

**Action brought on 21 April 2008 — Beifa Group v OHIM — Schwan-STABILO Schwanhäußer (design of instruments for writing)**

(Case T-148/08)

(2008/C 142/65)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Beifa Group Co. Ltd (formerly Ningbo Beifa Group Co. Ltd) (Zhejiang, China) (represented by: R. Davis, Barrister and N. Cordell, Solicitor)

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

*Other party to the proceedings before the Board of Appeal:* Schwan-STABILO Schwanhäußer GmbH & Co KG (Heroldsberg, Germany)

**Form of order sought**

- Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 January 2008 in case R 1352/2006-3;
- remit the matter to the Invalidity Division for further consideration of the issues raised in the application for invalidity; and
- order OHIM to pay the costs.

**Pleas in law and main arguments**

*Registered Community design subject of the application for a declaration of invalidity:* A design for the product 'instruments for writing' — registered Community design No 352315-0007

*Proprietor of the Community design:* The applicant

*Party requesting the declaration of invalidity of the Community design:* The other party to the proceedings before the Board of Appeal

*Trade mark right of the party requesting the declaration of invalidity:* A national figurative mark representing an instrument for writing registered on 14 December 2006 for goods in class 16 — registration No DE 30045470

*Decision of the Invalidity Division:* Invalidity of the challenged design

*Decision of the Board of Appeal:* Dismissal of the appeal

*Pleas in law:* Infringement of Article 25(1)(e) of Council Regulation No 6/2002 as the Third Board of Appeal applied the

wrong test to determine whether there was the requisite use of the trade mark by the applicant; the Third Board of Appeal should have considered whether the use of the trade mark by the other party to the proceedings has been both within the meaning of Article 25(1)(e) of Council Regulation No 6/2002 and German national law; in reaching its decision under Article 25(1)(e) of Council Regulation No 6/2002 the Third Board of Appeal should have applied the test for trade mark infringement upheld under German national law.

**Action brought on 18 April 2008 — Abbott Laboratories v OHIM — aRigen (Sorvir)**

(Case T-149/08)

(2008/C 142/66)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Abbott Laboratories (Abbott Park, United States) (represented by: S. Schäffler, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* aRigen, Inc. (Tokyo, Japan)

**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 February 2008 in case R 809/2007-2; and
- order OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* aRigen, Inc

*Community trade mark concerned:* The word mark 'Sorvir' for goods in class 5 — application No 004 455 507

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant