Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

3 May 2018 *

(EU trade mark — Invalidity proceedings — Three-dimensional EU trade mark — Shape of a part of a prosthetic hip — Figurative EU trade mark representing a part of a prosthetic hip — EU trade mark consisting in a shade of pink — Withdrawal of applications for declarations of invalidity and closure of the invalidity proceedings — Action of the proprietor of the mark seeking the annulment of decisions closing proceedings — Inadmissibility of action before the Board of Appeal — Article 59 of Regulation (EC) No 207/2009 (now Article 67 of Regulation (EU) 2017/1001))

In Joined Cases T-193/17, T-194/17 and T-195/17,

CeramTec GmbH, established in Plochingen (Germany), represented initially by A. Renck and E. Nicolás Gómez, and subsequently by A. Renck, lawyers,

applicant,

v

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

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

C5 Medical Werks, established in Grand Junction, Colorado (United States), represented by S. Naumann, lawyer,

ACTIONS brought against the decisions of the Fourth Board of Appeal of EUIPO of 15 February 2017 (Cases R 929/2016-4, R 928/2016-4 and R 930/2016-4), relating to invalidity proceedings between C5 Medical Werks and CeramTec,

THE GENERAL COURT (Eighth Chamber),

composed of A.M. Collins, President, R. Barents and J. Passer (Rapporteur), Judges,

Registrar: I. Dragan, Administrator,

having regard to the application lodged at the Court Registry on 27 March 2017,

having regard to the responses of EUIPO lodged at the Court Registry on 13 June 2017,

having regard to the responses of the intervener lodged at the Court Registry on 7 June 2017,

* Language of the case: English.

having regard to the decision of the President of the Eighth Chamber of the General Court of 14 December 2017 joining Cases T-193/17 to T-195/17 for the purposes of the oral procedure and the decision closing the proceedings,

further to the hearing on 17 January 2018,

gives the following

Judgment

1 The applicant, CeramTec GmbH, is the proprietor of the following EU trade marks:

– the three-dimensional mark No 10 214 179 in the colour 'pink, Pantone 677 C':



– the figurative mark No 10 214 112 in the colour 'pink, Pantone 677 C':



– and the mark No 10 214 195 consisting in the colour pink, Pantone 677 C:

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2 Those marks were registered on 20 June, 12 April and 26 March 2013 respectively by the European Union Intellectual Property Office (EUIPO) on the basis of distinctive character acquired through use as EU trade marks for products in Class 10 within the meaning 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 following description: 'Ceramic parts for implants for osteosynthesis, articular surface replacement, bone spacer blocks; Hip joint balls, hip joint sockets and parts for knee joints; All of the aforesaid goods for sale to manufacturers of implants'.

3 On 31 January 2014 the intervener, C5 Medical Werks, filed applications for declarations of invalidity in respect of the applicant's trade marks ('the contested marks') with EUIPO pursuant to Council Regulation (EC) No 207/2009 of 26 February 2009 on the EU trade mark (OJ 2009 L 78, p. 1), as amended (replaced 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)). Those applications were based on the grounds laid down in Article 7(1)(a) to (e) of Regulation No 207/2009 (now Article 7(1)(a) to (e) of Regulation (EU) 2017/1001), each read in conjunction with Article 52(1)(a) of that regulation (now Article 59(1)(a) of Regulation 2017/1001) and on the ground of bad faith, within the meaning of Article 52(1)(b) of Regulation No 207/2009 (now Article 59(1)(b) of Regulation 2017/1001).

4 The intervener filed its applications for declarations of invalidity in response to two infringement proceedings which the applicant had brought on the basis of the contested marks on 11 and 13 December 2013 respectively before the Landgericht Stuttgart (Regional Court, Stuttgart, Germany) and the tribunal de grande instance de Paris (Regional Court, Paris, France).

5 On 7 April 2016 the intervener informed EUIPO that, on 15 February 2016, in response to the infringement proceedings before the tribunal de grande instance de Paris (Regional Court, Paris), it had filed counterclaims for a declaration of invalidity in respect of the contested marks and that it was withdrawing its applications for a declaration of invalidity before EUIPO, without prejudice to any subsequent legal proceedings.

6 On 21 April 2016 the Cancellation Division closed the cases and ordered the intervener to pay the costs incurred by the applicant in connection with the invalidity proceedings.

7 On 19 May 2016 the applicant filed three actions against the decisions of the Cancellation Division closing the cases, claiming in particular that the closure of proceedings following the intervener's withdrawal required its consent, that the withdrawal had occurred at an advanced stage of proceedings and that it had been deprived of the possibility of obtaining a positive decision on the validity of the contested marks. In addition, the applicant claimed that that withdrawal constituted an abuse of process.

