

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

15 September 2011 \*

In Case T-434/09,

**Centrotherm Systemtechnik GmbH**, established in Brilon (Germany), represented by J. Albrecht and U. Vormbrock, lawyers,

applicant,

v

**Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**, represented by G. Schneider and R. Manea, acting as Agents,

defendant,

\* Language of the case: German.

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

**centrotherm Clean Solutions GmbH & Co. KG**, established in Blaubeuren (Germany), represented by O. Löffel, lawyer,

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 25 August 2009 (Case R 6/2008-4) relating to revocation proceedings between centrotherm Clean Solutions GmbH & Co. KG and Centrotherm Systemtechnik GmbH,

THE GENERAL COURT (Sixth Chamber),

composed of E. Moavero Milanesi, President, N. Wahl (Rapporteur) and S. Soldevila Fragoso, Judges,

Registrar: T. Weiler, Administrator,

having regard to the application lodged at the Registry of the General Court on 26 October 2009,

having regard to the response of OHIM lodged at the Registry of the General Court on 15 February 2010,

having regard to the response of the intervener lodged at the Registry of the General Court on 2 February 2010,

having regard to the parties' request to hold an oral hearing,

having regard to the order of 30 March 2011 joining Cases T-427/09 and T-434/09 for the purposes of the oral procedure,

further to the hearing on 5 May 2011,

gives the following

## **Judgment**

### **Background to the dispute**

- 1 On 7 September 1999, the applicant, Centrotherm Systemtechnik GmbH, filed an application for registration of a Community trade mark at the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), under Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)).
- 2 The mark for which registration was sought is the word sign CENTROTHERM.

- 3 The goods and services in respect of which registration was sought are in Classes 11, 17, 19 and 42 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond, for each of those classes, to the following description:
- Class 11: ‘Exhaust gas pipes for heating installations, chimney flues, boiler pipes (tubes) for heating installations; brackets for gas burners; mechanical parts for heating, air-conditioning, steam generating, drying and ventilating installations; air-filter apparatus and parts thereof; mechanical parts for gas installations; faucets for pipes; chimney blowers’;
  
  - Class 17: ‘Junctions for pipes, pipe sleeves, reinforcing materials for pipes, flexible pipes, all the aforesaid goods not of metal; seals, packing materials; packing, stopping and insulating materials; semi-processed plastics in extruded form for use in manufacture; goods of plastic, included in class 17’;
  
  - Class 19: ‘Building materials; pipes, pipework, in particular for building; water pipes, branching pipes; reinforcing materials for building purposes; wall linings, building panels, panels; lengthening pieces for chimneys, chimney shafts, chimney cowls, chimney pots, mantelpieces, all the aforesaid goods non-metallic’;
  
  - Class 42: ‘Architectural consultation, construction drafting, engineering services, technical project studies; surveying’.

- 4 The mark CENTROTHERM was registered for the goods and services referred to in paragraph 3 above on 19 January 2001 as a Community trade mark.
  
- 5 On 7 February 2007, the intervener, centrotherm Clean Solutions GmbH & Co. KG, filed with OHIM, under Articles 15 and 50(1)(a) of Regulation No 40/94 (now Articles 15 and 51(1)(a) of Regulation No 207/2009) an application for revocation of the mark CENTROTHERM for all of the registered goods and services.
  
- 6 The application for revocation was notified to the applicant on 15 February 2007, which was invited to submit any comments and proof of genuine use of the mark at issue within a period of three months.
  
- 7 In its comments of 11 May 2007, the applicant contested the application for revocation and, in order to demonstrate genuine use of its mark, produced the following:
  - fourteen digital photographs;
  
  - four invoices;
  
  - a declaration, headed 'eidesstattliche Versicherung' (sworn declaration), made by Mr W., acting in his capacity as manager of the applicant.

- 8 The applicant stated that it was in possession of many other copies of invoices which, at the outset, it would not be submitting, for reasons of confidentiality. Asserting that it could submit other documents, the applicant asked the Cancellation Division of OHIM to therefore adopt a procedural measure accordingly in the event that it wished that other evidence and individual documents be added to the file.
  
