

3. The third plea in law concerns a breach of the second paragraph of Article 296 TFEU on the ground that the contested decision is inadequately reasoned

The applicant criticises the Commission on the ground that, under the contested decision, the Polish authorities were not closely involved in the decision-making process as the Commission presented its position of principle only after bilateral consultation. The Commission did not adduce any evidence and failed to provide grounds for its findings of law and fact, which it adopted as the basis for the financial correction applied.

(¹) OJ 2013 L 123, 4.5.2013, p. 11.

Action brought on 16 July 2013 — Boehringer Ingelheim International/OHIM — Lehning entreprise (ANGIPAX)

(Case T-368/13)

(2013/C 260/85)

Language in which the application was lodged: English

Parties

Applicant: Boehringer Ingelheim International GmbH (Ingelheim am Rhein, Germany) (represented by: V. von Bomhard and D. Slopek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Lehning entreprise SARL (Sainte Barbe, France)

Form of order sought

The applicant claims that the Court should:

- Annul OHIM's Fifth Board of Appeal's decision of 29 April 2013 in Case R 571/2012-5 insofar as it allowed registration of the mark ANGIPAX in respect of pharmaceutical and veterinarian products and preparations for health and medical care; fungicides; dietetic substances adapted for medical use; disinfectants; surgical dressings and materials for dressing, materials for stopping teeth, preparations for destroying vermin; food for babies; and
- Order that the costs of the proceedings be borne by the defendant, or — in the event that the other party before the Boards of Appeal intervenes on the side of the defendant — that they be borne jointly by the defendant and the intervenor.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'ANGIPAX' for goods in class 5 — Community trade mark application No 8 952 401

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: The word mark 'ANTISTAX' — Community trade mark registration No 2 498 343 for goods in classes 3, 5, 28 and 30

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

Action brought on 18 July 2013 — Versorgungswerk der Zahnärztekammer Schleswig Holstein v ECB

(Case T-376/13)

(2013/C 260/86)

Language of the case: German

Parties

Applicant: Versorgungswerk der Zahnärztekammer Schleswig Holstein (Kiel, Germany) (represented by: O. Hoepner, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision of 16 April 2013 in the version of the decision of 22 May 2013 (LS/MD/13/313) in so far as the request for access to Annexes A and B to the 'Exchange Agreement dated 15. February 2012 among the Hellenic Republic and the European Central Bank and the Eurosystem NBCs listed herein' was not granted;
- order the defendant to pay the costs;

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the basis of the Decision is illegal

The applicant claims that, by its Decision ECB/2011/6, (¹) the ECB materially extended the scope of the refusal grounds set out in Article 4(1)(a) of Decision ECB/2004/3 (²) without sufficient authorisation.

2. Second plea in law, alleging breach of essential procedural requirements

In this plea, the applicant claims that the contested decision infringes essential procedural requirements. In that connection, the applicant states that, in the light of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, the requirements of the obligation to state reasons laid down in Article 296(2) TFEU are set high and that the recitals in the preamble to the contested decision of the defendant do not satisfy the requirements laid down by the European Court of Justice.

3. Third plea in law, alleging breach of substantive law

In this plea, the applicant alleges breach of substantive law, since, as a result of its inadequate statement of reasons, the contested decision infringes the applicant's right to access to documents pursuant to Article 42 of the Charter of Fundamental Rights of the European Union and Article 15(3) TFEU. Moreover, the refusal of access is disproportionate.

- (¹) 2011/342/EU: Decision of the European Central Bank of 9 May 2011 amending Decision ECB/2004/3 on public access to European Central Bank documents (ECB/2011/6) (OJ 2011 L 158, p. 37).
 (²) 2004/258/EC: Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42).

Action brought on 17 July 2013 — ultra air GmbH v OHIM — Donaldson Filtration Deutschland (ultra.air ultrafilter)

(Case T-377/13)

(2013/C 260/87)

Language in which the application was lodged: German

Parties

Applicant: ultra air GmbH (Hilden, Germany) (represented by: C. König, Rechtsanwalt)

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

Other party to the proceedings before the Board of Appeal: Donaldson Filtration Deutschland GmbH

Form of order sought

The Applicant claims that the Court should:

- Set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 May 2013 in Case R 1100/2011-4;

— Order OHIM, and Donaldson Filtration Deutschland GmbH should it participate in the proceedings, to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'ultra.air ultrafilter' for goods and services in Classes 7, 9, 11, 37 and 42 — Community trade mark No 7 480 585

Proprietor of the Community trade mark: Applicant

Applicant for the declaration of invalidity of the Community trade mark: Donaldson Filtration Deutschland GmbH

Grounds for the application for a declaration of invalidity: Absolute ground of invalidity under Article 52(1)(a) of Regulation No 207/2009

Decision of the Cancellation Division: Application for declaration of invalidity dismissed

Decision of the Board of Appeal: Appeal allowed; Community trade mark declared invalid

Pleas in law:

Infringement of Article 7(1)(c) of Regulation No 207/2009;

Infringement of Article 7(1)(b) of Regulation No 207/2009;

Infringement of Article 75(2) of Regulation No 207/2009;

Infringement of Article 75(1) of Regulation No 207/2009

Action brought on 23 July 2013 — Apple and Pear Australia and Star Fruits Diffusion v OHIM — Carolus C. (English pink)

(Case T-378/13)

(2013/C 260/88)

Language of the case: French

Parties

Applicants: Apple and Pear Australia Ltd (Victoria, Australia) and Star Fruits Diffusion (Caderousse, France) (represented by: T. de Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal: Carolus C. BVBA (Nieuwerkerken, Belgium)