

**Judgment of the General Court of 13 September 2010 —  
KUKA Roboter v OHIM (Shade of orange)**

(Case T-97/08) <sup>(1)</sup>

*(Community trade mark — Application for a Community trade mark consisting of a shade of orange — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))*

(2010/C 301/41)

Language of the case: German

**Parties**

*Applicant:* KUKA Roboter GmbH (Augsburg, Germany) (represented by: A. Kohn and B. Hannemann, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Pethke, acting as Agent)

**Re:**

ACTION brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 December 2007 (Case R 1572/2007-4), concerning an application for registration of a shade of orange as a Community trade mark.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders KUKA Roboter GmbH to pay the costs.

<sup>(1)</sup> OJ C 107, 26.4.2008.

**Judgment of the General Court of 13 September 2010 —  
Schniga v CPVO — Elaris and Brookfield New Zealand  
(Gala Schnitzer)**

(Case T-135/08) <sup>(1)</sup>

*(Plant varieties — Application for a Community plant variety right for the Gala Schnitzer apple variety — Technical examination — Discretion of the CPVO — Objections — Article 55(4) of Regulation (EC) No 2100/94)*

(2010/C 301/42)

Language of the case: English

**Parties**

*Applicant:* Schniga GmbH (Bolzano, Italy) (represented by: G. Würtenberger and R. Kunze, lawyers)

*Defendant:* Community Plant Variety Office (CPVO) (represented by: B. Kiewiet and M. Ekvad, Agents)

*Other parties to the proceedings before the Board of Appeal of the CPVO, interveners before the General Court:* Elaris SNC (Angers, France), and Brookfield New Zealand Ltd (Havelock North, New Zealand) (represented by: M. Eller, lawyer)

**Re:**

ACTION against the decision of the Board of Appeal of the CPVO of 21 November 2007 (Cases A 003/2007 and A 004/2007), concerning the grant of a Community plant variety right for the Gala Schnitzer plant variety.

**Operative part of the judgment**

*The Court*

1. Annuls the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 21 November 2007 (Cases A 003/2007 and A 004/2007);
2. Orders the CPVO to bear its own costs and to pay those incurred by Schniga GmbH;
3. Orders Elaris SNC and Brookfield New Zealand Ltd to bear their own costs.

<sup>(1)</sup> OJ C 142, 7.6.2008.

**Order of the General Court of 13 September 2010 —  
Abbott Laboratories v OHIM — aRigen (Sorvir)**

(Case T-149/08) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community word mark Sorvir — Earlier Community word mark NORVIR — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))*

(2010/C 301/43)

Language of the case: English

**Parties**

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

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo and A. Folliard-Monguiral, Agents)

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

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 6 February 2008 (Case R 809/2007-2) relating to opposition proceedings between Abbott Laboratories and aRigen, Inc.

**Operative part of the order**

The General Court:

1. Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 February 2008 (Case R 809/2007-2);
2. Orders OHIM to bear its own costs and to pay those of Abbott Laboratories.

(<sup>1</sup>) OJ C 142, 7.6.2008.

**Judgment of the General Court of 13 September 2010 — Inditex v OHIM — Marín Díaz de Cerio (OFTEN)**

(Case T-292/08) (<sup>1</sup>)

*(Community trade mark — Opposition proceedings — Application for the Community word mark OFTEN — Earlier national word mark OLTEN — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Proof of genuine use of the earlier mark — Article 43(2) and (3) of Regulation No 40/94 (now Article 42(2) and (3) of Regulation No 207/2009) — Subject-matter of the dispute before the Board of Appeal — Articles 61 and 62 of Regulation No 40/94 (now Articles 63 and 64 of Regulation No 207/2009))*

(2010/C 301/44)

Language of the case: Spanish

**Parties**

*Applicant:* Industria de Diseño Textil (Inditex), SA (Arteixo, Spain) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Roberto Fernando Marín Díaz de Cerio (Logroño, Spain)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 24 April 2008 (Case R 484/2007-2) in opposition proceedings between Roberto Fernando Marín Díaz de Cerio and Industria de Diseño Textil (Inditex), SA.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Industria de Diseño Textil (Inditex), SA to pay the costs.

(<sup>1</sup>) OJ C 236, 13.9.2008.

**Judgment of the General Court of 13 September 2010 — Enercon v OHIM — BP (ENERCON)**

(Case T-400/08) (<sup>1</sup>)

*(Community trade mark — Opposition proceedings — Application for the Community word mark ENERCON — Earlier Community word mark ENERGOL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Partial refusal to register)*

(2010/C 301/45)

Language of the case: English

**Parties**

*Applicant:* Enercon GmbH (Aurich, Germany) (represented by: R. Böhm, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: BP plc (London, United Kingdom)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2008 (Case R 957/2006-4), relating to opposition proceedings between BP plc and Enercon GmbH.