The applicant claims that the Court should:

— annul the Commission's decision rejecting the applicant's candidature and refusing to admit him to the written procedure in open competition EUR/A/166/01, as notified to him by decision of the appointing authority of 8 April 2002;

— in the alternative, order compensation for non-material damage provisionally estimated at EUR 2 500;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in the present case challenges the decision refusing to allow him to take part in the tests in competition EUR/A/166/01, held for the purpose of constituting a reserve for recruitment of A7/A6 administrators in the area of auditing, on the ground that the qualifications and diplomas produced by the applicant did not satisfy the conditions laid down in point III.B.2 of the notice of competition. The Selection Board considered that the applicant's qualifications of 'Ragioniere e Perito Commerciale' and 'Revisore Commerciale' could not be regarded as equivalent to the qualification of 'Dottore Commercialista'.

In support of his claims, the applicant alleges failure to comply with of the notice of competition and infringement of the duty to state reasons, and alleges that there was in the circumstances of the case a manifest error of assessment. Specifically, he argues that the Selection Board erred in its assessment of his qualifications, diplomas, professional activity and training periods in auditing which in fact enable him to claim a professional qualification of equivalent level.

Action brought on 31 January 2003 by Aventis Cropscience S.A. against Office for the Harmonisation of the Internal Market (trade marks and designs) (OHIM)

(Case T-35/03)

(2003/C 83/53)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (trade marks and designs (OHIM) was brought before the Court of First Instance of the European Communities on 31 January 2003 by Aventis Cropscience S.A., the registered office of which is in Lyon (France), represented by Enrique Armijo Chávarri.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of OHIM of 18 November 2002 in file R 803/2001-2;

— uphold, therefore, the applicant's opposition to registration of the trade mark 'CARPO', and

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	Basf Aktiengegesellschaft
The Community trade mark concerned:	Word mark 'CARPO' for products in class 5 (fungicides, herbicides, insecticides and pesticides).
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Applicant.
Trade mark or sign asserted by way of opposition in the opposition proceedings:	Spanish word mark 'HARPO Z' for products in Class 5 (preparations for destroying vermin, fungicides, herbicides).
Decision of the Opposition Division:	Opposition rejected.
Decision of the Board of Appeal:	Action dismissed.
Grounds of claim:	Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion)

Action brought on 4 February 2003 by Open Mobile Alliance Ltd. against the Office for Harmonization in the Internal Market

(Case T-37/03)

(2003/C 83/54)

(Language of the case: English)

An action against the Office for Harmonization in the Internal Market was brought before the Court of First Instance of the European Communities on 4 February 2003 by Open Mobile Alliance Ltd., Reading, United Kingdom, represented by Ms Alexandra Dellmeier, Attorney at Law.

The applicant claims that the Court should:

— cancel the decision of the Third Board of Appeal of 20 November 2002;

— reassign the application No 1131739 for the figurative mark 'W@P' to the original filing date of 8 April 1999;

— as an auxiliary request it is asked for that the application No 1131739, the figurative mark 'W@P', be reassigned the application date of 13 October 1999, the date given to the application for the word mark 'WAP FORUM' with the No 1131705 which was also filed for on 8 April 1999;

— as an auxiliary request it is asked for that the application No 1131739, the figurative mark 'W@P', be reassigned the application date of 21 December 1999;

— as an auxiliary request it is asked for reinstatement according to article 78 of Council Regulation 40/94;

Pleas in law and main arguments

The applicant applied on 8 April 1999 for the registration of the figurative mark 'W@P' for goods and services in classes 35, 41 and 42 (application No 1131739). The then representatives of the applicant requested that the filing fee be deducted from their deposit account.

The defendant informed the applicant that the filing fee had to be paid within a time-limit of one month. Later, the defendant informed the applicant that since the application fee had not been paid, the application would have, as its filing date, the date on which all flaws had been remedied. The then representatives of the applicant requested again that the fee be deducted from their deposit account.

The defendant informed the applicant on 5 September 2000 that the application would have 17 March 2000 as its filing date because this was the date actual payment by cheque was received. The applicant was furthermore informed that the deposit account did not have sufficient funds to debit the fee.

The applicant contested this decision before the board of appeal on 23 January 2001. The Board of Appeal decided that the appeal was out of time and declared it inadmissible.

In support of its present application, the applicant submits that the defendant has breached an obligation it has as a public authority to keep track of its bookkeeping and an infringement of Article 41 of the Charter of Fundamental Rights, namely the right to good administration. According to the applicant, the defendant has the responsibility to notify within a reasonable period of time any inconsistencies.

The applicant furthermore invokes a violation of Rule 52(2) of Regulation 2868/95 [1] and an infringement of the right to good administration and the right to an effective remedy and a fair trial as incorporated in articles 41 and 47 of the Charter of Fundamental Rights. The applicant states that no written communication was attached as required by Rule 52(2).

The applicant finally submits that the defendant made a statement and not a decision so that the time-limit of two months indicated in Rule 52(2) of Regulation 2868/95 is not applicable.

---

[1] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, p. 1).

Action brought on 4 February 2003 by Merck Sharp & Dohme Limited and 19 other applicants against the Commission of the European Communities and the European Agency for the Evaluation of Medicinal Products ('EMEA')

(Case T-41/03)

(2003/C 83/55)

(Language of the case: English)

An action against the Commission of the European Communities and the European Agency for the Evaluation of Medicinal Products ('EMEA') was brought before the Court of First Instance of the European Communities on 4 February 2003 by Merck Sharp & Dohme Limited, Hoddeston, United Kingdom, Merck Sharp & Dohme BV, Haarlem, Netherlands, Laboratoires Merck Sharp & Dohme-Chibret, Paris, France, MSD Sharp & Dohme GmbH, Haar, Germany, Merck Sharp & Dohme (Italia) SpA., Rome, Italy, Merck Sharp & Dohme, LDA. Paço de Arcos, Portugal, Merck Sharp & Dohme de Espana S.A., Madrid, Spain, Merck Sharp & Dohme Ges.m.b.H., Wien, Austria, Merck & Co. Inc., Whitehouse Station, USA, Dieckmann Arzneimittel GmbH, Haar, Germany, Neopharmed SpA, Rome, Italy, Istituto Gentili SpA., Pisa, Italy, Laboratórios Químico-Farmacêuticos Chibret, LDA., Paço de Arcos, Portugal, Laboratoires Sanofi, Synthelabo France, Paris, France, Boehringer Ingelheim Pharma GmbH & Co.KG, Ingelheim, Germany, VIANEX S.A., Nea Erythrea, Greece, Sigma-Tau Industrie Farmaceutiche Riunite SpA., Rome, Italy, Mediolanum SpA., Milano, Italy, BIOHORM S.A. (Groupo Uriach), Barcelona, Spain, and LACER S.A., Barcelona, Spain, represented by Dr Georg M. Berrisch and Mr Peter Bogaert, Lawyers.