1. Do Paragraphs 16 and 18 of the Sozialgesetzbuch (Code of Social Law) relating to statutory sickness insurance ('SGB V'), which in this country make reimbursement of the costs of dental treatment carried out by a dentist in another Member State subject to authorisation based on the merits of the case by the insured person's social security institution, infringe Articles 59 and 60 of the EC Treaty, even where the national statutory sickness insurance scheme is based on the benefit-in-kind principle (and not, as in Case C-158/96 Kohll v Union des caisses de maladie ([1]), on the cost-reimbursement principle)?

2. If, depending on the answer to Question 1, the defendant were to be required, for reasons connected with Community law, to reimburse the costs of the dental treatment (in this case provided in the Republic of Austria), is the amount of the claim for reimbursement governed by the costs actually incurred or is that amount restricted to the rates applicable under the national sickness insurance scheme (in this case that of the Federal Republic of Germany)?

([1]) European Court Reports 1998, page I-01931.

Action brought on 16 September 2002 by the Commission of the European Communities against Hydrowatt SARL ('Hydrowatt')

(Case C-323/02)

(2002/C 289/18)

An action against Hydrowatt Sarl ('Hydrowatt') was brought before the Court of Justice of the European Communities on 16 September 2002 by the Commission of the European Communities, represented by H. Støvlbæk, acting as Agent and E. Cabau, lawyer, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should order Hydrowatt to:

— pay to the Commission the principal sum of 25 109 euros, together with default interest of 23 422,91 euros, making a total of 48 531,91 euros;

— pay the Commission's costs in these proceedings.

Pleas in law and main arguments

The action seeks reimbursement of the part of a subsidy awarded under a contract for the completion of a project 'New group with turbine and generator adapted for low heads', which was terminated by Commission under Article 8. The contract is governed by French law and the parties have agreed to submit any disputes to the Court of Justice of the European Communities.

Appeal brought on 18 September 2002 (faxed on 12 September 2002) by SAT.1 SatellitenFernsehen GmbH against the judgment delivered on 2 July 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-323/00 between SAT.1 SatellitenFernsehen GmbH and the Office for Harmonisation of the Internal Market

(Case C-329/02 P)

(2002/C 289/19)

An appeal against the judgment delivered on 2 July 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-323/00 between SAT.1 SatellitenFernsehen GmbH and the Office for Harmonisation of the Internal Market (Trademarks and Designs) was brought before the Court of Justice of the European Communities on 18 September 2002 (faxed on 12 September 2002) by SAT.1 SatellitenFernsehen GmbH, represented by Reinhard Schneider, Rechtsanwalt, Büsing, Müffelmann and Theye, Marktstraße 3, D-28195 Bremen, with an address for service in Luxembourg.

The appellant claims that the Court should:

1. set aside the contested judgment ([1]), in so far as it dismissed the action ([2]) as formulated in the form of order sought;

2. order the Office to pay the costs.

Pleas in law and main arguments

— Infringement of Article 7(1)(b) of Council Regulation No 40/94 on the Community trade mark ('the Regulation'): the Court erred in law in finding that Article 7(1)(b) of the Regulation also pursues the general interest objective of allowing signs covered by that provision to be used freely by everyone. There is, however, no evident reason to assume that indications which are merely not suitable for distinguishing goods or services according to their origin must be available for free use. In the present case it was therefore necessary for the Court to examine whether the compound sign 'SAT.2'

enables the relevant class of persons to distinguish the services in question from services of another business source. Instead the Court based its view that the sign in question fell within the scope of Article 7(1)(b) of the Regulation on the fact that it did not satisfy criteria for protection governed by other provisions. It interprets Article 7(1)(b) as a catch-all provision for cases in which the trade marks applied for, despite having descriptive character, do not fall within the scope of the grounds for rejecting protection under Article 7(1)(c) of the Regulation.

The splitting by the Court of the trade mark 'SAT.2' into its component parts does not reflect the view and approach adopted by consumers. The distinctive character or lack of distinctive character of the trade mark must to some degree be apparent 'at first sight'.

(in the alternative)

— Infringement of the principle of equal treatment: it may be correct that a person cannot rely on a failure to apply the law which has benefitted another person. In the present case, however, the appellant did not point to wrongly-decided isolated cases, but to the Office's clearly recognisable general practice of allowing in principle applications for registration of trademarks consisting of a combination of numbers and descriptive indications/abbreviations. The appellant refers in this connection in particular to the trademarks 'T-SAT' (00 918 409), 'One Tel' (001 096 312, 000 983 973, 001 105 089), 'MEDIA 4' (001 179 530, 'CAR ONE' (000 707 430), 'D1' (000 920 157) and 'B-MAIL' (000 896 399).

(1) OJ 2002 C 202, p. 23.
(2) OJ 2001 C 4, p. 5.

Reference for a preliminary ruling by the Landgericht Düsseldorf by order of that Court of 17 September 2002 in the proceedings between Saatgut-Treuhandverwaltungs-GmbH and Brangewitz GmbH

(Case C-336/02)

(2002/C 289/20)

Reference has been made to the Court of Justice of the European Communities by order of the Landgericht Düsseldorf (Regional Court, Düsseldorf) of 17 September 2002, received at the Court Registry on 23 September 2002, for a preliminary ruling in the proceedings between Saatgut-Treuhandverwaltungs-GmbH and Brangewitz GmbH on the following questions concerning the interpretation of Article 14(3), sixth indent, of Council Regulation (EC) No 2100/94 (1) of 27 July 1994 on Community Plant variety rights (OJ 1994 L 227, p. 1) in conjunction with Article 9 of Commission Regulation (EC) No 1768/95 (2) of 24 July 1995:

1. Are the abovementioned provisions to be interpreted as meaning that the holder of a variety protected under Regulation No 2100/94 can request the supplier of processing services or the processor to provide the information specified in those provisions, regardless of whether there is any evidence that the supplier of processsing services has supplied a processing service in respect of the protected variety concerned or that the processor has processed the protected variety concerned?

2. If there must be evidence for the factual situation referred to in Question 1:

   Must the supplier of processing services or processor provide information pursuant to Article 14(3), sixth indent, of Regulation No 2100/94 in conjunction with Article 9 of Regulation No 1768/95 with regard to all the farmers to whom he has supplied the processing service in respect of the protected variety concerned and/or for whom he has carried out the processing of the protected variety concerned, or only with regard to those farmers in respect of whom the holder has evidence that the supplier of processing services has supplied processing services in respect of the protected variety concerned and/or the processor has carried out the processing of the protected variety concerned?

(1) OJ L 227, p. 1.
(2) OJ L 173, p. 14.

Action brought on 24 September 2002 by Commission of the European Communities against French Republic

(Case C-340/02)

(2002/C 289/21)

An action against the French Republic was brought before the Court of Justice of the European Communities on 24 September 2002 by the Commission of the European Communities, represented by M. Nolin, acting as Agent, with an address for service in Luxembourg.