



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

6 June 2019\*

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Revocation proceedings — Figurative mark representing a cross on the side of a sports shoe — Rejection of the application for revocation)

In Case C-223/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 March 2018,

**Deichmann SE**, established in Essen (Germany), represented by C. Onken, Rechtsanwältin,

appellant,

the other parties to the proceedings being:

**European Union Intellectual Property Office (EUIPO)**, represented by D. Gája, acting as Agent,

defendant at first instance,

**Munich SL**, established in Capellades (Spain), represented by J. Güell Serra and M. del Mar Guix Vilanova, abogados,

intervener at first instance,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, A. Rosas and M. Safjan (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: English.

## Judgment

- 1 By its appeal, Deichmann SE seeks to have set aside the judgment of the General Court of the European Union of 17 January 2018, *Deichmann v EUIPO — Munich (Representation of a cross on the side of a sports shoe)* (T-68/16, EU:T:2018:7) ('the judgment under appeal'), by which the General Court dismissed Deichmann SE's action seeking annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 4 December 2015 (Case R 2345/2014-4), relating to revocation proceedings between Deichmann and Munich SL ('the contested decision').

### Legal context

- 2 Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1) was amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 (OJ 2015 L 341, p. 21), which entered into force on 23 March 2016. Regulation No 207/2009, as amended, was repealed and replaced with effect from 1 October 2017 by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1). Nevertheless, in view of the date of submission of the application for revocation at issue, that is to say 26 January 2011, which is decisive for the purpose of identifying the applicable law, the present dispute is governed by the provisions of Regulation No 207/2009.

- 3 Article 15(1)(a) of Regulation No 207/2009, entitled 'Use of [EU] trade marks', provides:

'If, within a period of five years following registration, the proprietor has not put the [EU] trade mark to genuine use in the [EU] in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the [EU] trade mark shall be subject to the sanctions provided for in this Regulation, unless there are proper reasons for non-use.

The following shall also constitute use within the meaning of the first subparagraph:

- (a) use of the [EU] trade mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered'.

- 4 Article 51 of that regulation, entitled 'Grounds for revocation', provides, in paragraph 1(a) thereof:

'The rights of the proprietor of the [EU] trade mark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings:

- (a) if, within a continuous period of five years, the trade mark has not been put to genuine use in the [EU] in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in a Community trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application or counterclaim, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application or counterclaim which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application or counterclaim may be filed'.

5 Commission Implementing Regulation (EU) 2017/1431 of 18 May 2017 laying down detailed rules for implementing certain provisions of Regulation No 207/2009 (OJ 2017 L 205, p. 39), which, under Article 38 thereof, is applicable only from 1 October 2017, that is to say after the date of adoption of the contested decision, provides, in Article 3 thereof, entitled ‘Representation of the trade mark’:

‘1. The trade mark shall be represented in any appropriate form using generally available technology, as long as it can be reproduced on the register in a clear, precise, self-contained, easily accessible, intelligible, durable and objective manner so as to enable the competent authorities and the public to determine with clarity and precision the subject-matter of the protection afforded to its proprietor.

2. The representation of the trade mark shall define the subject matter of the registration. Where the representation is accompanied by a description pursuant to paragraph 3(d), (e), (f)(ii), (h) or paragraph 4, such description shall accord with the representation and shall not extend its scope.

3. Where the application concerns any of the trade mark types listed in points (a) to (j), it shall contain an indication to that effect. Without prejudice to paragraphs 1 or 2, the type of the trade mark and its representation shall accord with each other as follows:

