

**Parties to the main proceedings**

*Applicant:* AHP Manufacturing BV

*Defendant:* Bureau voor de Industriële Eigendom (Industrial Property Office), also operating under the name Octrooicentrum Nederland (Netherlands Patent Centre)

**Appeal brought on 5 November 2007 by Galileo Lebensmittel GmbH & Co KG against the order of the Court of First Instance (Second Chamber) delivered on 28 August 2007 in Case T-46/06 Galileo Lebensmittel GmbH & Co KG v Commission of the European Communities**

**(Case C-483/07 P)**

(2008/C 8/13)

*Language of the case: German*

**Questions referred**

1. Does Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products <sup>(1)</sup>, as subsequently amended, and more specifically Article 3(1)(c) thereof, preclude the grant of a certificate to the holder of a basic patent for a product for which, at the time of the submission of the application for a certificate, one or more certificates have already been granted to one or more holders of one or more other basic patents?
2. Does Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products <sup>(2)</sup>, as subsequently amended, and more specifically recital 17 and the second sentence of Article 3(2) thereof, give rise to a different answer to Question 1?
3. When answering the previous questions, is it relevant whether the last application submitted, like the previous application or applications, is submitted within the period prescribed by Article 7(1) of Regulation (EEC) No 1768/92 or that prescribed by Article 7(2) of Regulation (EEC) No 1768/92?
4. When answering the previous questions, is it relevant whether the period of protection afforded by the grant of a certificate pursuant to Article 13 of Regulation (EEC) No 1768/92 expires at the same time as, or at a later time than, under one or more certificates already granted for the product concerned?
5. When answering the previous questions, is it relevant that Regulation (EEC) No 1768/92 does not specify the period within which the competent authority, as referred to in Article 9(1) of that Regulation, must process the application for a certificate and ultimately grant a certificate, as a result of which a difference in the speed with which the authorities concerned in the Member States process applications may lead to differences between them as to the possibility of a certificate being granted?

<sup>(1)</sup> OJ 1992 L 182, p. 1.

<sup>(2)</sup> OJ 1996 L 198, p. 30.

**Parties**

*Appellant:* Galileo Lebensmittel GmbH & Co KG (represented by: K. Bott, lawyer)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought by the appellant**

1. Set aside the order of the Second Chamber of the Court of First Instance of the European Communities of 28 August 2007 and
2. Annul the respondent's decision to reserve the Domain galileo.eu;
3. Order the respondent to pay the costs of the appeal proceedings and of the proceedings before the Court of First Instance;
4. Only in the alternative to the orders sought under points 2 and 3 above, refer the case back to the Court of First Instance and order the respondent to pay the costs of the appeal proceedings.

**Pleas in law and main arguments**

The appellant contends in this appeal that there has been an infringement of Community law (second sentence of Article 58(1) of the Court Statute), namely the fourth paragraph of Article 230 EC. According to the appellant, the Court of First Instance committed such a legal infringement by dismissing its action as inadmissible on the basis that the appellant was not 'individually concerned' by the contested decision of the respondent to reserve the domain galileo.eu for itself. The appellant regards itself as individually concerned within the meaning of the case-law of the Court of Justice by the decision of the Commission to reserve the Domain galileo.eu for itself, on the ground of its rights in respect of the German word mark Galileo, on the ground of its legal standing in the registration procedure conferred on it by Commission Regulation 874/2004 and on the basis that the Domain galileo.eu is a marketable economic asset and can only be allocated once.