Decision of the Opposition Division: Upheld the opposition and rejected the application for registration for all the contested goods.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 on the Community trade mark and Articles 50(1) and 20(2) of Regulation (EC) No 2868/95 implementing Regulation (EC) No 40/94 on the Community trade mark (replaced by Regulation No 207/2009).

Action brought on 17 July 2009 — Fédération Internationale des Logis v OHIM

(Case T-282/09)

(2009/C 220/84)

Language in which the application was lodged: French

Parties

Applicant: Fédération Internationale des Logis (Paris, France) (represented by B. Brisset, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 22 April 2009 in Case R 1511/2008-1 and allow registration of the trade mark applied for;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a green square for goods and services in Classes 3, 18, 24, 43 and 44 — Application No 6 468 789

Decision of the Examiner: Rejection of the application for registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009, as the representation of a square with convex edges in a particular and specific green colour is distinctive with regard to the goods and services for which the registration was sought, in so far as those elements give the mark a particular appearance for those goods and services.

Action brought on 17 July 2009 — CEVA v Commission

(Case T-285/09)

(2009/C 220/85)

Language of the case: French

Parties

Applicant: Centre d'Étude et de Valorisation des Algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court of First Instance should:

— declare that no statement of reasons has been provided for the enforcement orders for four debit notes of the European Commission, dated 11 May 2009: No 3230901933, No 3230901935, No 3230901936 and No 3230901937;

— declare that there is a likelihood of unjust enrichment on the part of the Commission in the event that CEVA refunds the amount of EUR 173 435 together with default interest;

— in consequence, annul the enforcement orders for the four debit notes dated 11 May 2009, namely, No 3230901933, No 3230901935, No 3230901936 and No 3230901937;

— lastly, declare that the Commission has failed to comply with the terms and conditions of the 'SEAPURA' contract, namely Contract No Q5RS-2000-31334;

— declare that the Commission has failed, in particular, to comply with Article 22(5)(3) and Article 3.5 of Annex II to Contract No Q5RS-2000-31334;

— in consequence, annul the enforcement orders for the four debit notes dated 11 May 2009, namely, No 3230901933, No 3230901935, No 3230901936 and No 3230901937.

Pleas in law and main arguments

By the present action, CEVA is seeking annulment of the enforcement orders by which the Commission demanded full reimbursement of the advance payments made to CEVA in the context of the SEAPURA Contract (No Q5RS-2000-31334) concerning a research and technological development project.

In support of its action, CEVA relies on three pleas in law:

— failure to provide an adequate statement of reasons, in so far as the Commission based its position on the allegation that CEVA was in breach of its contractual obligations but did not set out the factual and legal grounds for that allegation;

— breach of the principle that there should be no unjust enrichment since, if the sum claimed by the Commission were to be refunded in full, the Commission would be unjustly enriched in that the work and research carried out by CEVA would be available to the Commission without it having to pay for it;

— failure on the part of the Commission to make proper use of its powers of control during the performance of the contract.

Action brought on 22 July 2009 — Intel v Commission

(Case T-286/09)

(2009/C 220/86)

Language of the case: English

Parties

Applicant: Intel Corp. (Wilmington, United States of America) (represented by: N. Green, I. Forrester, QC, M. Hoskins, K. Bacon, S. Singla, Barristers, A. Parr and R. MacKenzie, Solicitors)

Defendant: Commission of the European communities

Form of order sought

— Annul in whole or in part Commission Decision C(2009) 3726 final of 13 May 2009 in Case COMP/C-3/37.990 — Intel;

— Alternatively, annul or reduce substantially the level of the fine imposed;

— Order the Commission to pay Intel's costs.

Pleas in law and main arguments

By means of this application, the applicant seeks annulment, pursuant to Article 230 EC, of Commission Decision C(2009) 3726 final of 13 May 2009 in Case COMP/C-3/37.990 — Intel finding that it committed a single and continuous infringement of Article 82 EC and Article 54 of EEA Agreement from October 2002 until December 2007 by implementing a strategy aimed at foreclosing competitors form the market of x86 central processing units ('CPUs'). Further, the applicant seeks the annulment or the reduction of the fine imposed on it.

The applicant puts forward the following pleas in law in support of its claims.

First, it contends that the Commission errs in law by:

(a) finding that the conditional discounts granted by Intel to its customers were abusive *per se* by virtue of them being conditional without establishing that they had an actual capability to foreclose competition;

(b) relying on a form of exclusionary abuse, termed 'naked restrictions', and failing to conduct any analysis of foreclosure (even a capability or likelihood to foreclose) in respect thereof;

(c) failing to analyse whether Intel's rebate arrangements with its customers were implemented in the territory of the European Community and/or had immediate, substantial, direct and foreseeable effects within the European Community.

Secondly, the applicant claims that the Commission fails to meet the required standard of proof in its analysis of the evidence. Thus, the Commission fails to prove that Intel's rebate arrangements were conditional upon its customers purchasing all or almost all of their x86 CPU requirements from Intel. In addition, the Commission uses an 'as efficient competitor' ('AEC') test to determine whether Intel's rebates were capable of restricting competition but it commits numerous errors in the analysis and assessment of the evidence relating to the application of that test. The Commission also fails to address other categories of evidence relevant to the effects of Intel's discounts. In particular, the Commission fails:

(a) to address the evidence which shows that during the period of the alleged infringement, one of Intel's competitors substantially increased its market share and its profitability but that its lack of success in certain market segments and/or with certain original equipment manufacturers ('OEMs') was the result of its own shortcomings;

(b) to establish a causal link between what it finds to be conditional discounts and the decisions of Intel's customers not to purchase from that competitor;

(c) to analyse the evidence of the impact of Intel's discounts upon consumers.

Thirdly, the applicant argues that the Commission fails to prove that Intel engaged in a long-term strategy to foreclose the competitors. Such a finding is not supported by the evidence and is impossible to reconcile with the fragmented nature of the Commission's allegations (in relation to both products covered and time period) in respect of each Intel customer.

The applicant also submits that all or part of the Decision should be annulled on the basis that the Commission infringed essential procedural requirements during the administrative procedure, which materially infringed Intel's rights of defence. In particular, the Commission failed:

(a) to grant Intel an oral hearing in relation to the Supplementary Statement of Objections and Letter of Facts, even though they raised entirely new allegations and referred to new evidence which feature prominently in the contested decision;