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JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

15 July 2026 (*)

(EU trade mark – Application for the EU word mark OPENAI – Absolute grounds for refusal – Lack of distinctive character – Descriptive character – Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 – Equal treatment – Principle of sound administration)

In Case T-555/25,

OpenAI, Inc., established in San Francisco, California (United States), represented by A. Klett and C. Mikyska, lawyers,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by T. Klee and V. Ruzek, acting as Agents,

defendant,

THE GENERAL COURT (Eighth Chamber),

composed of I. Gâlea (Rapporteur), President, M.J. Costeira and L. Spangsberg Grønfeldt, Judges,

Registrar: J. Čuboň, Administrator,

having regard to the written part of the procedure,

further to the hearing on 21 April 2026,

gives the following

Judgment

Background to the dispute

1 By its action under Article 263 TFEU, the applicant, OpenAI, Inc., seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of10June 2025 (Case R 190/2025-5) (‘the contested decision’).

2 On 15 June 2023, the applicant filed an application for registration of an EU trade mark with EUIPO in respect of the word sign OPENAI.

3 Following the restriction made in the course of the proceedings before EUIPO, the mark applied for covered goods and services in Classes 9, 38, 42 and 45 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the

Registration of Marks of 15 June 1957, as revised and amended, corresponding, for Classes 9, 42 and 45, inter alia to the following description:

– Class 9: ‘Recorded and downloadable media, computer software, blank digital or analogue recording and storage media; Computer software; Computer software programs; Computer software platforms; Computer software development tools; Downloadable computer software; Application software; Interactive computer software; Computer programs [downloadable software]; Computer search engine software; Apps; Recorded computer software; Software applications; Mobile software applications; Applications for smartphones and tablets; Computer application software for streaming audio-visual media content via the internet; Software for processing images, graphics, audio, video and text; Computer databases; Electronic databases; Interactive database software; Database and file management software; Computer software for creating searchable databases of information and data; System software; Computer systems; Data processing systems; System and system support software, and firmware; Computer operating system software; Document management system software; Workflow management system software; Computer software downloadable from global computer networks; Computer software applications, downloadable; Computer software for database management; Computer software for business purposes; Computer software for wireless network communications; Computer software for application and database integration; Computer software for scanning images and documents; Downloadable computer software for the transmission of data and information; Downloadable computer software for the management of data; Computer software for use as an application programming interface (API); Downloadable computer software for use as an application programming interface (API); Downloadable digital files authenticated by non-fungible tokens [NFTs]; Smart watches; Smart bands; Smart jewellery; Graphic art software; Software for generating virtual images; Downloadable software for use in electronically buying, selling, receiving, sending, storing, trading, and processing transactions to and related to digital art and collectibles, crypto-collectibles, nfts, application tokens, and digital currencies; Downloadable software for providing access to an online virtual environment’;

– Class 42: ‘Scientific and technological services and research and design relating thereto; Quality control and authentication services; Design and development of computer hardware and software; Technological research and development; Safety testing services relating to computer software; Certification of safety standards relating to computer software; Computer software research; Computer software integration; Software development services; Hosting services, software as a service, and rental of software; Development of interactive multimedia software; Providing online, non-downloadable software; Software as a service [SaaS]; Platform as a service [PaaS]; Platform as a service [PaaS] featuring software platforms for transmission of images, audio- visual content, video content and messages; Application service provider featuring Application Programming Interface (API) software; Design, development, updating and maintenance of computer software; Computer systems development; Computer system integration services; Development of computer systems; Development of computer platforms; Design and development of data storage systems; Design and development of data entry systems; Design and development of data processing systems; Design and development of electronic data security systems; Development of systems for the transmission of data; Cloud computing services; Cloud storage services for electronic files and data; Database design; Database design and development; Data security services; Web-based software as a service related to blockchain-based non-fungible tokens (nfts) featuring software for creating, providing information about, authentication, grading, valuation, selling, auctioning and trading nfts; Platform as a service (paas) and software as a service (saas) featuring software platforms for use in electronically buying, selling, receiving, sending, storing, trading, and

processing transactions to and related to digital art and collectibles, crypto-collectibles, nfts, application tokens, and digital currencies; Technology services including artificial intelligence and learning technologies for digital art and collectibles, crypto-collectibles, nfts, application tokens, and digital currencies; Design and development of virtual reality hardware and software; Application service provider (ASP) services featuring software for use in virtual currency, digital currency, cryptocurrency, and digital asset exchange and transactions';

– Class 45: 'User identity verification services; Business identification verification services; Providing authentication of personal identification information [identification verification services]'.