- (a) in the case of a trade mark consisting exclusively of words or letters, numerals, other standard typographic characters or a combination thereof (word mark), the mark shall be represented by submitting a reproduction of the sign in standard script and layout, without any graphic feature or colour;
- (b) in the case of a trade mark where non-standard characters, stylisation or layout, or a graphic feature or a colour are used (figurative mark), including marks that consist exclusively of figurative elements or of a combination of verbal and figurative elements, the mark shall be represented by submitting a reproduction of the sign showing all its elements and, where applicable, its colours;
- (c) in the case of a trade mark consisting of, or extending to, a three-dimensional shape, including containers, packaging, the product itself or their appearance (shape mark), the mark shall be represented by submitting either a graphic reproduction of the shape, including computer-generated imaging, or a photographic reproduction. The graphic or photographic reproduction may contain different views. Where the representation is not provided electronically, it may contain up to six different views;
- (d) in the case of a trade mark consisting of the specific way in which the mark is placed or affixed on the product (position mark), the mark shall be represented by submitting a reproduction which appropriately identifies the position of the mark and its size or proportion with respect to the relevant goods. The elements which do not form part of the subject-matter of the registration shall be visually disclaimed preferably by broken or dotted lines. The representation may be accompanied by a description detailing how the sign is affixed on the goods;
- (e) in the case of a trade mark consisting exclusively of a set of elements which are repeated regularly (pattern mark), the mark shall be represented by submitting a reproduction showing the pattern of repetition. The representation may be accompanied by a description detailing how its elements are repeated regularly;
- (f) in the case of a colour mark:
  - (i) where the trade mark consists exclusively of a single colour without contours, the mark shall be represented by submitting a reproduction of the colour and an indication of that colour by reference to a generally recognised colour code;

- (ii) where the trade mark consists exclusively of a combination of colours without contours, the mark shall be represented by submitting a reproduction that shows the systematic arrangement of the colour combination in a uniform and predetermined manner and an indication of those colours by reference to a generally recognised colour code. A description detailing the systematic arrangement of the colours may also be added;
- (g) in the case of a trade mark consisting exclusively of a sound or combination of sounds (sound mark), the mark shall be represented by submitting an audio file reproducing the sound or by an accurate representation of the sound in musical notation;
  - (h) in the case of a trade mark consisting of, or extending to, a movement or a change in the position of the elements of the mark (motion mark), the mark shall be represented by submitting a video file or by a series of sequential still images showing the movement or change of position. Where still images are used, they may be numbered or accompanied by a description explaining the sequence;
  - (i) in the case of a trade mark consisting of, or extending to, the combination of image and sound (multimedia mark), the mark shall be represented by submitting an audiovisual file containing the combination of the image and the sound;
  - (j) in the case of a trade mark consisting of elements with holographic characteristics (hologram mark), the mark shall be represented by submitting a video file or a graphic or photographic reproduction containing the views which are necessary to sufficiently identify the holographic effect in its entirety.
4. Where the trade mark is not covered by any of the types listed in paragraph 3, its representation shall comply with the standards set out in paragraph 1 and may be accompanied by a description.
5. Where the representation is provided electronically, the Executive Director of the Office shall determine the formats and size of the electronic file as well as any other relevant technical specifications.
6. Where the representation is not provided electronically, the trade mark shall be reproduced on a single sheet of paper separate from the sheet on which the text of the application appears. The single sheet on which the mark is reproduced shall contain all the relevant views or images and shall not exceed DIN A4 size (29,7 cm high, 21 cm wide). A margin of at least 2,5 cm shall be left all around. A margin of at least 2,5 cm shall be left all around.
7. Where the correct orientation of the mark is not obvious, it shall be indicated by adding the word 'top' to each reproduction.
8. The reproduction of the mark shall be of such quality as to enable it to be:
- (a) reduced to a size of not less than 8 cm wide by 8 cm high;
  - or
  - (b) enlarged to a size of not more than 8 cm wide by 8 cm high.
9. The filing of a sample or a specimen shall not constitute a proper representation of a trade mark.'

