Form of order sought

— To annul Articles 1, 2 and 3 of Commission Decision C(2007) 5910 final of 5 December 2007 in Case COMP/F/38.629 — Chloroprene Rubber;

— alternatively, to substantially reduce the fine imposed on the applicants pursuant to Article 2 of that decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of their application the applicants seek the annulment of Commission Decision C(2007) 5910 final of 5 December 2007 (Case COMP/F/38.629 — Chloroprene Rubber) relating to a proceeding under Article 81 EC and Article 53 EEA insofar as the Commission found that the applicants infringed Article 81 EC and that it imposed a fine on them requesting them to bring the alleged infringement to an end immediately.

In support of their claims, the applicants put forward six pleas in law:

On the basis of their first and second pleas, the applicants submit, first, that the Commission has made a manifest error of assessment in finding that the applicants participated in an infringement of Article 81 EC, since it has neither proved that the applicants shared a common objective with the other chloroprene producers in order to form a cartel, nor did it prove that the applicants participated in a concerted practice.

Second, the applicants claim that the Commission infringed their rights of defence and violated Article 253 EC and the principle of sound administration in that it did not provide access to Bayer's pleadings made during the *in camera* hearing.

On the basis of their third, fourth, fifth and sixth pleas, the applicants request the Court to reduce significantly the fine imposed by the Commission on the basis of Article 2 of the contested decision.

Namely, by their third plea, the applicants submit that the Commission has violated principles of legal certainty and non-retroactivity by calculating the fine on the basis of the 2006 Fining Guidelines instead of applying the 1998 Fining Guidelines.

By their fourth plea, the applicants contend that the Commission made a manifest error of assessment in relation to the calculation of the value of sales in determining the basic amount of the fine. Further, according to the applicants, the Commission allegedly breached the principle of proportionality in that the applicants were punished twice.

By their fifth plea, the applicants claim that the Commission made a manifest error of assessment regarding the duration of the cartel.

Finally, by the sixth plea, it is submitted that the Commission committed a manifest error of assessment and violated Article 253 EC and the principles of proportionality and equal treatment in that it failed to reduce the fine imposed on the applicants on account of mitigating circumstances.

Action brought on 19 February 2008 — Exalation v OHIM (Vektor-Lycopin)

(Case T-85/08)

(2008/C 107/61)

Language in which the application was lodged: German

Parties

Applicant: Exalation Ltd (Ilford, United Kingdom) (represented by K. Zingsheim, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of OHIM of 17 December 2007 in Case R 1037/2007-4 and OHIM's decision of 4 May 2007 and order OHIM to register the mark 'Vektor-Lycopin' applied for by the applicant as a Community trade mark in the Community Trade Mark Register;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Vektor-Lycopin' for goods in Classes 5, 29 and 30 (Application No 4 838 983)

Decision of the Examiner: Partial rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ([1]), as the mark applied for has sufficient distinctive character and is not descriptive.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 22 February 2008 — Global Digital Disc v Commission

(Case T-96/08)

(2008/C 107/62)

Language of the case: German

Parties

Applicant: Global Digital Disc GmBH & Co. KG (Dresden, Germany) (represented by: E. Stein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission decision COMP/C-3/38.803 of 7 December 2007 — Global Digital Disc (GDD) v Philips;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests Commission decision COMP/C-3/38.803 of 7 December 2007 — Global Digital Disc (GDD) v Philips. In that decision the Commission dismissed the applicant's complaint, in which it pleaded several infringements of Article 82 EC by the party complained of in connection with that party's licensing practice in the CD-R field, pursuant to Article 7(2) of Regulation (EC) No 773/2004 ([1]).

In its grounds of complaint the applicant contends first that the Commission failed to fulfil its obligation to give reasons. Furthermore the defendant infringed the applicant's rights of defence. Finally the applicant complains that the Commission's arguments for rejecting the Community-wide importance of the subject-matter of the complaint are misjudged.

([1]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18).

Action brought on 20 February 2008 — KUKA Roboter v OHIM (colour mark orange)

(Case T-97/08)

(2008/C 107/63)

Language in which the application was lodged: German

Parties

Applicant: KUKA Roboter GmbH (Augsburg, Germany) (represented by A. Kohn, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 14 December 2007 in Case R 1572/2007-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The contourless colour mark orange for goods in Class 7 (Application No 4 607 801)

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— Infringement of Article 28 EC as the contested decision constitutes a measure having equivalent effect to a quantitative restriction on imports

— Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 ([1]), as the mark applied for has distinctive character