4 By decision of 5 December 2024, the examiner rejected the application for registration of that mark in part, on the basis of Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1), read in conjunction with Article 7(2) of that regulation, on the ground that that mark was descriptive and devoid of distinctive character in respect of the goods and services referred to in paragraph 3 above.

5 On 27 January 2025, the applicant filed a notice of appeal with EUIPO against the examiner's decision.

6 By the contested decision, the Board of Appeal dismissed the appeal. As regards the ground for refusal laid down in Article 7(1)(c) of Regulation 2017/1001, it found, first of all, that the goods and services at issue were aimed both at the English-speaking general public and professional public in the European Union, the level of attention ranging from average to high. Next, the Board of Appeal found that at least a non-negligible part of the relevant public will recognise the elements of which the sign applied for consists, namely, 'open', meaning 'not closed or barred; available; not limited; ready for business; free to all to join; in computing (of software or a computer system) designed to an internationally agreed standard in order to allow communication between computers, irrespective of size, manufacturer, etc.', and 'AI', as the abbreviation of the expression 'artificial intelligence', which denotes 'a type of computer technology which is concerned with making machines work in an intelligent way, similar to the way that the human mind works'. Consequently, the Board of Appeal found that those two elements were descriptive of the nature and intended purpose of the goods and services at issue, as a whole, since all the goods and services in Classes 9, 42 and 45 were based on 'open artificial intelligence'. As regards the ground for refusal laid down in Article 7(1)(b) of Regulation 2017/1001, it also found that, although that sign would not be perceived as indicating the commercial origin, it would nevertheless provide direct information indicating that the goods and services at issue are linked to or operate by means of freely accessible artificial intelligence. Lastly, as regards the earlier similar registrations relied on by the applicant, the Board of Appeal recalled that those registrations did not represent current practice and case-law and that the legality of the decisions of the Boards of Appeal must be assessed solely on the basis of Regulation 2017/1001 and not on the basis of a previous administrative practice. The Board of Appeal also stated that, once the contested decision has become final, the proceedings will resume for the purposes of examining the applicant's alternative claim based on Article 7(3) of Regulation 2017/1001, relating to distinctive character acquired through use.

Forms of order sought

7 The applicant claims that the Court should:

– annul the contested decision;

– order EUIPO to pay the costs.

8 EUIPO contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs in the event that an oral hearing is convened.

Law

9 The applicant relies, in essence, on three pleas in law, alleging, first, infringement of Article7(1)(c) of Regulation 2017/1001, second, infringement of Article 7(1)(b) of Regulation 2017/1001 and, third, breach of the principles of equal treatment and sound administration in the light ofEUIPO's previous practice.

The first plea in law, alleging infringement of Article 7(1)(c) of Regulation 2017/1001

10 By its first plea, the applicant submits, first, that the Board of Appeal erred in finding that the relevant public would understand the sign OPENAI as meaning 'freely accessible artificial intelligence', second, that that sign is a composite sign devoid of meaning, which cannot be regarded as descriptive of a characteristic of the goods and services at issue, and, third, that the Board of Appeal could not rely on general reasoning as regards all the goods and services in respect of which registration was sought.

11 EUIPO disputes the applicant's arguments.

12 Article 7(1)(c) of Regulation 2017/1001 provides that trade marks which 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 must not be registered. Article 7(2) of that regulation provides that Article 7(1) is to apply notwithstanding that the grounds of non-registrability obtain in only part of the European Union.

13 Those signs or indications are regarded as incapable of performing the essential function of a trade mark, namely that of identifying the commercial origin of the goods or services (judgments of 23 October 2003, *OHIM* v *Wrigley*, C-191/01 P, EU:C:2003:579, paragraph 30, and of 27 February 2002, *Eurocool Logistik* v *OHIM (EUROCOOL)*, T-34/00, EU:T:2002:41, paragraph 37).