- 9 On 30 October 2007, the Cancellation Division revoked the CENTROTHERM mark, finding that the evidence adduced by the applicant was insufficient to demonstrate genuine use of that mark.
  
- 10 On 14 December 2007, the applicant filed an appeal against that decision, which the Fourth Board of Appeal upheld in part by decision of 25 August 2009 ('the contested decision'). The applicant in particular claimed that the Cancellation Division should have requested other pieces of information. The applicant also submitted that the Cancellation Division did not take account of the factors included in the file of another case also pending before OHIM regarding the CENTROTHERM mark.
  
- 11 The Board of Appeal annulled the decision of the Cancellation Division and dismissed the application for revocation in respect of the goods 'exhaust gas pipes for heating installations, chimney flues, boiler pipes (tubes) for heating installations; brackets for gas burners; mechanical parts for heating, mechanical parts for gas installations; faucets for pipes; chimney blowers' in Class 11, 'junctions for pipes, pipe sleeves, reinforcing materials for pipes, flexible pipes, all the aforesaid goods not of metal' in Class 17, and 'pipes, pipework, in particular for building; branching pipes; chimney shafts' in Class 19. The Board of Appeal dismissed the remainder of the appeal.

- 12 In particular, the Board of Appeal found that evidence of genuine use of the CENTROTHERM mark, in respect of the period of five years preceding submission of the application for revocation, namely 7 February 2007 ('the relevant period'), for the goods mentioned in paragraph 11 above had been adduced, since the photographs submitted by the applicant demonstrated the nature of the mark's use and the invoices produced showed that the goods mentioned had been marketed under the mark at issue.
- 13 However, the Board of Appeal found that the applicant had solely provided the statement of its manager by way of evidence in relation to the other goods and services for which the CENTROTHERM mark had been registered (see paragraph 3 above), which, according to the Board of Appeal, was insufficient to show genuine use of the mark. In that regard, the Board of Appeal pointed out that the Cancellation Division was neither obliged to ask for other documents nor to take account of the file of another case also pending before OHIM.

### **Forms of order sought by the parties**

- 14 The applicant claims that the Court should:
- annul the contested decision in so far as it grants the application for revocation of the CENTROTHERM mark;
  
  - order OHIM and the intervener to pay the costs.

15 OHIM contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

16 The intervener contends that the Court should dismiss the action.

## Law

17 In support of its action, the applicant raises three pleas for annulment and one plea of illegality. The pleas allege an incorrect appraisal of the evidence of genuine use produced before the Cancellation Division, infringement of the duty to examine relevant facts of its own motion, in accordance with Article 76(1) of Regulation No 207/2009, and failure to take account of the evidence produced before the Board of Appeal. The plea of illegality is raised in the alternative against Rule 40(5) of Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1), as amended.



*The first plea in law, alleging an incorrect appraisal of the evidence of genuine use produced before the Cancellation*

### Arguments of the parties

- 18 The applicant claims that the documents produced before the Cancellation Division (see paragraph 7 above) validly demonstrated genuine use of the CENTROTHERM mark, since they include information on the place, time, extent and nature of use of the mark at issue for all of the goods and services referred to in paragraph 3 above.
- 19 In particular, the applicant alleges that the Board of Appeal disregarded the evidential value of the sworn statement of its manager. In that respect, the applicant asserts that that sworn statement must be considered to be correct as a whole, since a broadly preponderant part of its contents is supported by additional evidence in the file.
- 20 OHIM and the intervener contend that this plea should be rejected.

### Findings of the Court

- 21 At the outset it is necessary to note the procedure for and objective of the sanction of revocation and the principles governing evidence in revocation proceedings.

