

12. Twelfth plea in law, alleging that the Commission has breached the parties right to be heard.
13. Thirteenth plea in law, alleging that the Commission erred in its assessment of penalties.

**Action brought on 30 August 2013 — Xellia Pharmaceuticals and Zoetis Products v Commission**

**(Case T-471/13)**

(2013/C 325/75)

*Language of the case: English*

**Parties**

*Applicant:* Xellia Pharmaceuticals ApS (Copenhagen, Denmark) and Zoetis Products, LLC (New Jersey, United States) (represented by: D. Hull, Solicitor)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- Annul Articles 1(3), 2(3) and 3 of Commission Decision C(2013) 3803 final of 19 June 2013 (COMP/39.229 — Lundbeck) in so far as they concern the applicants; or
- In the alternative, declare Article 1(3) of the Decision partially null and void, and reduce the amount of the fine imposed; and
- Order the Commission to bear the costs of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicant relies on eight pleas in law.

1. First plea in law, alleging a manifest error of assessment in finding that the restrictions set forth in the Settlement Agreement exceeded the scope of Lundbeck's patents.
2. Second plea in law, alleging an error of law in using the wrong legal standard to determine whether Alpharma was a potential competitor; and a manifest error of assessment in finding that Alpharma was a potential competitor.
3. Third plea in law, alleging a manifest error of assessment in finding that the Settlement Agreement constituted a restriction of competition 'by object'.

4. Fourth plea in law, alleging an error of law in finding a restriction of competition within the meaning of Article 101 despite the fact that the Settlement Agreement solely reflected the exclusionary scope of Lundbeck's patents, which, as a matter of law, must be presumed to be valid.
5. Fifth plea in law, alleging violation of the Applicants' rights of defence by belatedly notifying them of (i) the existence of the investigation and (ii) the Commission's specific objections.
6. Sixth plea in law, alleging violation of the principle of non-discrimination by addressing the Decision to Zoetis.
7. Seventh plea in law, alleging an error of law in calculating the fine without taking into account the limited gravity of the alleged infringement and a manifest error of assessment in setting the fine proportionately higher than the fine imposed on Lundbeck and failing to take into account the uncertainty in the law, the less serious nature of the infringement, and the geographic scope.
8. Eighth plea in law, alleging a manifest error of assessment in applying the 10 % fine cap to A.L. Industrier based upon its 2011 turnover instead of its significantly higher 2012 turnover, thereby forcing the Applicants to pay a higher proportion of the fine

**Action brought on 30 August 2013 — H. Lundbeck and Lundbeck v Commission**

**(Case T-472/13)**

(2013/C 325/76)

*Language of the case: English*

**Parties**

*Applicants:* H. Lundbeck A/S (Valby, Denmark); and Lundbeck Ltd (Milton Keynes, United Kingdom) (represented by: R. Subiotto, QC, and T. Kuhn, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- Annul the Commission's decision C(2013) 3808 final of 19 June 2013, served to the applicants on 21 June 2013, in case COMP/39.226 — Lundbeck;

- Alternatively, annul the fines imposed on the applicants pursuant to that decision;
- In the further alternative, substantially reduce the fines imposed on the applicants pursuant to that decision;
- In any event, order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter; and
- Take any other measures that this Court considers appropriate.

### Pleas in law and main arguments

In support of the action, the applicant relies on ten pleas in law.

1. First plea in law, alleging that the Defendant wrongly concluded that Lundbeck and the other undertakings that were parties to the agreements were actual or potential competitors under Article 101(1) TFEU.
2. Second plea in law, alleging that the Defendant wrongly assessed the relevance under Article 101(1) TFEU of value transfers in the context of patent settlement agreements.
3. Third plea in law, alleging that the Defendant's conclusion that the patent settlement agreements restricted competition by object under Article 101(1) rests on a wrongful application of the established principles on restrictions by object.
4. Fourth plea in law, alleging that the Defendant's decision errs and lacks reasoning in dismissing the 'Scope-of-the-Patent Test' as the relevant standard for the competition law assessment of patent settlement agreements under article 101(1) TFEU.
5. Fifth plea in law, alleging that the Defendant's decision mischaracterizes Lundbeck's actions and fails to explain how these unilateral actions are relevant for a finding of infringement of Article 101(1) TFEU.
6. Sixth plea in law, alleging that the Defendant failed to consider all the circumstances surrounding the agreements and erroneously concluded that their intended scope went beyond the scope of Lundbeck's patent rights.
7. Seventh plea in law, alleging that the Defendant failed to carry out a proper examination of the efficiencies arising from the agreements under article 101(3) TFEU.

8. Eighth plea in law, alleging that the Defendant's decision infringes Lundbeck's rights of defense, because the Defendant has changed the constituent elements of the alleged infringement between the issuance of the statement of objections and the decision, without affording Lundbeck an opportunity of being heard.
9. Ninth plea in law, alleging, in the alternative, that the Defendant wrongly imposed a fine on Lundbeck despite the novelty of the factual and legal issues raised in this case, thereby also violating the principle of legal certainty.
10. Tenth plea in law, alleging, in the further alternative, that the Defendant wrongly calculated the fines imposed on Lundbeck.

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### Action brought on 13 September 2013 — Schmidt Spiele v OHIM (Representation of a games board)

(Case T-492/13)

(2013/C 325/77)

*Language of the case: German*

### Parties

*Applicant:* Schmidt Spiele GmbH (Berlin, Germany) (represented by T. Sommer, lawyer)

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

### Form of order sought

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of OHIM of 3 July 2013 in Case R 1767/2012-1;
- Order OHIM to pay the costs;
- Set a date for the oral procedure.

### Pleas in law and main arguments

*Community trade mark concerned:* the figurative mark including the representation of a games board for goods and services in Classes 9, 16, 28 and 41 — Community trade mark application No 10 592 103