14 For a sign to be caught by the prohibition set out in Article 7(1)(c) of Regulation 2017/1001, 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 (see judgments of 12 January 2005, *Deutsche Post EURO EXPRESS* v *OHIM (EUROPREMIUM)*, T-334/03, EU:T:2005:4, paragraph 25 and the case-law cited, and of 22 June 2005, *Metso Paper Automation* v *OHIM (PAPERLAB)*, T-19/04, EU:T:2005:247, paragraph 25 and the case-law cited).

15 Whether a sign is descriptive can be assessed only, first, by reference to the goods or services concerned and, second, by reference to the understanding which the relevant public has of the sign (see judgment of 25 October 2005, *Peek & Cloppenburg* v *OHIM (Cloppenburg)*, T-379/03, EU:T:2005:373, paragraph 37 and the case-law cited).

16 By prohibiting the registration as trade marks of such signs and indications, Article 7(1)(c) of Regulation 2017/1001 pursues an aim which is in the public interest, namely that signs or indications that are descriptive of the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision accordingly prevents such signs or indications from being reserved to one undertaking alone because they have been registered as trade marks (see judgment of 23 October 2003, *OHIM* v *Wrigley*, C-191/01 P, EU:C:2003:579, paragraph 31 and the case-law cited).

17 It is in the light of those considerations that it must be examined whether, as the applicant claims, the Board of Appeal infringed Article 7(1)(c) of Regulation 2017/1001.

The relevant public

18 The Board of Appeal found that the relevant public was the English-speaking public in the European Union, consisting of both the general public and the professional public, whose level of attention could vary from average to high.

19 The applicant has not called those findings into question.

The meaning of the sign applied for

20 The Board of Appeal found, first, that the relevant public will recognise the terms ‘open’ and ‘AI’ in the sign applied for, even in the absence of a hyphen. As regards the term ‘open’, the Board of Appeal found that it would be understood as meaning ‘not closed or barred; available; not limited; ready for business; free to all to join; in computing (of software or a computer system) designed to an internationally agreed standard in order to allow communication between computers, irrespective of size, manufacturer, etc.’. As regards the term ‘AI’, the Board of Appeal found that it was the abbreviation of the expression ‘artificial intelligence’, meaning ‘a type of computer technology which is concerned with making machines work in an intelligent way, similar to the way that the human mind works’.

21 Second, the Board of Appeal found that, when linked to IT-related goods and services in Classes 9, 42 and 45, the term ‘open’ could indicate that they are freely available or that they have unrestricted access. Thus, the sign applied for would not be perceived as a fanciful term, but as a juxtaposition of the terms ‘open’ and ‘AI’. Therefore, those terms, used together, could mean accessible or unrestricted artificial intelligence, artificial intelligence based on open source principles or transparent or explainable artificial intelligence.

22 The applicant criticises, in essence, the Board of Appeal for finding that the relevant public would understand the sign OPENAI as meaning ‘freely accessible artificial intelligence’ and that it would be perceived as a mere juxtaposition of the terms ‘open’ and ‘AI’ and not as a fanciful term.

23 It submits, in particular, that the term ‘open’ has multiple meanings and that the Board of Appeal erred in finding that that term would be understood as ‘freely accessible’ or as an abbreviation of the concept of ‘open source’. Therefore, even if the relevant public were to perceive the term ‘open’ as an isolated term, which the applicant disputes, that term could have multiple meanings and, associated with the term ‘AI’, it would make up a composite sign, consisting of a single word without visual separation and devoid of any inherent meaning, without evoking any characteristic of the goods and services at issue.

24 EUIPO disputes the applicant’s arguments.

25 According to the case-law, a sign must be refused registration if at least one of its possible meanings designates a characteristic of the goods or services concerned (judgment of 23 October 2003, *OHIM* v *Wrigley*, C-191/01 P, EU:C:2003:579, paragraph 32; see also, judgment of 12 June 2024, *Nike Innovate* v *EUIPO – Puma (FOOTWARE)*, T-130/23, not published, EU:T:2024:373, paragraph 38 and the case-law cited).