- 22 It is clear from the first subparagraph of Article 15(1) and from Article 51(1)(a) of Regulation No 207/2009 that the rights of a proprietor of a Community trade mark are to be declared to be revoked, on application to OHIM, if, within a continuous period of five years, the trade mark has not been put to genuine use in the European Union ('EU') in connection with the goods or services in respect of which it is registered, and there are no proper reasons for its non-use.
- 23 Rule 40(5) of Regulation No 2868/95 provides that OHIM, in the case of an application for revocation, shall specify to the proprietor of the Community trade mark a time limit within which it must provide proof of use of the mark. If the proof is not provided within the time limit set, the Community trade mark shall be revoked. Under Rule 22(3) of Regulation No 2868/95 — which applies to applications for revocation pursuant to Rule 40(5) of the same regulation — the proof of use of the mark must relate to the place, time, extent and nature of use.
- 24 The rationale for the requirement that a mark must be the subject of genuine use in order to be protected under EU law is that OHIM's register cannot be compared to a strategic and static depository granting an inactive proprietor a legal monopoly for an unlimited period. On the contrary, and in accordance with recital 10 of Regulation No 207/2009, that register must faithfully reflect what companies actually use on the market to distinguish their goods and services in economic life (see, to that effect and by analogy, order in Case C-259/02 *La Mer Technology* [2004] ECR I-1159, paragraphs 18 to 22).
- 25 According to case-law, there is genuine use of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. Moreover, the condition of genuine use of the mark requires that that mark, as protected on the relevant territory,

be used publicly and outwardly (see judgment of the General Court of 27 September 2007, Case T-418/03 *La Mer Technology v OHIM — Laboratoires Goëmar (LA MER)*, not published in the ECR, paragraph 54, and case-law cited).

<sup>26</sup> Although the concept of genuine use therefore excludes all minimal and insufficient use as the basis for a finding that a mark is being put to real and effective use on a given market, nevertheless the requirement of genuine use does not seek to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the case where large-scale commercial use has been made of the marks (Case T-194/03 *Il Ponte Finanziaria v OHIM - Marine Enterprise Projects (BAINBRIDGE)* [2006] ECR II-445, paragraph 32).

<sup>27</sup> More specifically, to assess whether a particular trade mark has been put to genuine use in a particular case, an overall assessment of the documents in the file must be carried out, taking account of all the relevant factors in the case. In such an assessment, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (see *LA MER*, paragraphs 53 to 55 and case-law cited).

<sup>28</sup> As to the extent of the use to which the trade mark at issue has been put, account must be taken, in particular, of the commercial volume of the overall use, as well as of the length of the period during which the mark was used and the frequency of use (see *LA MER*, paragraph 56 and case-law cited). That assessment entails a degree of interdependence of the factors taken into account. Thus, the fact that commercial

volume achieved under the mark was not high may be offset by the fact that use of the mark was extensive or regular, and vice versa (see *LA MER*, paragraph 57, and case-law cited).

- <sup>29</sup> However, the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor of the mark to produce additional evidence to dispel any doubts as to the genuineness of its use (judgment of 18 January 2011 in Case T-382/08 *Advance Magazine Publishers v OHIM — Capela & Irmãos (VOGUE)*, not published in the ECR, paragraph 31).
- <sup>30</sup> Moreover, genuine use of a trade mark cannot be proven by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (see *LA MER*, paragraph 59, and case-law cited).
- <sup>31</sup> The question whether the Board of Appeal was right to consider that the evidence adduced by the applicant did not show genuine use of the CENTROTHERM mark for the goods and services other than those referred to in paragraph 11 above must be assessed in the light of those considerations.
- <sup>32</sup> It should be borne in mind that the evidence adduced by the applicant to the Cancellation Division to show genuine use of its mark are the sworn statement of its manager, four invoices and fourteen digital photographs.