### Background to the dispute and the contested decision

- 6 The background to the dispute, as described in paragraphs 1 to 14 of the judgment under appeal, may be summarised as follows.
- 7 On 6 November 2002, the intervener, Munich, filed an application for registration of an EU trade mark with EUIPO, pursuant to Regulation No 207/2009.
- 8 The figurative mark for which registration was sought ('the mark at issue') was represented as follows:



- 9 The goods in respect of which registration was applied for are in Class 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond to the description 'Sports footwear'.
- 10 The mark at issue was registered on 24 March 2004 under number 2923852.
- 11 In infringement proceedings brought by Munich before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) against Deichmann, the latter filed a counterclaim on 29 June 2010 under Articles 51(1)(a), 52(1)(a) and 100(1) of Regulation No 207/2009. On 26 October 2010, the Landgericht Düsseldorf (Regional Court, Düsseldorf) decided to stay the infringement proceedings under Article 100(7) of Regulation No 207/2009 and requested that Deichmann submit an application to EUIPO for revocation and for a declaration of invalidity within a period of three months.
- 12 On 26 January 2011, the appellant filed an application with EUIPO for the revocation of the mark at issue on the basis of Article 51(1)(a) of Regulation No 207/2009 on the ground that the mark had not been put to genuine use in the European Union in connection with the goods in respect of which it had been registered, in particular during the five-year period preceding the date of the counterclaim, in respect of the goods for which it had been registered.
- 13 By decision of 7 August 2014, the Cancellation Division of EUIPO upheld the application for revocation, revoked the mark at issue with effect from 26 January 2011 and ordered Munich to pay the costs.
- 14 On 10 September 2014, Munich filed a notice of appeal against the decision of the Cancellation Division.
- 15 By the contested decision, the Fourth Board of Appeal of EUIPO annulled the decision of the Cancellation Division and dismissed the application for revocation. The Board of Appeal found, in essence, that the evidence of use showed use of the mark at issue for 'sports footwear' in Class 25 of the Nice Agreement, for the relevant period, which it defined as corresponding to the five years preceding the date of filing the counterclaim.

## The procedure before the General Court and the judgment under appeal

- 16 By application lodged at the General Court Registry on 15 February 2016, the appellant brought an action against the contested decision.
- 17 In support of its action, the appellant put forward three grounds of appeal. The first ground of appeal alleged infringement of Article 51(1) of Regulation No 207/2009 by the Board of Appeal, on the ground that the latter, by having considered as irrelevant whether the mark at issue was a figurative mark or a position mark, wrongly assessed the subject matter of the mark. The second ground of appeal concerned infringement of Articles 51(1) and 15(1) of that regulation, as the Board of Appeal, in order to determine whether the mark at issue was used in its registered form or in a form that did not alter its distinctive character, merely compared a part of the mark, namely two intersecting stripes placed on the sports shoes allegedly marketed by the intervener. By its third ground of appeal, the appellant claimed that the Board of Appeal infringed Article 51(1) of Regulation No 207/2009 by relying on models of shoe whose marketing by the intervener had not been proved.
- 18 By the judgment under appeal, the General Court rejected those three grounds of appeal and, consequently, dismissed the action in its entirety.
- 19 As regards the first ground of appeal, the General Court held, in paragraphs 33 and 34 of the judgment under appeal, that the ‘position marks’ were similar to the categories of figurative and three-dimensional marks, as they related to the application of figurative or three-dimensional elements to the surface of a product. It took the view that it was apparent from that case-law that, when assessing the distinctiveness of a mark, the classification of a ‘position mark’ as a figurative or three-dimensional mark, or as a specific category of marks, was irrelevant. Moreover, the case-law recognises that figurative marks may in fact be ‘position’ marks.
- 20 According to the General Court, it cannot be inferred from the mere fact that the ‘figurative mark’ box was ticked when the mark at issue was registered that it may not be regarded, at the same time, as a ‘position’ mark. In that regard, the General Court pointed out, in paragraph 36 of the judgment under appeal, that it should be taken into account, in particular, that the graphic representation of the mark clearly identified, in solid lines, the element in respect of which protection was applied for and, in dotted lines, the outline of the goods at issue, on which that element was placed. The General Court explained that the mark at issue, whilst being regarded as a ‘position mark’, remained also a figurative mark.
- 21 In paragraph 40 of the judgment under appeal, the General Court took the view that it may be inferred directly from the graphic representation of the mark at issue that the protection sought covered only a cross, consisting of two black intersecting lines, represented in solid lines. It found, by contrast, that the ‘dotted’ lines, forming the outline of the sports shoe and its laces, had to be understood as enabling the position of that cross to be specified, since the dotted lines are normally used in that sense in similar situations.
- 22 The General Court inferred, in paragraph 44 of the judgment under appeal, that the Board of Appeal had been entitled to take the view that ‘in so far as [it was] the graphic representation that defin[ed] the mark, ... whether the mark is a position mark or a figurative mark [was] irrelevant’.
- 23 As regards the second and third grounds of appeal, the General Court observed that the Board of Appeal correctly found that the evidence submitted before the Cancellation Division sufficed to prove genuine use of the mark at issue.