26 In that regard, it must be held that the Board of Appeal was right, relying on dictionary definitions, to find that the term ‘open’ could be understood as meaning ‘not closed or barred; available; not limited; ready for business; free to all to join; in computing (of software or a computer system) designed to an internationally agreed standard in order to allow communication between computers, irrespective of size, manufacturer, etc.’. The Board of Appeal was also right in finding that the term ‘AI’ is the abbreviation of the expression ‘artificial intelligence’. Indeed, it must be held, as the Board of Appeal found, that that term is widely known and is commonly used in the field of new technologies, in particular by users of IT tools.

27 However, the applicant complains in that regard that the Board of Appeal based its assessment on the meaning of the term ‘open’ understood as ‘freely accessible’ on account of the implicit and incorrect association with the concept of ‘open source’, despite the numerous other possible meanings. Indeed, it submits that the term ‘source’ is not included in the sign applied for and that the term ‘open’ is not a commonly accepted abbreviation of the expression ‘open source’.

28 First, it is clear from the contested decision that the Board of Appeal took into consideration different possible definitions of the term ‘open’ relying in particular on dictionaries. Furthermore, it stated that, in the context of IT-related goods and services, such as those in Classes 9, 42 and 45, that term is likely to describe those goods and services as being freely available or accessible, or as having unrestricted access.

29 Consequently, the Board of Appeal cannot be criticised for having supplemented the term ‘open’ by the implicit addition of the word ‘source’ and thus, in effect, basing its analysis on the concept of ‘open source’. It is true that the Board of Appeal found, in addition to its reasoning, that, in technological terminology, the term ‘open’ was used to refer to open standards, ‘open source’ formats or accessible formats. Nevertheless, that subsequent finding alone does not make it possible to regard the contested decision as being based on the fact that the term ‘open’ was the abbreviation of the concept of ‘open source’.

30 Therefore, the Board of Appeal was right to find, in paragraph 37 of the contested decision, that the term ‘open’ combined with the term ‘AI’ could also refer to accessible or non-restricted artificial intelligence, or even to transparent or explainable artificial intelligence.

31 Second, it should be borne in mind that, in accordance with the case-law cited in paragraph 25 above, a sign must be refused registration if at least one of its possible meanings designates a characteristic of the goods or services concerned.

32 Therefore, even if the term ‘open’ may have multiple meanings, the Board of Appeal did not make an error of assessment in finding that, when linked to the goods and services at issue, that term could be perceived as meaning ‘freely available or accessible’.

33 Furthermore, it follows from the case-law cited in paragraph 25 above that the fact, even if it were established, that the definitions of the term ‘open’, relied on by the applicant, do not designate characteristics of the goods and services at issue has no bearing on the merits of the ground relied on by the Board of Appeal, namely that another definition of the term ‘open’ designates a characteristic of the goods and services at issue.

34 In the second place, the applicant’s claim that the sign applied for is a neologism on account of its unusual syntax arrangement and its lack of lexical meaning must be rejected.

35 In that regard, it should be recalled that, according to settled case-law, although the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details, the fact remains that, when perceiving a word sign, he or she will break it down into word elements which, for him or her, have a specific meaning or which resemble words known to him or her (see judgment of 13 February 2007, *Mundipharma* v *OHIM – Altana Pharma (RESPICUR)*, T-256/04, EU:T:2007:46, paragraph 57 and the case-law cited).

36 In addition, a trade mark consisting of a neologism or a word composed of elements each of which is descriptive of characteristics of the goods or services in respect of which registration is sought is itself descriptive of the characteristics of those goods or services for the purposes of Article 7(1)(c) of Regulation 2017/1001, unless there is a perceptible difference between the neologism or the word in question and the mere sum of its parts. That presupposes that, because of the unusual nature of the combination in relation to the goods or services, the neologism or word in question creates an impression which is sufficiently far removed from that produced by the mere combination of indications arising from its constituent elements, with the result that it is more than the sum of its parts. In that connection, an analysis of the term in question in the light of the appropriate lexical and grammatical rules is also relevant (see judgment of 28 April 2021, *Freistaat Bayern* v *EUIPO (GEWÜRZSOMMELIER)*, T-348/20, not published, EU:T:2021:228, paragraph 39 and the case-law cited).

