



Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber)

21 May 2014*

(Procedure — Taxation of costs)

In Case T-145/08 DEP,

Atlas Transport GmbH, established in Düsseldorf (Germany), represented by U. Hildebrandt, K. Schmidt-Hern, B. Weichhaus and A. Feutlinske, lawyers,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM),

defendant,

the other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court, being

Atlas Air, Inc., established in Wilmington, Delaware (United States), represented by R. Dissmann, lawyer,

APPLICATION for taxation of costs to be paid following the judgment of 16 May 2011 in Case T-145/08 *Atlas Transport v OHIM - Atlas Air (ATLAS)* [2011] ECR II-2073,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka and V. Kreuschitz (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

Order¹

...

* Language of the case: German.

¹ — Only the paragraphs of the present order which the Court considers it appropriate to publish are reproduced here.

Law

Jurisdiction of the General Court

- 10 As a preliminary point, it must be established whether the General Court has jurisdiction to adjudicate on the intervener's application for the costs incurred during the proceedings before it, even though the Court of Justice ordered the applicant to pay the costs in its order in *Atlas Transport v OHIM*, cited in paragraph 3 above.
- 11 In that regard, it should be borne in mind that, under Articles 137 and 184 of the Rules of Procedure of the Court of Justice and Article 87(1) of the Rules of Procedure of the General Court, a decision as to costs is to be given in the final judgment or in the order which closes the proceedings.
- 12 In the present case, the Court of Justice, by its order in *Atlas Transport v OHIM*, cited in paragraph 3 above, dismissed the applicant's appeal and ordered it to pay the costs. That order for costs must be interpreted as covering only the costs relating to the appeal. Dismissal of the appeal implies that the General Court's decision on costs has not been set aside by the Court of Justice. It is therefore for the General Court to determine the amounts recoverable following the proceedings before it which culminated in the judgment in *ATLAS*, cited in paragraph 3 above, in which the intervener intervened (see, to that effect, order of 17 November 2005 in Case C-3/03 P-DEP *Matratzen Concord v OHIM*, not published in the ECR, paragraphs 2 and 12 to 14, and order of 11 January 2008 in Joined Cases C-105/04 P-DEP and C-113/04 P-DEP *CEF and CEF Holdings v Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie*, not published in the ECR, paragraph 22).
- 13 The General Court therefore has jurisdiction to rule on the application for taxation of costs relating to the proceedings before it which culminated in the judgment in *ATLAS*, cited in paragraph 3 above.

Costs incurred in the proceedings before the Cancellation Division and the Board of Appeal

- 14 After setting out the hourly rates for the persons who assisted it during the various proceedings, the intervener listed the number of hours worked by those persons and the disbursements relating to the proceedings before the Cancellation Division and the Board of Appeal. According to the intervener, those costs totalled EUR 83 261.48. The applicant disputes the recoverability of those costs on the ground that they were not sufficiently detailed.
- 15 Article 92(1) of the Rules of Procedure provides:
- 'If there is a dispute concerning the costs to be recovered, the General Court hearing the case shall, on application by the party concerned and after hearing the opposite party, make an order, from which no appeal shall lie.'
- 16 Article 136(2) of the Rules of Procedure states that '[c]osts necessarily incurred by the parties for the purposes of the proceedings before the Board of Appeal and costs incurred for the purposes of the production, prescribed by the second subparagraph of Article 131(4), of translations of pleadings or other documents into the language of the case shall be regarded as recoverable costs'.
- 17 In so far as the intervener's application concerns the costs which it incurred in the proceedings before the Cancellation Division, it is apparent from Article 136(2) of the Rules of Procedure that the General Court does not have jurisdiction to adjudicate on the costs relating to the proceedings before the Cancellation Division of OHIM. The intervener's application must therefore be declared inadmissible

in this respect (see, to that effect, order of 17 July 2012 in Joined Cases T-60/04 DEP to T-64/04 DEP *Budějovický Budvar v OHIM — Anheuser-Busch (BUD)*, not published in the ECR, paragraph 9 and the case-law cited).

- 18 In so far as the intervener's application concerns the costs which it incurred in the proceedings before the Board of Appeal, it should be borne in mind that, under Article 81(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) (now Article 85(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)), the losing party in proceedings for a declaration of invalidity is to bear the fees incurred by the other party as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of the scales set for each category of costs under the conditions laid down in the Implementing Regulation.
- 19 Under Article 81(6) of Regulation No 40/94 (now Article 85(6) of Regulation No 207/2009):
- 'The ... Board of Appeal shall fix the amount of the costs to be paid ... when the costs to be paid are limited to the fees paid to [OHIM] and the representation costs. In all other cases, the registry of the Board of Appeal ... shall fix the amount of the costs to be reimbursed on request. The request is admissible only within two months of the date on which the decision for which an application was made for the costs to be fixed became final. The amount so determined may be reviewed by a decision of the ... Board of Appeal on a request filed within the prescribed period.'
- 20 In the present case, the Board of Appeal dismissed the applicant's appeal without ruling on the costs of the proceedings before it. Pursuant to the abovementioned provisions, it was up to the intervener to lodge an application at the registry of the Board of Appeal to fix the amount of the costs to be reimbursed with regard to the proceedings before the Board of Appeal.
- 21 The action before the General Court and the appeal before the Court of Justice have no bearing on that assessment, since neither the judgment of the General Court nor the order of the Court of Justice challenged the lawfulness of the Board of Appeal's decision. Those judicial proceedings only delayed the date on which the Board of Appeal's decision for which the application was made for the costs to be fixed became final.
- 22 Accordingly, by analogy with the situation in which, where the Board of Appeal makes an order for costs and its decision remains valid after the dismissal of the applicant's action before the General Court, the Court does not rule on the costs incurred before the Board of Appeal (see, to that effect, order of 6 March 2013 in Case T-332/10 DEP *Polsko-Amerykański dom inwestycyjny v OHIM — Pfizer (VIAGUARA)*, not published in the ECR, paragraphs 61 and 62 and the case-law cited), there is no need, in the present case, for the General Court to rule on the costs incurred before the Board of Appeal. It was for the intervener to lodge an application at the registry of the Board of Appeal, pursuant to Article 85(6) of Regulation No 207/2009, for the amount of the costs to be reimbursed to be fixed with regard to the proceedings before it within two months after service of the order in *Atlas Air v Atlas Transport*, cited in paragraph 8 above, by which the Board of Appeal's decision became final.
- 23 Moreover, the General Court observes that, in its statement in intervention in the proceedings before the General Court which ended with the judgment in *ATLAS*, cited in paragraph 3 above, the intervener claimed that the applicant should be ordered to pay 'the costs of the proceedings including those of the intervener', in accordance with Article 87(2) of the Rules of Procedure. Since those proceedings were the ones before the General Court, that court could order the applicant to pay only the costs incurred before it. For the same reason, the intervener's application for an order that the applicant pay the costs relating to the proceedings before the Board of Appeal must be dismissed.

...

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

The total amount of costs to be reimbursed by Atlas Transport GmbH to Atlas Air, Inc. is fixed at EUR 9 000.

Luxembourg, 21 May 2014.

E. Coulon
Registrar

M. Prek
President