Union. Refusals by the USPTO or registrations in other jurisdictions may form part of the factual background, but they cannot relieve the Board of carrying out its own assessment under Article 7(1)(c) EUTMR.

- 79 On the basis of the foregoing, the Board finds that, at the relevant date of 27 December 2022, the contested sign ‘GPT’ was liable to be understood by a non-negligible part of the relevant public, namely at least a substantial part of the professional public in the European Union active in the fields of artificial intelligence, machine learning, natural language processing and related software-development, as the acronym or technical designation of ‘generative pre-trained transformer’ or generative pre-trained transformer / language model technology.
- 80 In relation to the registered goods and services, which are all directed to, or expressly concern, AI software, language models, natural language processing, machine learning, speech and text generation, predictive analytics, datasets, voice recognition, neural networks, APIs, SaaS and software research and development, ‘GPT’ designates an objective and inherent technical characteristic. It informs the relevant professional public, immediately and without further thought, that the goods or services use, implement, provide access to, integrate, concern, develop, research or support GPT technology.
- 81 The contested sign therefore has a sufficiently direct and specific relationship with all the goods in Class 9 and all the services in Class 42 at issue. It may serve in trade to designate the kind, technological nature, intended purpose, mode of operation, field or technical subject matter of those goods and services. The contested EUTM was therefore registered contrary to Article 7(1)(c) EUTMR.
- 82 This finding is confined to the public for which the descriptive meaning has been sufficiently established, namely the professional public in the European Union active in artificial intelligence, machine learning, natural language processing and related software-development fields. This is sufficient for Article 7(1)(c) EUTMR to apply. Pursuant to Article 7(2) EUTMR, it is enough that the absolute ground exists in part of the Union or in relation to a non-negligible part of the relevant public.
- 83 It follows that the Cancellation Division did not err in finding that, at the relevant date, the contested sign had a sufficiently close, direct and specific relationship with the contested goods and services to fall within the prohibition laid down in Article 7(1)(c) EUTMR, read together with Article 7(2) EUTMR.

Conclusion

- 84 In the light of the above, the Board confirms the Cancellation Division’s conclusion that the contested EUTM was registered contrary to Article 7(1)(c) EUTMR for all the goods and services at issue in Classes 9 and 42.
- 85 Therefore, the contested decision is confirmed, and the appeal dismissed.
- 86 Since the appeal is dismissed in relation to all the services at issue in the present case on the basis of Article 59(1)(a) EUTMR, in conjunction with Article 7(1)(c)

EUTMR, there is no need to assess the other grounds invoked by the invalidity applicant.

Costs

- 87 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the EUTM proprietor, as the losing party, must bear the invalidity applicant's costs of the appeal proceedings.
- 88 These consist of the invalidity applicant's costs of professional representation of EUR 550.
- 89 As to the cancellation proceedings, the Cancellation Division did not take any decision on costs, as the contested decision did not terminate the proceedings. Since the case is remitted and a new decision has to be made, the decision on costs is reserved for the Cancellation Division's decision.

Order

On those grounds,

THE BOARD

hereby:

- 1 Dismisses the appeal.**
- 2 Remits the case to the Cancellation Division for further examination of the subsidiary claim of acquired distinctiveness pursuant to Article 7(3) EUTMR.**
- 3 Orders the EUTM proprietor to bear the invalidity applicant's costs incurred in the appeal proceedings in the amount of EUR 550.**

Signed

V. Melgar

Signed

S. Rizzo

Signed

A. Pohlmann

Registrar:

Signed

K. Zajfert

