

**Re:**

Action for annulment of the decision of the Second Board of Appeal of OHIM of 23 October 2003 (Case R 814/2000-2) relating to opposition proceedings between Laboratoires Goëmar and La Mer Technology, Inc.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders La Mer Technology, Inc., to pay its own costs and those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Laboratoires Goëmar.

<sup>(1)</sup> OJ C 47, 21.2.2004.

**Judgment of the Court of First Instance (Grand Chamber)  
of 17 September 2007 — Microsoft v Commission**

(Case T-201/04) <sup>(1)</sup>

**(Competition — Abuse of dominant position — Client PC operating systems — Work group server operating systems — Streaming media players — Decision finding infringements of Article 82 EC — Refusal of the dominant undertaking to supply and authorise the use of interoperability information — Supply by the dominant undertaking of its client PC operating system conditional on the simultaneous acquisition of its media player — Remedies — Appointment of an independent monitoring trustee — Fine — Determination of the amount — Proportionality)**

(2007/C 269/80)

Language of the case: English

**Parties**

**Applicant:** Microsoft Corp. (Redmond, Washington, United States) (represented by: J.-F. Bellis, lawyer, and I. Forrester QC)

**Defendants:** Commission of the European Communities (represented initially by: R. Wainwright, F. Castillo de la Torre, P. Hellström and A. Whelan, Agents, and subsequently by F. Castillo de la Torre, P. Hellström and A. Whelan)

**Interveners in support of the applicant:** The Computing Technology Industry Association, Inc. (Oakbrook Terrace, Illinois, United States) (represented by: G. van Gerven and T. Franchoo, lawyers, and B. Kilpatrick, Solicitor); DMDsecure.com BV (Amsterdam, Netherlands); MPS Broadband AB (Stockholm, Sweden); Pace Micro Technology plc (Shipley, West Yorkshire, United Kingdom); Quantel Ltd (Newbury, Berkshire, United Kingdom); Tandberg Television Ltd (Southampton, Hampshire, United

Kingdom) (represented by: J. Bourgeois, lawyer); Association for Competitive Technology, Inc. (Washington, DC, United States) (represented by: L. Ruessmann and P. Hecker, lawyers, and K. Bacon, Barrister); TeamSystem SpA (Pesaro, Italy); Mamut ASA (Oslo, Norway) (represented by: G. Berrisch, lawyer); and Exor AB (Uppsala, Sweden) (represented by: S. Martínez Lage, H. Brokelmann and R. Allendesalazar Corcho, lawyers)

**Interveners in support of the defendant:** Software & Information Industry Association (Washington, DC) (represented by: J. Flynn QC, C. Simpson and T. Vinje, Solicitors, and D. Paemen, N. Dodoo and M. Dolmans, lawyers); Free Software Foundation Europe eV (Hamburg, Germany) (represented by: C. Piana, lawyer); Audiobanner.com (Los Angeles, California, United States) (represented by: L. Alvizar Ceballos, lawyer); and European Committee for Interoperable Systems (ECIS) (Brussels, Belgium) (represented by: D. Paemen, N. Dodoo and M. Dolmans, lawyers, and J. Flynn QC)

**Re:**

Application for annulment of Commission Decision 2007/53/EC of 24 March 2004 relating to a proceeding pursuant to Article 82 [EC] and Article 54 of the EEA Agreement against Microsoft Corp. (Case COMP/C-3/37.792 — Microsoft) (OJ 2007 L 32, p. 23) or, in the alternative, annulment or reduction of the fine imposed on the applicant in that decision.

**Operative part of the judgment**

*The Court:*

1. Annuls Article 7 of Commission Decision 2007/53/EC of 24 March 2004 relating to a proceeding pursuant to Article 82 [EC] and Article 54 of the EEA Agreement against Microsoft Corp. (Case COMP/C-3/37.792 — Microsoft), in so far as:
  - it orders Microsoft to submit a proposal for the establishment of a mechanism which is to include a monitoring trustee with the power to have access, independently of the Commission, to Microsoft's assistance, information, documents, premises and employees and to the source code of the relevant Microsoft products;
  - it requires that the proposal for the establishment of that mechanism provide that all the costs associated with the appointment of the monitoring trustee, including his remuneration, be borne by Microsoft; and
  - it reserves to the Commission the right to impose by way of decision a mechanism such as that referred to in the first and second indents above;