### Forms of order sought by the parties

- 24 The appellant claims that the Court should:
- set aside the judgment under appeal;
  - annul the contested decision or, as a precautionary measure, refer the case back to the General Court, and
  - order the defendant and the intervener to bear the costs both in relation to the proceedings at first instance and the appeal proceedings.
- 25 Munich and EUIPO contend respectively that the Court should dismiss the appeal and order the appellant to pay the costs.

### The appeal

- 26 In support of its appeal, the appellant relies on a single ground of appeal alleging infringement of Articles 51(1)(a) and 15(1) of Regulation No 207/2009. In support of that ground, the appellant takes the view, first, that the General Court, by having considered as irrelevant whether the mark at issue was a position mark or a figurative mark, failed to have regard to the importance and the legal consequences of determining the type of mark concerned. Second, the General Court did not correctly determine the subject matter of the trade mark at issue, but regarded and treated that mark as a position mark when assessing its genuine use. Third, the General Court incorrectly assumed that Munich had succeeded in demonstrating genuine use of its trade mark by providing proof of the sale of shoes to the side of which two intersecting lines were applied.

### *Arguments of the parties*

- 27 By its single ground of appeal, the appellant submits, first of all, that the General Court, in paragraph 44 of the judgment under appeal, incorrectly assumed that, ‘in so far as it was the graphic representation that defined the mark, ... whether the mark was a position mark or a figurative mark was irrelevant’.
- 28 It states, in that regard, that it is important, in order to determine whether the mark at issue has been put to genuine use, to know whether it has been registered as a position mark or as a figurative mark.
- 29 The legal requirements, the subject matter and the scope of protection specific to the various types of trade mark and their use are different. If the mark at issue should be regarded as a figurative mark, its subject matter would consist of the graphic representation as it was registered, that is to say the stylised image of a lace-up shoe with an invisible sole and two crossed lines on the side. If, by contrast, the mark at issue should be regarded as a position mark, its subject matter would consist of two crossed lines and the specific position in which they are affixed to the product.
- 30 The appellant also disputes paragraph 34 of the judgment under appeal, by which the General Court observed that the case-law recognises that figurative marks may in fact be ‘position’ marks. It submits that that interpretation is contrary to Article 3(3)(d) of Implementing Regulation 2017/1431, according to which position marks constitute a specific category of marks, different from the category of figurative marks. The appellant also maintains that the case-law cited by the General Court, in particular the judgment of the Court of Justice of 18 April 2013, *Colloseum Holding* (C-12/12, EU:C:2013:253) and the judgment of the General Court of 28 September 2010, *Rosenruist v OHIM (Representation of two curves on a pocket)* (T-388/09, not published, EU:T:2010:410), is not applicable

here, since registration of the mark at issue in the present case, designated as a figurative mark, contained neither a description of it, which could lead to it being regarded as a position mark, nor a disclaimer.

