

Pleas in law and main arguments:

The subject-matter of this action is the complaint lodged by the applicants with the defendant concerning inter alia the aid granted by the French State to ORANGE FRANCE and SFR by way of a retroactive reduction in the royalty payments of EUR 4 955 000 000 which each of those operators had undertaken to pay in exchange for the Universal Mobile Telecommunications System ('UMTS') licence awarded to them on 15 June 2001. The other complaints raised by the applicants related to:

- the making available on an exclusive basis of FRANCE TELECOM outlets for the benefit of ORANGE FRANCE;
- the exceptional arrangements for commercial tax applying to FRANCE TELECOM;
- the reduction in liability for pension charges and the exemption from unemployment benefit contributions granted to FRANCE TELECOM;
- the French rules relating to universal service;
- the treatment of dividends paid by FRANCE TELECOM;
- the measures of financial support granted to FRANCE TELECOM.

As regards the action for a declaration of failure to act, the applicants claim that the Commission has still not defined its position in relation to the UMTS complaint, which was none the less the subject of the letter of formal notice, and that the letter of 11 December 2003 sent to them by the Commission in response to their letter of formal notice cannot amount to a definition of its position in terms of Article 232 EC. That letter simply noted that the consideration of measures potentially amounting to State aid for the benefit of FRANCE TELECOM was one of the Commission's priorities, without stating an opinion on the merits of the complaint in question. Accordingly, having regard to the omissions in its reasoning, that letter could not be treated as having remedied the failure to act.

As regards the application brought in the alternative for a declaration of invalidity relating to the decision of 11 December 2003 which dismissed the complaint, the applicants rely on three pleas in law based on:

- breach of the duty to state reasons;
- a manifest error of assessment under Article 87 EC et seq., in that the retroactive reduction in the amount of UMTS royalties which ORANGE FRANCE and SFR had originally undertaken to pay met all the requirements of a measure constituting State aid;
- a breach of the procedural rules laid down in Article 88(3) EC, in that the Commission wrongly decided, having regard to the circumstances of the case, not to initiate the formal investigation procedure laid down under that provision.

Action brought on 20 February 2004 by Axiom Medical, Inc. against the Office for Harmonisation in the Internal Market

(Case T-84/04)

(2004/C 106/151)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 20 February 2004 by Axiom Medical, Inc., Rancho Dominguez (USA), represented by R. Köbbing, lawyer.

The applicant claims that the Court should:

- annul Decision R 193/2002-1 of the First Board of Appeal of 17 December 2003;
- in the alternative, annul Decision R 193/2002-1 in respect of the goods in Class 10;
- order the defendant to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant
Community trade mark sought:	Word mark 'ATRAUM' for goods in Class 5 (wound dressings) and Class 10 (medical devices etc.) – Application No 11405588
Proprietor of mark or sign cited in the opposition proceedings:	Paul Hartmann Akteingesellschaft
Mark or sign cited in opposition:	National and international mark 'Atrauman' for goods in Class 5
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Decision of the Opposition Division:	Rejection of the opposition
Pleas in law:	Infringement of Article 8(1)(b) of Regulation No 40/94

— Order the defendant to pay all costs relating to the proceedings.

Pleas in law and main arguments:

In support of his application, the applicant first pleads that the report concerning him is stored in electronic form in the new computer system of the Commission's personnel division and thus constitutes a parallel personal file which infringes Article 26 of the Staff Regulations. The use of the new computer system also contravenes the requirement in Article 25 of the Staff Regulations that documents be in written form.

The applicant submits further that the reporting procedure infringes Article 43 of the Staff Regulations, Article 8 of the Commission Decision of 26 April 2002 on general implementing provisions for Article 43, the principle of equality, the prohibition of discrimination, the duty to state reasons and the prohibition of arbitrary action. The requirement that legitimate expectations be protected, the '*patere legem quam ipse fecisti*' rule, the Commission's duty to protect the interests of its officials, the *audi alteram partem* rule and the principles of fair administrative procedure have also been infringed by the contested reporting procedure, including the appeal proceedings brought by the applicant.

Action brought on 1 March 2004 by Guido Strack against the Commission of the European Communities

(Case T-85/04)

(2004/C 106/152)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 March 2004 by Guido Strack, Wasserliesch (Germany), represented by J. Mosar, Rechtsanwalt.

The applicant claims that the Court should:

- set aside the reporting procedure for the years 2001 to 2002 so far as the applicant is concerned;
- set aside the report made in his regard (REC/CDR) — including the view expressed by his previous hierarchical superior and the decision of the appointing authority (R/432/03) of 24 November 2003 — for the period from 1 July 2001 to 31 December 2002;

Action brought on 1 March 2004 by Milagros Irene Arranz Benítez against the European Parliament

(Case T-87/04)

(2004/C 106/153)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 1 March 2004 by Milagros Irene Arranz Benítez, residing in Brussels, represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, avocats, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

- annul the decision of the Head of the European Parliament's 'Individual Rights' Division of 15 April 2003;