2. Dismisses the remainder of the application;
3. Orders Microsoft to bear 80 % of its own costs and to pay 80 % of the Commission's costs, with the exception of the costs incurred by the Commission in connection with the intervention of The Computing Technology Industry Association, Inc., Association for Competitive Technology, Inc., TeamSystem SpA, Mamut ASA, DMDsecure.com BV, MPS Broadband AB, Pace Micro Technology plc, Quantel Ltd, Tandberg Television Ltd and Exor AB;

4. Orders Microsoft to bear its own costs and to pay the Commission's costs relating to the interim measures proceedings in Case T-201/04 R, with the exception of the costs incurred by the Commission in connection with the intervention of The Computing Technology Industry Association, Association for Competitive Technology, TeamSystem, Mamut, DMDsecure.com, MPS Broadband, Pace Micro Technology, Quantel, Tandberg Television and Exor;
5. Orders Microsoft to pay the costs of Software & Information Industry Association, Free Software Foundation Europe, Audiobanner.com and European Committee for Interoperable Systems (ECIS), including those relating to the interim measures proceedings;
6. Orders the Commission to bear 20 % of its own costs and to pay 20 % of Microsoft's costs, with the exception of the costs incurred by Microsoft in connection with the intervention of Software & Information Industry Association, Free Software Foundation Europe, Audiobanner.com and ECIS;
7. Orders The Computing Technology Industry Association, Association for Competitive Technology, TeamSystem, Mamut, DMDsecure.com, MPS Broadband, Pace Micro Technology, Quantel, Tandberg Television and Exor to bear their own costs, including those relating to the interim measures proceedings.

<sup>(1)</sup> OJ C 179 of 10.7.2004.

**Judgment of the Court of First Instance (First Chamber, Extended Composition) of 17 September 2007 — France v Commission**

(Case T-240/04) <sup>(1)</sup>

*(European Atomic Energy Community — Investments — Communication to Commission of investment projects — Procedures — Regulation (Euratom) No 1352/2003 — Commission's lack of competence — Articles 41 EA to 44 EA — Principle of legal certainty)*

(2007/C 269/81)

Language of the case: French

**Parties**

*Applicant:* French Republic (represented initially by: F. Alabrune, G. de Bergues, C. Lemaire and E. Puisais, then by G. De Bergues and S. Gasri, agents)

*Defendant:* Commission of the European Communities (represented by: M. Patakia)

*Interveners in support of the applicant:* Federal Republic of Germany (represented by C.-D. Quassowski and A. Tiemann, agents) and Kingdom of Belgium (represented initially by D. Haven, then by M. Wimmer, and then by A. Hubert, agents, assisted by J.-F. De Bock, lawyer)

**Re:**

Annulment of Commission Regulation (Euratom) No 1352/2003 of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community (OJ 2003 L 192, p. 15).

**Operative part of the judgment**

*The Court:*

1. Annuls Commission Regulation (Euratom) No 1352/2003 of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community;
2. Orders the Commission to pay the costs of the French Republic;
3. Orders the Federal Republic of Germany and the Kingdom of Belgium to bear their own costs.

<sup>(1)</sup> OJ C 304 of 13.12.2003 (formerly Case C-455/03).

**Judgment of the Court of First Instance of 20 September 2007 — Imagination Technologies v OHIM (PURE DIGITAL)**

(Case T-461/04) <sup>(1)</sup>

*(Community trade mark — Application for the Community word mark PURE DIGITAL — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 40/94 — Distinctive character acquired through use — Article 7(3) of Regulation No 40/94)*

(2007/C 269/82)

Language of the case: English

**Parties**

*Applicant:* Imagination Technologies (Kings Langley, Hertfordshire, United Kingdom) (represented by: M. Edenborough, Barrister, and P. Brownlow and N. Jenkins, Solicitors)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Schennen initially and subsequently by D. Botis, acting as Agents)

**Re:**

Application for annulment of the decision of the Second Board of Appeal of OHIM of 16 September 2004 (Case R 108/2004-2), concerning an application for the registration of the word mark PURE DIGITAL as a Community trade mark