- 33 At the outset, it is important to note that it is settled case-law that, in order to assess the probative value of 'statements in writing sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up' within the meaning of Article 78(1)(f) of Regulation No 207/2009, it is necessary to check the probability and the veracity of the account it contains, by taking account of, inter alia, the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the document appears sound and reliable (see, to that effect, judgments of 16 December 2008 in Case T-86/07 *Deichmann-Schuhe v OHIM — Design for Woman (DEITECH)*, not published in the ECR, paragraph 47, and of 13 May 2009 in Case T-183/08 *Schuhpark Fascies v OHIM — Leder & Schuh (jello SCHUHPARK)*, not published in the ECR, paragraph 38).
- 34 It must therefore be considered that, in view of the clear links between the author of the statement and the applicant, a probative value cannot be attributed to that statement unless it is supported by the fourteen photographs and the four invoices in question.
- 35 As regards the invoices, it should be noted that three of them are dated July 2006 and relate to Denmark, Hungary and Slovakia and one is dated January 2007 and relates to Germany. The word 'centrotherm' appears in the letterhead of those invoices, accompanied by the applicant's logo as its business name and its postal address.
- 36 Those invoices show multiple products related to plumbing (pipes, pipe sleeves, sets for connecting boilers, revision elbows, exhaust system covers) were sold by the applicant to four clients for a sum which corresponds, including the invoice from 2007, to less than 0.03% of the turnover which the applicant's manager declared to have achieved in 2006 with the sale of the goods under the CENTROTHERM mark.

37 It follows that, before OHIM, the applicant adduced relatively weak evidence of sales as compared with the sum indicated in the statement of its manager. Consequently, even if the Board of Appeal had taken that statement into account, it should be noted that there was insufficient evidence in the file supporting the statement as regards the value of sales. Moreover, as regards the temporal aspect of the use of the mark, those invoices concern a very short, even selective, period, namely 12, 18 and 21 July 2006 and 9 January 2007.

38 As regards the photographs lodged, it must be noted that only on seven of the fourteen photographs is the CENTROTHERM mark clearly visible, namely:

— as printed on two pipes;

— as printed on two objects which seem to form part of pipes;

— as a sticker on an object which appears to be a pallet and on two boxes.

39 On four other photographs, it is quite impossible to make out any trace of the mark at issue.

40 On the last three photographs, it is possible to make out traces of the CENTRO-THERM mark, namely:

- the letters ‘centroth’ on the mouth of a pipe;
  
- the logo of the applicant’s company and an illegible text next to that logo, probably corresponding to the text on the letterhead of the invoices submitted, on a pipe and on an object which appears to be the mouth of a pipe.

41 It should also be noted that none of those photographs is dated, and that, during the hearing, the applicant conceded that they had not been taken during the relevant period.

42 Furthermore, those photographs do not enable identification of the goods packed on the palette and in the two boxes displaying the CENTROTHERM stickers. Although two of those stickers contain references to plumbing, neither the photographs nor the invoices provide evidence from which to deduce what those packages actually contain.

43 Moreover, the article numbers which are identifiable on the stickers do not correspond to the article numbers on the invoices provided by the applicant. It follows that it is not possible to conclude, on the basis of those photographs and invoices, that the packages on which the stickers showing the CENTROTHERM mark were stuck were in fact marketed by the applicant during the relevant period.

44 It follows from the above that neither the photographs nor the invoices corroborate the statement of the applicant’s manager, in so far as he maintains that the following

goods had been marketed under the CENTROTHERM mark during the relevant period: mechanical parts for air-conditioning, steam generating, drying and ventilating installations; air-filter apparatus and parts therefor; seals, packing materials; packing, stopping and insulating materials; semi-processed plastics in extruded form for use in manufacture; building materials; reinforcing materials for building purposes; wall linings, building panels, panels; lengthening pieces for chimneys, chimney cowls, chimney pots and mantelpieces.

45 Accordingly, it must be held that an overall assessment of the evidence in the file does not allow the conclusion, without resorting to probabilities or presumptions, that the CENTROTHERM mark was the subject of genuine use during the relevant period for the goods and services other than those referred to at paragraph 11 above.