- 31 Next, the appellant claims that the General Court contradicts itself by maintaining, first, that the question of whether it is a position mark or a figurative mark was irrelevant and, by treating, second, in paragraphs 26, 28, 35, 40, 49 and 65 et seq. of the judgment under appeal, the mark at issue as a position mark.
- 32 The appellant takes the view, in any event, that it is incorrect to regard the mark as issue as a position mark, since it was designated on the application form and registered as a figurative mark. Therefore, according to the appellant, the General Court erred in determining the subject matter of the mark at issue, which led it to regard and treat that mark as a position mark when it assessed its genuine use.
- 33 First, and contrary to the assessment of the General Court, according to which the exact outlines of the sports shoe are not claimed under the mark since they appear in dotted lines, the mere use of a dotted or broken line does not show, if there are no other criteria suggesting a position mark, that the elements which appear in that form are disclaimed. In the absence of a disclaimer or a description, it must be assumed that those lines are part of the mark at issue.
- 34 Second, no legal provision provides that the mere use of dotted lines to represent a mark signifies its classification as a position mark.
- 35 Third, the General Court, in paragraph 38 of the judgment under appeal, wrongly took the view that the mark at issue should be regarded as a position mark, given that Munich had claimed a priority, on the basis of a Spanish mark registered in 1992 whose graphic representation was identical to the mark at issue and which contained a description specifying that the mark consisted of the representation of a cross positioned on the side of a sports shoe.
- 36 Lastly, the appellant claims that the General Court infringed Articles 51(1)(a) and 15(1) of Regulation No 207/2009 by merely examining whether the crossed lines were affixed in a certain position to the shoes sold by Munich, without comparing the signs used by Munich and the mark as it was registered. Thus, the General Court erred in assuming that Munich had demonstrated genuine use of the mark at issue by showing the sale of shoes, to the side of which two intersecting lines were applied.
- 37 EUIPO takes the view that the ground of appeal is unfounded.
- 38 Munich, which contends, principally, that the ground of appeal is inadmissible, submits that it is in any event unfounded.

#### *Findings of the Court*

- 39 First of all, in respect of the plea of inadmissibility raised by Munich and based on the alleged factual nature of the General Court's assessment as regards the constituents of the mark at issue, that is to say that that mark consisted only of a black cross and not of a background in dotted lines, it is clear from the appeal that the appellant claims that the General Court erred in law by considering that it was irrelevant in the present case to determine whether the mark at issue was a position mark or a figurative mark. Since the plea of inadmissibility does not concern the General Court's assessment contested by that plea, it is necessary to reject it.



