

of the European Communities on 10 September 2002 by Dyson Limited, Malmesbury, Wiltshire (United Kingdom), represented by D. Barron, C. Jones and C. Loweth, Lawyers.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the Office of 2 July 2002 (Case R655/2001-1),
- remit the decision to the Board for further consideration in respect of the other absolute grounds of refusal raised by the examiner under Articles 7(1)(b) and 7(3) of Regulation No 40/94,
- order the Office to pay the applicant's costs.

Pleas in law and main arguments

Trade Mark: 'Feature of goods' consisting of 'a transparent bin or collection chamber forming part of an external surface of a vacuum cleaner' — Application No 522144

Goods and services: 'Apparatus for cleaning, polishing and shampooing floors and carpets; vacuum cleaners; carpet shampooers; floor polishers; parts and fittings for all the aforesaid goods' in Class 7 of the Nice classification).

Decision challenged before the Board of Appeal: Refusal by the examiner to register.

Pleas in law: Misinterpretation of Article 7(1)(a) of Regulation No 40/94.

Action brought on 15 September 2002 by J.J. Pikaart and Others against Commission of the European Communities

(Case T-280/02)

(2002/C 289/54)

(Language of the Case: Dutch)

An action against Commission of the European Communities was brought before the Court of First Instance of the European

Communities on 15 September 2002 by J.J. Pikaart and Others, represented by M.J. van Dam and R.D. Ouwerling.

The applicant claims that the Court should:

- (1) Annul the Decision of the European Commission of 16 July 2002 (E1/L 02157 D(2002) 11796;
- (2) Order the defendants to pay the costs.

Pleas in law and main arguments

The applicants own the inland waterway vessel Factotum. In 1997 the mid and bow sections of the Factotum were replaced. At the same time the tonnage of the Factotum was increased through lengthening the mid and bow sections. The old mid and bow sections were left unused by the applicants. The original plans to make this segment into a pusher craft were not put into effect because of a possible old-for-new obligation pursuant to Regulation No 1101/89 ⁽¹⁾.

However, the Netherlands Fund imposed a levy on the applicants pursuant to the old-for-new rule in Regulation 1101/89. According to the applicants, the Factotum was hereby regarded as a newly constructed motor-vessel.

The applicants then asked the Commission how Article 8 of Regulation 1101/89 should be applied in the specific circumstances. The applicants' present action contests the interpretation given by the Commission.

The applicants submit that the alterations to the Factotum did not constitute a newly constructed vessel or any of the other cases set out in Article 8 of Regulation 1101/89. According to the applicants, the replacement of the section of the Factotum increases the total capacity of inland waterway vessels only in so far as it lengthens the Factotum. In other words, the old-for-new obligations should have been limited to the additional tonnage.

The applicants also submit that if the old mid and bow section were to be converted to a pusher vessel, that is no reason to impose old-for-new obligation in respect of the motor-vessel tonnage of the Factotum. The applicants submit that this extension concerns pusher vessel tonnage for which the old-for-new obligations are less severe than those for motor-vessel tonnage.

⁽¹⁾ Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ L 116, p. 25).