37 In the present case, having regard to the fact that the terms ‘open’ and ‘AI’ are easily and immediately recognisable, that the expression ‘open AI’ complies with the grammatical rules of English – the adjective preceding the noun – and that that expression does not contain any unusual element in its syntax, it must be held that that expression does not create, on the part of the relevant public, an impression which is sufficiently far removed from that produced by the mere juxtaposition of its constituent elements so that the expression in question is more than a sum of its parts. That public may understand the term ‘OPENAI’ as meaning either accessible or unrestricted artificial intelligence, based on open source principles, or even one that is transparent or explainable.

38 Furthermore, as the Board of Appeal correctly pointed out, the fact that the terms ‘open’ and ‘ai’ are joined without space cannot reinforce its fanciful nature. In that regard, it should be noted

that the absence of a hyphen or space between the two words composing a sign does not amount to evidence of any creative aspect capable of rendering that sign non-descriptive (see, to that effect, judgment of 13 November 2008, *Duro Sweden* v *OHIM (EASYCOVER)*, T-346/07, not published, EU:T:2008:496, paragraph 52 and the case-law cited).

39 Moreover, it is of little consequence that the expression ‘open AI’ has no lexical meaning and does not constitute a recognised expression in English. The mark applied for is not required to appear in a dictionary or to be used in everyday language in order for it to be refused registration under Article 7(1)(c) of Regulation 2017/1001 (see, to that effect, judgments of 6 March 2015, *Braun Melsungen* v *OHIM (SafeSet)*, T-513/13, not published, EU:T:2015:140, paragraph 42, and of 13 July 2022, *Brand Energy Holdings* v *EUIPO (RAPIDGUARD)*, T-573/21, not published, EU:T:2022:450, paragraph 40).

40 It must be concluded that, taken as a whole, the sign applied for cannot create, on the part of the relevant public, an impression sufficiently far removed from that produced by the mere juxtaposition of the words of which it is composed to alter its meaning or scope.

41 It follows that the Board of Appeal’s analysis of the perception of the relevant public and the meaning of the mark applied for is not vitiated by any error of assessment.

The link between the sign applied for and the goods and services at issue

42 The Board of Appeal found that all the goods at issue in Class 9 are software applications using artificial intelligence or involving functionality based on it, that all the services at issue in Class 42 use ‘open’ artificial intelligence technologies in terms of architecture, access or transparency and that all the services in Class 45 run on the basis of software that comes with features related to ‘open’ artificial intelligence. It also found that the mark applied for merely described the nature, function or purpose of the goods and services at issue, which could all be based on or driven by ‘open’ artificial intelligence and that the descriptive characteristics common to all the goods and services at issue are the nature and intended purpose, thus forming a sufficiently homogeneous category or group of goods and services.

43 Consequently, the Board of Appeal found that, for at least a non-negligible part of the relevant public, in particular that of increasing awareness of artificial intelligence, the term ‘OPENAI’ directly conveyed a descriptive statement that the goods and services at issue are related to or are provided with the aid of a certain type of artificial intelligence system or software, namely that they embed or are offered using ‘open source’ or ‘open in access’ artificial intelligence.

44 The applicant submits, first, that none of the possible meanings conveys a characteristic, function or benefit of the goods and services at issue. It claims that the goods and services at issue involve a variety of different applications or may serve different purposes unrelated to artificial intelligence. The purpose of those goods is not necessarily to offer ‘open’ artificial intelligence, since the sign applied for is therefore not appropriate for directly describing their nature or characteristics. Furthermore, it is not clear that the goods and services at issue are ‘based on open AI’. Furthermore, the mark applied for is known to the relevant public and will thus be perceived as a direct reference to the applicant.

45 Second, the applicant criticises the Board of Appeal for merely finding that all the goods in Classes 9, 42 and 45 could be ‘open AI-driven or open AI-based’, whereas some of those goods do not have a sufficiently direct and specific relationship between them, to the point of forming a category sufficiently homogeneous to warrant general reasoning. The fact that the goods and services at issue fall within the same class of the Nice Agreement is insufficient. Accordingly, the applicant submits that the contested decision is excessively general and abstract and vitiated by a failure to state reasons.