8 By three decisions delivered on 15 February 2017 in Cases R 929/2016-4, R 928/2016-4 and R 930/2016-4, respectively ('the contested decisions'), the Fourth Board of Appeal dismissed the applicant's actions as being inadmissible, holding that the Cancellation Division's decisions of 21 April 2016 had not adversely affected the applicant.

9 In essence, the Board of Appeal found that the decisions of the Cancellation Division of 21 April 2016 had no 'negative consequences' for the status of the contested marks and that those decisions did not constitute decisions 'adversely affecting' a party, in so far as the marks remained on EUIPO's register and the intervener had been ordered to pay the costs incurred by the applicant.

10 Moreover, the Board of Appeal held that the applications to withdraw had been formulated in accordance with the Rules of Procedure and that the effect of those applications was that the actions for a declaration of invalidity became devoid of purpose. In addition, according to the Board, Article 56(1) of Regulation No 207/2009 (now Article 63(1) of Regulation 2017/1001) does not allow the proprietor of a mark to request a positive statement on the validity of his mark.

11 Furthermore, there is no provision of Regulation No 207/2009 or Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1) (repealed by Commission Delegated Regulation (EU) 2017/1430 of 18 May 2017 supplementing Regulation No 207/2009 and repealing Regulations (EC) No 2868/95 and (EC) No 216/96 (OJ 2017 L 205, p. 1)) that supports the position that a withdrawal by the other party requires the consent of the proprietor of the contested mark. The arguments to the contrary which the applicant derives, first, from the theory that the invalidity proceedings continue following a surrender of the contested mark and, second, from the application of the principles of procedural law generally recognised by the Member States, to which reference is made in Article 83 of Regulation No 207/2009 (now Article 107 of Regulation 2017/1001), relate to different situations which are therefore not comparable.

12 Last, the Board of Appeal held that the filing by the intervener of applications for declarations of invalidity could not be abusive, since those applications had been filed first and that their withdrawal at a later stage was even less likely to be abusive. According to the Board of Appeal, any 'disadvantage' linked with the amount of the costs incurred by the applicant was covered by Article 85(3) of Regulation No 207/2009 (now Article 109(4) of Regulation 2017/1001).

Forms of order sought

13 The applicant claims that the Court should:

– annul the contested decisions;

– order that the costs be borne by EUIPO, or by the intervener if it should join in the proceedings.

14 EUIPO contends that the Court should:

– dismiss the actions;

– order the applicant to pay the costs incurred by EUIPO.

15 The intervener contends that the Court should:

– dismiss the actions;

– order the applicant to pay the costs incurred by the intervener;

– order the applicant to bear its own costs.

Law

16 In support of its actions, the applicant relies on two pleas in law, alleging, first, infringement of Articles 59 and 75 of Regulation No 207/2009 (now Articles 67 and 94 of Regulation 2017/1001) and, second, infringement of Articles 75 and 83 of Regulation No 207/2009.

First plea: infringement of Articles 59 and 75 of Regulation No 207/2009

First part of the first plea: incorrect interpretation of the concept of a decision adversely affecting a party

17 The first plea is divided into two parts. By the first part, the applicant takes issue with the Board of Appeal for having incorrectly interpreted the concept of a decision adversely affecting a party. It maintains that the Board of Appeal did not take account of the adverse impacts of the absence of a final decision on the merits, which, having the authority of *res judicata*, would prevent the filing of a new application for a declaration of invalidity, pursuant to Articles 56(3) and 100(2) of Regulation No 207/2009 (now Articles 63(3) and 128(2) of Regulation 2017/1001). The applicant was therefore deprived of the interest in continuing the proceedings before EUIPO and of the legal certainty that would have prevented the intervener from bringing an identical action before the tribunal de grande instance de Paris (Regional Court, Paris).

18 In that regard, the applicant refers, in particular, to the judgment of 24 March 2011, *Ferrero* v *OHIM* (C-552/09 P, EU:C:2011:177, paragraphs 39 to 44), in which the Court of Justice accepted that the adverse effects resulting from the absence of a final decision on the merits following the surrender of a mark were relevant when assessing the applicant's interest in continuing the proceedings.

19 EUIPO and the intervener dispute the applicant's arguments.

20 As provided in the first sentence of Article 59 of Regulation No 207/2009, 'any party to proceedings adversely affected by a decision may appeal'.

21 It follows from that provision that, when a decision does not adversely affect a party, the latter is not entitled to bring an action against that decision before the Board of Appeal.

