

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 March 2010 in Case R 770/2009-1;

— Order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Lidl Stiftung & Co KG.

Community trade mark concerned: Word mark WESTERN GOLD for goods in Class 33.

Proprietor of the mark or sign cited in the opposition proceedings: Wesergold Getränkeindustrie GmbH & Co. KG

Mark or sign cited in opposition: a national and Community word mark WeserGold for goods in Classes 29, 31 and 32; a national and international word mark Wesergold for goods in Classes 29, 31 and 32 und a national word mark WESERGOLD for goods in Class 32.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal allowed, decision of the Opposition Division annulled.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾, as there is a likelihood of confusion between the marks at issue, infringement of Article 64(1) of Regulation (EC) No 207/2009, because the Board of Appeal did not remit the case or examine the substance of the opposition, also infringement of Article 75(2) of Regulation (EC) No 207/2009 on the basis of infringement of the applicant's right to be heard, also infringement of Article 75(1) of Regulation (EC) No 207/2009 because the Board of Appeal failed to state the reasons for its decision.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 30 June 2010 — Fondation de l'Institut de Recherche Idiap v European Commission

(Case T-286/10)

(2010/C 221/91)

Language of the case: French

Parties

Applicant: Fondation de l'Institut de Recherche Idiap (represented by: G. Chapus-Rapin, lawyer)

Defendant: European Commission

Form of order sought

— first, order that this action should have suspensory effect;

— principally,

— declare the action admissible;

— allow the action;

— consequently,

— annul the European Commission's decision of 11 May 2010

— declare eligible to be met by European Union external funding the costs of IDIAP researchers holding permanent contracts working on the AMIDA, BACS and DIRAC programmes;

— order that IDIAP is not obliged to repay EUR 98 042,45 in respect of DIRAC and EUR 251 505,76 in respect of AMIDA;

— order the European Commission to pay all the costs of the proceedings;

- order the European Commission to pay the expenses and fees of the lawyer acting for IDIAP;
- alternatively,
- declare the action admissible;
- allow the action;
- consequently,
- annul the European Commission's decision of 11 May 2010;
- order the European Commission to undertake a fresh audit of IDIAP and to assign it to an institution other than Treureva;
- order the European Commission to pay the expenses and fees of the lawyer acting for IDIAP.
- the model contract on which the AMIDA, BACS and DIRAC contracts are based does not exclude permanent employment contracts from eligible costs;
- the link between researchers' employment contracts and the AMIDA, BACS and DIRAC project is expressly mentioned in the employment contracts;
- the researchers' employment contracts exist solely because of the projects, the applicant having no funds of its own to pay the researchers outside of the projects;
- the best way of ensuring that researchers can be released at the end of a project is a permanent contract, since under Swiss law (where the applicant is established) such a contract can be terminated at any time without cause on a brief period of notice;
- the Commission's interpretation is contrary to the principles of good faith and protection of legitimate expectations, since that interpretation has been gradually altered;
- alternatively, the audit procedure which is the subject of the contested decision is vitiated by irremediable defects which demand its annulment.

Pleas in law and main arguments

By this action, based on an arbitration clause, the applicant asks in essence that the General Court declare the eligibility of costs incurred in respect of researchers holding permanent employment contracts in relation to the AMIDA, BACS and DIRAC contracts within the framework of the specific research and technological development and demonstration programmes 'Integrating and Strengthening the European Research Area (2002-2006)' and 'Information Society Technologies (2000-2006)'.

In support of its action, the applicant claims that:

- the European Commission's interpretation of the AMIDA, BACS and DIRAC contracts, to the effect that costs in respect of permanent employment contracts of researchers are ineligible ordinary operating costs and not additional costs linked to the projects, is arbitrary or at least unfounded, since:

Order of the General Court of 18 June 2010 — *Ecoleam Research & Development v OHIM (CAPS)*

(Case T-452/07) ⁽¹⁾

(2010/C 221/92)

Language of the case: Swedish

The President of the Fifth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 51, 23.2.2008.