46 EUIPO disputes the applicant’s arguments.

47 In the first place, as regards the competent authority’s obligation to state reasons for refusing to register a trade mark in respect of each of the goods or services for which that registration is sought, the competent authority may use only general reasoning for all of the goods and services concerned where the same ground for refusal is given for a category or group of goods or services (see judgment of 17 May 2017, *EUIPO* v *Deluxe Entertainment Services Group*, C-437/15 P, EU:C:2017:380, paragraph 30 and the case-law cited). However, such a power extends only to goods and services which are interlinked in a sufficiently direct and specific way, to the point where they form a sufficiently homogeneous category or group of goods or services (see judgment of 17 May 2017, *EUIPO* v *Deluxe Entertainment Services Group*, C-437/15 P, EU:C:2017:380, paragraph 31 and the case-law cited).

48 In the present case, the goods and services at issue in Classes 9, 42 and 45 have the common characteristic that they can all be based on or driven by freely accessible artificial intelligence. Indeed, contrary to what the applicant claims, that assessment also applies to ‘NFT’ or ‘smart bands’ in Class 9, ‘data security services’ in Class 42, and ‘user identity verification services’ in Class 45, all of which are capable of being based on or driven by artificial intelligence, or of operating by means of it.

49 Therefore, for the purposes of assessing the descriptive character of the mark applied for, which will be perceived by the relevant public as information that the software and other services at issue are based on accessible artificial intelligence, those various goods and services are sufficiently homogeneous, on account of the common characteristic referred to in paragraph 48 above. Consequently, the Board of Appeal’s use of general reasoning was justified in accordance with the case-law referred to in paragraph 47 above.

50 In that regard, contrary to what the applicant claims, the fact that the goods and services at issue fall within several different classes cannot in itself demonstrate their heterogeneity, since that fact does not in itself preclude the existence of a sufficiently direct and specific link between the goods and services at issue. The Board of Appeal concluded that there was a sufficiently direct and specific link between the goods and services at issue on account of their common characteristic in relation to the meaning of the mark applied for, referred to in paragraph 48 above.

51 In the second place, as regards the goods and services at issue, it must be held, as the Board of Appeal did, that, first, the goods in Class 9 are software applications using artificial intelligence or a feature based thereon, and which may be accessible to the general public. Second, as regards the services in Class 42 covered by the mark applied for, namely cloud computing, software research, certification of software, open-access AI research, or cloud platforms supporting open AI tools, it should be noted that they may all use artificial intelligence technologies which are open in terms of

access or transparency, enabling them to make artificial intelligence technologies more accessible, transparent or beneficial to a wide public. Third, the services in Class 45 are services offered to customers which may operate on the basis of software equipped with features related to artificial intelligence technology.

52 It follows that the goods and services at issue all have, as a common characteristic, the fact that they can be based on freely accessible artificial intelligence or are driven by artificial intelligence made accessible to the general public.

53 Thus, contrary to the applicant's arguments, it is irrelevant that the goods and services at issue may serve different purposes or that their primary purpose is not necessarily that of offering accessible artificial intelligence, since they are capable of being used for such purposes.

54 Indeed, for the mark applied for to be regarded as having a sufficiently direct and specific relationship with the goods and services concerned, it is sufficient that one of the possible uses of those goods and services is that designated by the mark applied for (see, to that effect and by analogy, judgment of 19 May 2021, *Steinel* v *EUIPO (GluePro)*, T-256/20, not published, EU:T:2021:279, paragraphs 49 and 50).

55 Therefore, the Board of Appeal was right to find that the term 'OPENAI', understood by the relevant public as meaning 'accessible or non-restricted artificial intelligence', is descriptive of the nature, function or purpose of artificial intelligence based software in Class 9 and of artificial intelligence based services in Classes 42 and 45. That term indicates directly that those goods and services may be related to or may be provided with the aid of a certain type of artificial intelligence software, either because they embed or are offered by means of freely accessible artificial intelligence.

56 That finding is not called into question by the applicant's arguments.

57 First, the applicant appears to criticise the Board of Appeal for a lack of clarity of the concept 'open AI-based', the meaning of which is not explained.