22 Further, it follows from settled case-law that an applicant must have an interest in seeing the contested measure annulled (judgments of 14 September 1995, *Antillean Rice Mills and Others* v *Commission*, T-480/93 and T-483/93, EU:T:1995:162, paragraph 59, and of 16 September 2004, *Metro-Goldwyn-Mayer Lion* v *OHIM — Moser Grupo Media (Moser Grupo Media)*, T-342/02, EU:T:2004:268, paragraph 44). Such an interest can be present only if the annulment of the measure is of itself capable of having legal consequences (see, to that effect, judgment of 24 June 1986, *AKZO Chemie and AKZO Chemie UK* v *Commission*, 53/85, EU:C:1986:256, paragraph 21).

23 In paragraphs 12 and 14 of the contested decisions, the Board of Appeal correctly held that the decisions of the Cancellation Division closing the proceedings for declarations of invalidity had not adversely affected the applicant, since the contested marks remained on EUIPO's register. The Board of Appeal was also fully entitled to find that, as a result of the withdrawal of the applications for declarations of invalidity, the cases had become devoid of purpose and hence it was no longer necessary to dismiss those applications expressly.

24 However, the applicant criticises the Board of Appeal for failing to take into consideration 'other adverse effects' that the closing of the proceedings would necessarily entail. The applicant alleges that it obtained less than it requested in its claims, as only a final decision on the merits would have allowed it to ensure that no other application for a declaration of invalidity would be lodged by the same party against the same mark on the basis of the same grounds before the tribunal de grande instance de Paris (Regional Court, Paris).

25 The applicant bases its reasoning on the theory of the continuation of invalidity proceedings following a surrender of the contested mark, which it derives from the judgment of 24 March 2011, *Ferrero* v *OHIM* (C-552/09 P, EU:C:2011:177, paragraphs 39 to 44).

26 However, that case-law cannot be applied to the present case, as the Board of Appeal was fully entitled to find in paragraph 19 of the contested decisions.

27 In contrast to the present cases, the judgment of 24 March 2011, *Ferrero* v *OHIM* (C-552/09 P, EU:C:2011:177) deals with the procedural position of an applicant for a declaration of invalidity, rather than that of the proprietor of the contested mark. As EUIPO rightly found, that case concerned the surrender of the contested mark, rather than the withdrawal of the application for a declaration of invalidity.

28 Moreover, it must be noted that, in the case that gave rise to the judgment of 24 March 2011, *Ferrero* v *OHIM* (C-552/09 P, EU:C:2011:177), the surrender of the contested mark was not in itself sufficient to render the action brought by the applicant devoid of all purpose, and the applicant still had an interest in obtaining the annulment of both the judgment under appeal and the contested decision, given that the effects of a surrender and those of a declaration of invalidity are not the same. Whereas an EU trade mark that has been surrendered ceases to have effects only as from the registration of that surrender, an EU trade mark that has been declared invalid is deemed not to have had any effects, as from the outset, in accordance with the provisions of Article 54(2) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) (which became Article 55(2) of Regulation No 207/2009, now Article 62(2) of Regulation 2017/1001). Consequently, the action was capable of procuring an advantage for the applicant (judgment of 24 March 2011, *Ferrero* v *OHIM*, C-552/09 P, EU:C:2011:177, paragraphs 42 to 44).

29 In the present case, had the applicant been successful in having the applications for declarations of invalidity dismissed, there would have been no legal consequence for the status of the contested marks, as they would have remained on EUIPO's register as from the date of their registration.

30 Furthermore, it is clear that the applicant misinterprets the judgment of 24 March 2011, *Ferrero* v *OHIM*, (C-552/09 P, EU:C:2011:177) when it submits that the Court held, in that case, that the 'other adverse effects' resulting from the absence of a final decision on the merits were relevant for establishing a continued legal interest in the proceedings. The Court did no more than find, as noted in paragraph 28 above, that a trade mark that has been declared invalid will be deemed not to have had any effects as from the outset, in accordance with the provisions of Article 54(2) of Regulation No 40/94, with all the legal consequences that such invalidity entails.

