

In support of her application, the applicant submits an infringement of Article 8 of Regulation No 1049/2001⁽¹⁾ and a failure to state reasons in accordance with Article 253 EC. According to the applicant, the Commission has given an incomplete reply to the request for access and did not identify all the documents included within its scope. The applicant claims that other documents exist, for which no reasons for refusal of access have been given and no exceptions have been invoked.

The applicant furthermore submits that the Commission erred in law and misapplied the exception under the second paragraph of Article 4(3) and the third indent of Article 4(1)(a) of Regulation No 1049/2001. The applicant also submits that the Commission failed to state reasons and erred in considering that disclosure would seriously undermine the decision making process, that there is no overriding public interest in disclosure of the documents and that the documents in question would weaken the Commission's position before the WTO panel on the de facto moratorium on the approval and marketing of biotech products.

The applicant also submits an infringement of the principle of proportionality and a failure to state reasons in not considering partial access to the documents.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).

Action brought on 31 January 2005 by Micronas GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-45/05)

(2005/C 93/66)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the

Court of First Instance of the European Communities on 31 January 2005 by Micronas GmbH, Freiburg i.Br., Germany, represented by G. Herr, lawyer.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of 12 November 2004 (Decision R 366/2004-2-3D-Panorama) refusing to register the Community trade mark '3D-Panorama' for Class 9 'electronic circuits, integrated circuits, and in particular semiconductor chips';
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:

Micronas GmbH.

Community trade mark sought:

The word mark '3D Panorama' for Class 9 goods (consumer electronics, in particular TV sets, video recorders, radios, electronic circuits, integrated circuits, and in particular semiconductor chips; software) — Registration No 2871218.

Decision of the examiner contested before the Board of Appeal:

Refusal to register the mark for all of the goods applied for.

Decision of the Board of Appeal:

Dismissal of the appeal.

Pleas in law:

The contested decision infringes Article 7(1)(b) and (c) of Regulation (EC) No 40/94, because as far as 'electronic circuits, integrated circuits, and in particular semiconductor chips' are concerned, the word combination 3D-Panorama neither consists exclusively of signs or indications nor is devoid of distinctive character.