46 The first plea must therefore be rejected.

*The second plea alleging infringement of OHIM's duty to examine relevant facts of its own motion*

#### Arguments of the parties

47 The applicant is of the view that OHIM erred in law by infringing the duty to examine relevant facts of its own motion. According to the applicant, the Cancellation



Division infringed the first sentence of Article 76(1) of Regulation No 207/2009 by failing to take account of the evidence in OHIM's file concerning the application for invalidity of the CENTROTHERM mark, lodged on 5 December 2005 by a company linked to the intervener.

48 OHIM's file regarding the annulment proceedings contained evidence relevant to the examination of genuine use of the CENTROTHERM mark, in particular the statement of its presence on the market for the manufacture of plastic exhaust systems for condensing boilers, relevant figures of the applicant's sales of products between 1994 and 2001 as well as references to its internet site.

49 According to the applicant, in the light of that evidence, it can be concluded that it is 'very probable' that it marketed a wide range of products during the relevant period under the CENTROTHERM mark.

50 OHIM and the intervener contest the applicant's arguments.

### Findings of the Court

51 At the outset, the Court notes the wording of Article 76(1) of Regulation No 207/2009, under which '[i]n proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to relative grounds for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties.'

- 52 In the present case, it should be pointed out that the grounds justifying the declaration of revocation are, like the grounds justifying refusal of registration, of both an absolute and relative nature.
- 53 According to Article 51(1) of Regulation No 207/2009, the rights of the proprietor of the Community trade mark are to be declared to be revoked if, within a continuous period of five years, it was not put to genuine use (Article 51(1)(a) of Regulation No 207/2009), if, in consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a product or service in respect of which it is registered (Article 51(1)(b) of Regulation No 207/2009) or if, in consequence of the use made of it by the proprietor of the trade mark or with his consent, the trade mark is liable to mislead the public (Article 51(1)(c) of Regulation No 207/2009).
- 54 Although the last two conditions relate to absolute grounds for refusal, as is apparent from Article 7(1)(b) to (d) and (g) of Regulation No 207/2009, the first condition relates to a provision falling within the examination of relative grounds for refusal, namely Article 42(2) of Regulation No 207/2009. Consequently, it must be concluded that OHIM's examination of the question of genuine use of the Community trade mark in revocation proceedings is subject to Article 76(1), *in fine*, of Regulation No 207/2009, which provide that that examination is limited to facts provided by the parties.
- 55 Accordingly, the applicant's premiss, according to which OHIM erred in limiting its examination to evidence which it submitted, is incorrect.
- 56 The second plea must therefore be rejected.

*The third plea in law, alleging failure to take account of the evidence produced before the Board of Appeal*

Arguments of the parties

57 The applicant claims that OHIM should have taken account of the proof of use of the mark at issue which it had produced for the first time before the Board of Appeal.

58 In that regard, the applicant claims, primarily, that Article 51(1)(a) and the first sentence of Article 76(1) of Regulation No 207/2009, and Rule 40(5) of Regulation No 2868/95, should be interpreted as meaning that OHIM is obliged to complete its file regarding revocation proceedings where it is perceptibly incomplete. Therefore, in this case, the Board of Appeal ought to have taken account of the evidence which had been produced for the first time before it.

59 Alternatively, the applicant maintains that, even in the absence of such an obligation on the Board of Appeal, in properly exercising its discretion under Article 76(2) of Regulation No 207/2009, it ought to have taken account of the evidence which had been produced for the first time before it.

60 OHIM and the intervener contend that the plea should be rejected.

## Findings of the Court

- 61 Firstly, it should be recalled that OHIM's examination of the question of genuine use of the Community trade mark is, as noted in paragraphs 51 to 54 above, subject to the application of Article 76(1), *in fine*, of Regulation No 207/2009. That provision provides that the examination by OHIM shall be restricted to the facts provided by the parties. It follows that the applicant's contention that OHIM was obliged to complete its file of its own motion must be rejected.
- 62 Secondly, the possibility for parties to proceedings before OHIM to submit facts and evidence after the expiry of the periods specified for that purpose does not exist unconditionally, but, as follows from case-law, is subject to the condition that there is no provision to the contrary. It is only if that condition is met that OHIM has a degree of latitude as regards the taking into account of facts and evidence submitted out of time (*Case T-86/05 K & L Ruppert Stiftung v OHIM - Lopes de Almeida Cunha e.a. (CORPO livre)* [2007] ECR II-4923, paragraph 47).
- 63 In the present case, there is a provision which precludes the taking into account of the material submitted to the Board of Appeal, namely Rule 40(5) of Regulation No 2868/95.
- 64 It follows from all the foregoing that the third plea must be rejected.