58 However, it is apparent from a combined reading of paragraphs 37 and 43 and 44 of the contested decision that the Board of Appeal found that the goods and services at issue could all be based on open artificial intelligence, meaning accessible, transparent, or available to a wide public. Accordingly, it must be held that the characteristics identified by the Board of Appeal, namely the nature, function and purpose of the goods and services at issue, are clear from the contested decision and are identifiable without any reflection by the relevant public.

59 Second, as regards the judgments of 20 September 2001, *Procter & Gamble* v *OHIM* (C-383/99 P, EU:C:2001:461), and of 20 July 2017, *Windfinder R&L* v *EUIPO (Windfinder)* (T-395/16, not published, EU:T:2017:530), cited by the applicant, it must be held that, in addition to different factual circumstances, the goods and services concerned in those judgments are clearly different from those of the present case. Indeed, first, as regards the judgment of 20 September 2001, *Procter & Gamble* v *OHIM* (C-383/99 P, EU:C:2001:461), it must be held that the goods concerned were 'disposable diapers made out of paper or cellulose' and 'diapers made out of textile' in respect of which the Court held that the syntax 'baby-dry' was an unusual juxtaposition in its structure, not constituting a familiar expression in English. As has been stated in paragraph 37 above, the mark

applied for does not contain any unusual element in its syntax. Second, as regards the judgment of 20 July 2017, *Windfinder* (T-395/16, not published, EU:T:2017:530), the Court found that, in so far as the purpose of the services concerned was not to 'find' wind, but to provide information on sports, neither the essential characteristics nor the goods and services as such were directly described by the word sign 'windfinder'. Those judgments therefore cannot be applied to the present case.

60 Third, the applicant's argument that the sign applied for enjoys recognition and reputation among consumers in the Member States must be rejected. By that argument, the applicant relies, in essence, on the actual use of the mark applied for. According to the case-law, such arguments are not relevant in the context of the application of Article 7(1)(c) of Regulation 2017/1001, a provision which concerns only the intrinsic characteristics of a sign in respect of which registration is sought. It is only in the context of the application of Article 7(3) of Regulation 2017/1001 that the actual use of a sign in respect of which registration is sought must be assessed (see, to that effect, judgment of 25 January 2023, *Scania CV* v *EUIPO (V8)*, T-320/22, not published, EU:T:2023:21, paragraph 43 and the case-law cited).

61 In the light of all of the foregoing, it must be held that the Board of Appeal did not make an error of assessment in finding that, as regards the goods and services at issue, the mark applied for was descriptive within the meaning of Article 7(1)(c) of Regulation 2017/1001.

62 Consequently, the first plea in law must be rejected.

The second plea in law, alleging infringement of Article 7(1)(b) of Regulation 2017/1001

63 By its second plea, the applicant submits that, by concluding on the basis of Article 7(1)(b) of Regulation 2017/1001 that the mark applied for was devoid of any distinctive character in relation to the goods and services at issue, the Board of Appeal infringed that provision.

64 EUIPO disputes the applicant's arguments.

65 In that regard, it should be noted that, in accordance with settled case-law, it is apparent from Article 7(1) of Regulation 2017/1001 that it is sufficient that one of the absolute grounds for refusal listed therein applies for the sign applied for not to be registrable as an EU trade mark (judgments of 19 September 2002, *DKV* v *OHIM*, C-104/00 P, EU:C:2002:506, paragraph 29, and of 7 October 2015, *Cyprus* v *OHIM (ΧΑΛΛΟΥΜΙ and HALLOUMI)*, T-292/14 and T-293/14, EU:T:2015:752, paragraph 74).

66 In the present case, it follows from the foregoing, and in particular from the examination of the first plea (see paragraph 61 above) that the Board of Appeal was right to find that the mark applied for was descriptive within the meaning of Article 7(1)(c) of Regulation 2017/1001. Therefore, since that ground for refusal in itself justifies the contested decision, it is not necessary to examine the merits of another ground and therefore in the present case to examine the second plea in law, alleging infringement of Article 7(1)(b) of that regulation.

