

### Pleas in law and main arguments

The applicant applied for registration of the domain 'galileo.eu' as an eu. Top Level Domain. The Registry, EURid, refused that registration on the ground that the domain applied for is reserved for the defendant.

In support of its application the applicant alleges infringement of Article 9 of Regulation (EC) No 874/2004 <sup>(1)</sup>. In addition, it claims that its rights under the second paragraph of Article 2, the first subparagraph of Article 10(1) and the third subparagraph of Article 12(2) of Regulation No 874/2004 have been infringed.

<sup>(1)</sup> Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration.

### Action brought on 17 February 2006 — Astex Therapeutics v OHIM

(Case T-48/06)

(2006/C 86/78)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Astex Therapeutics Limited (Cambridge, United Kingdom) [represented by: M. Edenborough, Barrister, and R. Harrison, Solicitor]

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal:* Protec Health International Limited (Cirencester, United Kingdom)

### Form of order sought

- annul the contested decision of the Second Board of Appeal of the OHIM, of 29 November 2005, in case R 651/2004 — 2 in its entirety or, alternatively, in part;
- order that the opponent pays to the applicant/appellant the costs incurred by the applicant/appellant in connection with this appeal (if the opponent intervenes in this appeal) and the appeal before the Board of Appeal and the opposition before the Opposition Division (in any event). Further,

order that the Office is jointly and severally liable with the opponent for the applicant's/appellant's costs incurred in connection with this appeal before the Court of First Instance.

### Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

*Community trade mark concerned:* Figurative mark 'Astex Technology' for goods in class 5 (pharmaceuticals)

Proprietor of the mark or sign cited in the opposition proceedings: Protec Health International Limited.

*Mark or sign cited:* Community word trade mark 'Astex' for goods and services in classes 5 (insecticides for killing dust mites) and 24 (textiles etc.)

Decision of the Opposition Division: Refuses registration

Decision of the Board of Appeal: Dismisses the appeal

*Pleas in law:* Violation of Article 8(1)(b) of Council Regulation (EC) No. 40/94.

### Action brought on 17 February 2006 — Ireland v Commission

(Case T-50/06)

(2006/C 86/79)

*Language of the case: English*

### Parties

*Applicant:* Ireland [represented by: D. O'Hagan, agent, P. McGarry, Barrister]

*Defendant:* Commission of the European Communities

### Form of order sought

- Annul, in whole or in part, pursuant to Article 230 of the Treaty, Commission Decision C[2005] 4436 Final of 7 December insofar as it relates to the exemption from excise duty on mineral oils used as fuel for alumina production in the Shannon region implemented by Ireland;
- order the Commission to pay the costs of these proceedings.

## Pleas in law and main arguments

In 1970 a commitment was given to the promoters of Aughinish in respect of exemptions from customs duties on fuel oil to be used in the production of alumina in the then proposed plant at Shannon, Ireland. In 1983, the plant at Aughinish went into operation and the Irish authorities notified the Commission that it intended to implement the commitments in respect of the exemption from excise duty. The applicant states that the exemption was furthermore authorized by virtue of subsequent Council Decisions<sup>(1)</sup>. In 2000, the Commission raised the issue of State aid, which led to the institution of the formal investigation and, finally, the adoption of the contested decision.

In support of its application, the applicant submits that the Commission is wrong in law in concluding that the aid concerned constitutes new aid, as opposed to existing aid.

According to the applicant, even if the aid constituted new aid and was required to be notified upon its implementation in 1983, the Commission accepts that the aid was notified at that time. The failure of the Commission to take any decision within the time periods devised by itself rendered the aid concerned existing aid. In the alternative, the Commission treated the aid as existing aid at all material times, and the unequivocal statement made by it in 1992 confirms this to be the case.

Furthermore, by virtue of Article 15 read in conjunction with Article 1(b)(iv) of Regulation 659/1999<sup>(2)</sup> since aid has been in existence in excess of ten years and the limitation period specified therein has expired, the aid has become existing aid and the procedures adopted by the Commission in relation to the supervision thereof are flawed.

In relation to its first plea, the applicant also claims that the aid was the subject of legally binding commitments entered into on the part of the Irish authorities prior to accession in 1973. According to the applicant the aid should have been found to constitute existing aid on this heading alone.

The applicant pleads by way of additional plea that the decision is in breach of the principle of legal certainty in circumstances where it conflicts with the unanimous decision of the Council taken on foot of a proposal submitted by the Commission. The decision is also in direct conflict with the provision of Article 8(5) of Directive 92/81/EEC<sup>(3)</sup> on the approximation of the rates of excise duty on mineral oils, which required the Commission to submit a proposal in respect of distortions of competition or incompatibility with the internal market for the unanimous approval of the Council.

Furthermore, the Commission has allegedly infringed, at least insofar as the beneficiary of the aid measure is concerned, the principle of legitimate expectation in circumstances where the Council has expressly authorised the derogation until 31 December 2006.

Finally, it is submitted that the Commission has breached a fundamental rule of law and has misused its powers by virtue of its conduct, including its delay in taking the contested decision, having regard in particular to the fact that it was first notified of the aid in question in 1983. In addition, the Commission disregarded the procedures contained in Directive 92/81/EEC, and made public statements regarding the compatibility of the aid scheme in issue. By virtue of its conduct therefore, the Commission is estopped from ordering the recovery of the aid in all the circumstances.

<sup>(1)</sup> 92/510/EEC: Council Decision of 19 October 1992 authorizing Member States to continue to apply to certain mineral oils when used for specific purposes, existing reduced rates of excise duty or exemptions from excise duty, in accordance with the procedure provided for in Article 8 (4) of Directive 92/81/EEC (OJ L 316, p. 16) and other subsequent decisions.

<sup>(2)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1)

<sup>(3)</sup> Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ L 316, p. 12)

## Action brought on 21 February 2006 — UPM-Kymmene v Commission

(Case T-53/06)

(2006/C 86/80)

*Language of the case: English*

### Parties

*Applicant:* UPM-Kymmene Oyj (Helsinki, Finland) [represented by: B. Amory, E. Friedel, F. Bimont, lawyers]

*Defendant:* Commission of the European Communities

### Form of order sought

— Partial annulment of the Decision insofar as it concluded that Rosenlew Saint Frères Emballage participated in the Valveplast meetings at the European level from 18 July 1994 until 31 January 1999 and that a single and continuous infringement was formed on the basis of Rosenlew Saint Frères Emballage's brief participation in the Valveplast meetings (from 21 November 1997 until 26 November 1998) and its cooperation in the French meetings on open mouth bags;