22 September 1999, the Opposition Division held the opposition to be justified and dismissed the application for certain goods of class 30.

The applicant argued that it was only in the context of an enquiry with the Office that it learned that opposition to the mark had been raised as early as 1998, and that up to that point it had received no notification that an opposition had been lodged.

In June 2000, the applicant made an application for restitutio in integrum in accordance with Article 78 of Regulation (EC) No 40/94, an application for inspection of the files and an application for costs. The Opposition Division dismissed the application for restitutio in integrum by decision of 25 October 2000. By the contested decision, the Board of Appeal dismissed the applicant's appeal.

The applicant argues that the contested decision infringed essential procedural requirements, the Treaty and Regulation (EC) No 40/94. It argues that it was deprived of the possibility of defending its right to a fair hearing, as it was unable to contact the opposing party during the 'cooling-off' period in order to make a settlement, and it was not possible for it either to submit its reaction to the opposition or to lodge an appeal within the time-limits against the decision of the Opposition Division. Accordingly, despite using all the care required in the circumstances, the applicant was prevented from complying with Office's time-limits and is therefore, it submits, entitled to restitutio in integrum.

The legal argument of the Board of Appeal, that an application for restitutio in integrum is possible only within a year after the expiry of the missed time-limit, cannot be accepted. Under that argument, the possibility of restitution is removed by a restrictive interpretation of Article 78 of Regulation (EC) No 94/40 in the very circumstances where protection is most needed, namely when no written document whatever was served.

Finally, proof of service merely in the form of a fax confirmation which the Office may have can never be sufficient.

(1) Decision of the First Board of Appeal in Case R 26/2001-1.

Action brought on 3 February 2003 by Leder & Schuh AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-32/03)

(2003/C 101/67)

(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 3 February 2003 by Leder & Schuh AG, Graz (Austria), represented by W. Kellenter and A. Schaffge, lawyers. Schuhpark Fascies GmbH, Warendorf (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 November 2002, in the amended version of 9 December 2002, in Case R 494/1999-3;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	The Applicant
Community trade mark sought:	The word mark 'JELLO SCHUHPARK' for products in Classes 18, 25 and 28 (particularly leather and imitations of leather, products of those materials in so far as they fall within Class 18, clothing, footwear and toys — Application No 107367
Proprietor of mark or sign cited in the opposition proceedings:	Schuhpark Fascies GmbH
Mark or sign cited in opposition:	German word mark 'Schuhpark' for products in Class 25 (particularly boots, ankle boots, slippers, shoes and sandals)

Decision of the Opposition Division:	Dismissal of the applicant's application for 'clothing, footwear and toys'. Dismissal of the opposition as to the remainder.
Decision of the Board of Appeal:	Dismissal of the applicant's appeal.
Pleas in law:	— infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1]; — absence of risk of confusion; — little distinctive character of the opposing trade mark — lack of similarity of trade marks — products largely dissimilar.

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 4 February 2003 by André Hecq and Syndicat des Fonctionnaires Internationaux et Européens (SFIE) against Commission of the European Communities

(Case T-34/03)

(2003/C 101/68)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 February 2003 by André Hecq, residing in Mondercange (Luxembourg), and Syndicat des Fonctionnaires Internationaux et Européens (SFIE), whose main offices are in Brussels, represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

- annul the decsion of the appointing authority of 4 October 2002, notified to the applicant on 9 October 2002 but received by him on 25 October 2002, rejecting the applicant's complaint, lodged on 24 April 2002, pursuant to Article 90(2) of the Staff Regulations in which he criticised various decisions, in particular:
  - two separate decisions notified on 15 January 2002 and 23 January 2002 respectively;
  - the decision of the College of Commissioners of 5 December 2001 improperly terminating the framework agreement of 20 September 1974, reiterating its approval of 'operational rules concerning the levels of concertation, the concertation body and the relevant procedures' dated 20 January 2000 and an alleged 'agreement' of 4 April 2001 on the 'resources to be made available to the central and the local staff committees and the unions';
- annul, to the extent necessary, the abovementioned decisions of 15 January 2002, 23 January 2002 and 5 December 2001;
- order the defendant to pay damages amounting to EUR 100 000;
- order the defendant to pay the costs of of the action, pursuant to Article 69(2) of the Rules of Procedure and the expenses necessarily incurred for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers, under Article 73(b) of those rules.

Pleas in law and main arguments

The applicant is an official of the Commission and secretary general of the 'Syndicat des Fonctionnaires Internationaux et Européens' (SFIE) trade union.

In support of his application, the applicant alleges, first, infringement of the framework agreement of 20 September 1974, in particular of the final provisions thereof, and breach of the general principles of contract law. According to the applicant, the framework agreement does not provide for unilateral termination.

The applicant also alleges infringement of Articles 11 and 12 of the framework agreement of 20 September 1974 in that the abovementioned provisions had not been agreed to by all the unions.

The applicant alleges next infringement of Article 24a of the Staff Regulations, Articles 18, 19 and 20 of the framework agreement of 20 September 1974, manifest error of assessment and breach of the principle of non-discrimination. According to the applicant, the criteria relating to representativeness are erroneous and arbitrary and favour certain unions.