The third plea in law, alleging breach of the principles of equal treatment and sound administration

67 By its third plea, the applicant criticises, in essence, the Board of Appeal for departing from its previous decision-making practice, by which it accepted the registration of marks comparable to the mark applied for, thereby breaching the principles of equal treatment and sound administration. In addition, the applicant claims that the mark applied for was registered in more than 30 different territories, including the United Kingdom and Singapore.

68 EUIPO disputes the applicant's arguments.

69 First, as regards registrations of the mark applied for with other bodies, it is sufficient to note that, according to settled case-law, the EU trade mark regime is an autonomous legal system which pursues objectives peculiar to it; it applies independently of any national system (judgments of

5 December 2000, *Messe München* v *OHIM (electronica)*, T-32/00, EU:T:2000:283, paragraph 47, and of 3 December 2015, *Infusion Brands* v *OHIM (DUALTOOLS)*, T-648/14, not published, EU:T:2015:930, paragraph 36). Consequently, the registrability or protectability of a sign as an EU trade mark must be assessed by reference only to the relevant EU rules. Accordingly, EUIPO and, if appropriate, the EU judicature are not bound by a decision given in a Member State, or indeed in a third country, that the sign in question is registrable as a national trade mark (judgments of

27 February 2002, *Streamserve* v *OHIM (STREAMSERVE)*, T-106/00, EU:T:2002:43, paragraph 47, and of 3 December 2015, *DUALTOOLS*, T-648/14, not published, EU:T:2015:930, paragraph 36).

70 Second, as regards the alleged breach of the principles of equal treatment and sound administration, it is true that those principles require EUIPO, when examining an application for registration of an EU trade mark, to take into account the decisions which it has already taken in respect of similar applications and consider with especial care whether it should decide in the same way or not (see judgment of 10 March 2011, *Agencja Wydawnicza Technopol* v *OHIM*, C-51/10 P, EU:C:2011:139, paragraph 74 and the case-law cited).

71 However, the application of those principles must be consistent with respect for the principle of legality, which means that the examination of any trade mark application must be stringent and full and must be undertaken in each individual case (see, to that effect, judgment of 28 June 2018, *EUIPO* v *Puma*, C-564/16 P, EU:C:2018:509, paragraph 61 and the case-law cited) and, moreover, that a person who files an application for registration of a sign as a trade mark cannot rely, to his or her advantage and in order to secure an identical decision, on a possibly unlawful act committed for the benefit of someone else (see, to that effect, judgment of 7 November 2019, *A9.com* v *EUIPO (Representation of a bell)*, T-240/19, not published, EU:T:2019:779, paragraph 77 and the case-law cited).

72 Furthermore, it must be borne in mind that the decisions which EUIPO is led to take under Regulation 2017/1001 are adopted in the exercise of circumscribed powers and are not a matter of discretion. Accordingly, the legality of decisions of the Boards of Appeal must be assessed solely on the basis of that regulation, as interpreted by the EU judicature, and not on the basis of a previous decision-making practice (see judgment of 26 April 2007, *Alcon* v *OHIM*, C-412/05 P, EU:C:2007:252, paragraph 65 and the case-law cited).

73 In the present case, it follows from the examination of the first plea that the Board of Appeal was right to conclude, following a stringent and full examination, that the mark applied for was caught by the ground for refusal set out in Article 7(1)(c) of Regulation 2017/1001. It is thus to no

avail that the applicant has relied, for the purposes of invalidating that finding, on earlier registrations on the part of EUIPO.

74 That is all the more so since the earlier registrations in question come from the first instance bodies of EUIPO, which are not capable of binding either the Court or the Boards of Appeal (see, to that effect, judgment of 7 November 2019, *Representation of a bell*, T-240/19, not published, EU:T:2019:779, paragraph 75 and the case-law cited).

75 Consequently, the applicant is wrong to claim that the Board of Appeal breached the principles of equal treatment and sound administration by departing from EUIPO's previous practice.

76 The third plea in law must therefore be rejected and, accordingly, the action must be dismissed in its entirety.

Costs

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

78 Since a hearing has taken place and the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by EUIPO.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders OpenAI, Inc. to pay the costs.**

Gâlea Costeira Spangsberg Grønfeldt

Delivered in open court in Luxembourg on 15 July 2026.

V. Di Bucci S. Papasavvas

Registrar President

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* Language of the case: English.