- 40 As regards the substance of the ground of appeal, it should be stated, first of all, that on the relevant date in this case, the applicable law did not define ‘position marks’, so that the General Court was not required to find that the classification of the mark at issue as a figurative mark or a position mark was relevant.
- 41 Next, it is necessary to point out that the General Court did not contradict itself when, first, it considered irrelevant whether the mark at issue should be regarded as a position mark or a figurative mark and, second, it treated that mark as a position mark. It is clear from paragraph 36 of the judgment under appeal that the General Court took the view that the mark at issue, whilst being regarded as coming within the scope of position marks, also remained a figurative mark. In addition, the General Court in essence relied on the graphic representation of the mark at issue, regardless of its classification, for the purpose of assessing whether there is genuine use of it, when it noted, in paragraphs 40 and 42 to 44 of that judgment, that the protection sought only referred to a cross consisting of two black intersecting lines, represented in solid lines and that the dotted lines forming the outline of the sports shoe and its laces, were only intended to make it easier to delimit the position of the graphic design on the side of the sports shoe.
- 42 The General Court correctly recalled, in paragraph 33 of the judgment under appeal, that ‘position marks’ are similar to the categories of figurative and three-dimensional marks as they related to the application of three-dimensional elements to the surface of a product and that when assessing the distinctiveness of a mark, the classification of a ‘position mark’ as a figurative or three-dimensional mark or as a specific category of marks, is irrelevant (judgment of 15 June 2010, *X Technology Swiss v OHIM (Orange colouring of the toe of a sock)*, T-547/08, EU:T:2010:235).
- 43 Such a classification is also irrelevant in assessing, as in the present case, the genuine use of such a mark. The Court has previously held that the requirements that apply to verification of the genuine use of a mark are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration (see, to that effect, judgment of 25 July 2018, *Société des produits Nestlé v Mondelez UK Holdings & Services*, C-84/17 P, C-85/17 P and C-95/17 P, EU:C:2018:596, paragraph 70 and the case-law cited).
- 44 Additionally, as regards the determination of the subject matter of the mark at issue, it is clear from the case-law of the Court that the graphic representation of a mark must be clear, precise, self-contained, easily accessible, intelligible, durable and objective (judgment of 12 December 2002, *Sieckmann*, C-273/00, EU:C:2002:748, paragraph 55).
- 45 In that regard, the General Court held, in paragraph 40 of the judgment under appeal, that in respect of the graphic representation of the mark at issue, two types of graphic design had been used, that is to say the broken or ‘dotted’ lines, which represent the appearance of the product covered by that mark, and two solid lines, representing an affixed cross. The General Court inferred from this, in paragraph 42 of the judgment under appeal, that the ‘dotted’ lines which form the outline of the sports shoe and its laces had to be understood as enabling the position of that cross to be specified, such broken lines usually being used to show precisely the position of a sign on the product in respect of which that actual sign has been registered without the outline of that product being covered by the mark.
- 46 That factual assessment, which it is not for the Court to review in the context of an appeal, confirms the General Court’s assessment, in paragraph 40 of the judgment under appeal, that it could be inferred directly from the graphic representation of the mark at issue, and with sufficient precision, that the protection sought covered only a cross, consisting of two black intersecting lines, represented in solid lines.

- 47 Contrary to the appellant's reasoning, the fact that the mark at issue has been registered as a figurative mark is not relevant here for the purpose of determining the scope of the application for protection. When assessing the characteristics of a sign, in addition to the graphic representation and any descriptions filed at the time of the application for registration, other material relevant to identifying appropriately the essential characteristics of a sign may be taken into consideration (see, to that effect, judgment of 6 March 2014, *Pi-Design and Others v Yoshida Metal Industry*, C-337/12, not published, EU:C:2014:129, paragraph 54).
- 48 As regards the appellant's argument that, if a mark containing broken or dotted lines is not described as a position mark or if the broken or dotted lines are not the subject of an express disclaimer, it should be inferred that those lines are part of the mark, it is sufficient to note that an applicant for trade mark protection is free to specify the scope of the protection requested by adding a description of the subject matter of the registered mark.
- 49 While it is true that, as the appellant states, often a description or a disclaimer for the purposes of delimiting the scope of the protection sought is added to the use of the broken lines in the registration of a trade mark, the fact remains that neither the legislation applicable *ratione temporis* nor the case-law requires the filing of such declarations. In so far as the appellant submits, in addition, that the EUIPO Guidelines require that a position mark is expressly described as such, it is to be noted that they are not binding legal acts for the purpose of interpreting provisions of EU law (see, to that effect, judgment of 19 December 2012, *Leno Merken*, C-149/11, EU:C:2012:816, paragraph 48).
- 50 Lastly, the General Court did not err in law in finding, following a thorough examination set out in paragraphs 64 to 69 of the judgment under appeal, that the differences between the mark at issue and the versions used on the sports shoes marketed by Munich were negligible in character which enabled the latter to establish 'a genuine use' of the mark at issue.
- 51 Consequently, the single ground of appeal put forward by the appellant must be rejected as unfounded and, therefore, the appeal must be dismissed in its entirety.

### Costs

- 52 In accordance with the Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 53 Since EUIPO and Munich have applied for costs against the appellant, and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds, the Court (Sixth Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Deichmann SE to pay the costs.**

Toader

Rosas

Safjan

Delivered in open court in Luxembourg on 6 June 2019.

A. Calot Escobar  
Registrar

C. Toader  
President of the Sixth Chamber