*The plea of illegality in Rule 40(5) of Regulation No 2868/95*

Arguments of the parties

<sup>65</sup> The applicant claims, in essence, that Rule 40(5) of Regulation No 2868/95 is inapplicable to the extent that it prevents OHIM from taking account of evidence submitted out of time in revocation proceedings under Article 51(1)(a) of Regulation No 207/2009. In that regard, it submits that Rule 40(5) of Regulation No 2868/95 is contrary to Article 202 EC as well as Article 57(1), Article 76(1) and Article 162(1) of Regulation No 207/2009. Furthermore, the applicant claims that that rule is contrary to the general principles of Community law, in particular the principle of proportionality, the right to property and the right to a fair hearing.

<sup>66</sup> OHIM and the intervener contend that the plea of illegality should be rejected.

Findings of the Court

<sup>67</sup> The General Court finds that, although it is true that the rules of Regulation No 2868/95 cannot contradict the provisions and scheme of Regulation No 207/2009, there is no inconsistency to be found between Rule 40(5) of Regulation No 2868/95 and the provisions on revocation in Regulation No 207/2009.

- 68 Although Regulation No 207/2009 lays down the substantive rule, namely revocation for Community trade marks which have not been put to genuine use, Regulation No 2868/95 specifies the applicable procedural rules, in particular allocation of the burden of proof and the consequences of failure to meet the time limits imposed. Moreover, as already noted (see paragraphs 51 to 54 above), it is apparent from the scheme of Regulation No 207/2009 that, as regards the application for revocation for lack of genuine use, the extent and intensity of OHIM's examination are constrained by the facts, evidence and arguments provided by the parties.
- 69 Clearly the arguments put forward by the applicant do not in any way show that the procedural provision in Rule 40(5) of Regulation No 2868/95 — which allocates the burden of proof to the proprietor of the Community trade mark and provides that the failure to produce sufficient evidence by the time limit set shall lead to a declaration of revocation — might contradict Regulation No 207/2009.
- 70 As regards the alleged breach of the principle of proportionality, it should be noted that non-compliance, without just grounds, with time limits, which are of fundamental importance to the proper functioning of a Community system, may be penalised in Community legislation by forfeiture of a right, without it being inconsistent with that principle of proportionality (see, to that effect, Case T-218/06 *Neurim Pharmaceuticals (1991) v OHIM - Eurim-Pharm Arzneimittel (Neurim PHARMACEUTICALS)* [2008] ECR II-2275, paragraph 55).
- 71 Finally, it should be noted that the argument that Rule 40(5) of Regulation No 2868/95 is contrary to the right to property and the right to a fair hearing is unfounded. That rule in no way affects the rights of a proprietor of a Community trade mark unless he chooses, as the applicant did in this case, not to provide before OHIM, by the time limit set, the material in its possession showing genuine use of its mark.

- 72 It follows from all the foregoing that the plea of illegality raised by the applicant must also be rejected.
- 73 The action must therefore be dismissed in its entirety.

### **Costs**

- 74 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 75 Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by OHIM. Since the intervener has not applied for an order that the applicant pay the costs, it must bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

**1. Dismisses the action;**

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**2. Orders Centrotherm Systemtechnik GmbH to pay the costs;**

**3. Orders centrotherm Clean Solutions GmbH & Co. KG to bear its own costs.**

Moavero Milanesi

Wahl

Soldevila Fragoso

Delivered in open court in Luxembourg on 15 September 2011.

[Signatures]