31 Moreover, the applicant's argument that it had an interest in the continuation of the procedures for declarations of invalidity due to there being parallel proceedings before national courts falls foul of settled case-law pursuant to which the interest in the annulment of the contested act must be vested and present (see judgment of 17 September 1992, *NBV and NVB* v *Commission*, T-138/89, EU:T:1992:95, paragraph 33 and the case-law cited) and is evaluated as at the date on which the action is brought (judgments of 16 December 1963, *Forges de Clabecq* v *High Authority*, 14/63, EU:C:1963:60, p. 748, and of 25 March 2015, *Evropaïki Dynamiki* v *EASA*, T-297/09, not published, EU:T:2015:184, paragraph 41). If the interest which an applicant claims concerns a future legal situation, the applicant must demonstrate that the prejudice to that future situation is already certain. Therefore, an applicant cannot rely on future and uncertain situations to justify its interest in applying for annulment of the contested act (see, to that effect, judgment of 17 September 1992, *NBV and NVB* v *Commission*, T-138/89, EU:T:1992:95, paragraph 33 and the case-law cited).

32 The annulment of the decisions of the Cancellation Decision of 21 April 2016 would not necessarily have led to a favourable decision being made on the merits of the validity of the contested marks. Consequently the interest on which the applicant seeks to rely is future and uncertain.

33 From that perspective, as the Board of Appeal rightly noted in paragraph 15 of the contested decisions, the question whether a decision adversely affects a party must be evaluated with respect to the instant proceedings and not in comparison with, or in conjunction with, other proceedings. Consequently, the

Court must concur with the Board of Appeal's argument that the existence of other proceedings before EU trade mark courts has no bearing on the conditions for the admissibility of the action before the Board of Appeal.

34 Last, it is not necessary to respond to the applicant's argument that the withdrawal of the applications for declarations of invalidity would not have the force of *res judicata* in the context of the proceedings before the tribunal de grande instance de Paris (Regional Court, Paris). As EUIPO pointed out, the observations of the Board of Appeal in respect of the theory of the force of *res judicata* were advanced for the sake of completeness and have no effect on the legality of the contested decision.

35 In the light of the foregoing, it must be found that the Board of Appeal did not err in law in finding that the decisions of the Cancellation Division had not adversely affected the applicant within the meaning of Article 59 of Regulation No 207/2009.

36 Consequently, the first part of the first plea must be rejected.

Second part of the first plea: insufficient statement of reasons

37 In paragraph 54 of its applications, the applicant questions whether the Board of Appeal was actually referring to the admissibility requirement in Article 59 of Regulation No 207/2009, which uses the concept 'adversely affected', when it made use on several occasions of the expression 'negatively affected'.

38 Further, the applicant takes issue with the Board of Appeal for not having properly assessed the arguments relating to the negative consequences resulting from the absence of final decisions on the merits.

39 EUIPO and the intervener dispute those arguments.

40 It must be noted that Article 75 of Regulation No 207/2009 lays down the requirement that EUIPO must state reasons for its decisions. According to case-law, that obligation to state reasons has the same scope as that under Article 296 TFEU, pursuant to which the reasoning of the author of the act must be shown clearly and unequivocally, and its purpose is twofold: first, to enable the persons concerned to ascertain the reasons for the measure taken in order to defend their rights and, second, to enable the European Union Courts to exercise their power to review the legality of the decision (see judgments of 6 September 2012, *Storck* v *OHIM*, C-96/11 P, not published, EU:C:2012:537, paragraph 86 and the case-law cited, and of 2 April 2009, *Zuffa* v *OHIM (ULTIMATE FIGHTING CHAMPIONSHIP)*, T-118/06, EU:T:2009:100, paragraph 19 and the case-law cited).

41 That was the situation in the present case. It follows from paragraphs 12 to 16 of the contested decisions and from their heading, namely 'Appellant not adversely affected', that the expression 'negatively affected' was used by the Board of Appeal to explain the concept of a decision adversely affecting a party. Given that the applicant was able to build its arguments concerning that concept, in particular in Part A of its applications, it is clear that the applicant therefore understood the explanations provided by the Board of Appeal in that respect in the contested decisions.

42 Further, the applicant cannot criticise the Board of Appeal for having failed to state sufficient reasons for its contested decisions with regard to the legal consequences flowing from the absence of a final decision on the merits, since the theory associated with pursuing invalidity proceedings following the surrender of the contested mark arising from case-law (judgment of 24 March 2011, *Ferrero* v *OHIM*, C-552/09 P, EU:C:2011:177) is not applicable in the present case.

43 It follows that the reasons stated by the Board of Appeal allowed the applicant to understand the grounds for the contested decisions and the Court to carry out its review of the merits of the Board of Appeal's assessment in that respect.

44 Consequently, since the second part of the first plea in law must also be rejected, the first plea in law must be rejected in its entirety.

Second plea: infringement of Articles 75 and 83 of Regulation No 207/2009

First part of the second plea: incorrect interpretation of the concept of principles of procedural law generally recognised in Member States

45 The second plea is divided into two parts. By the first part, the applicant claims that the Board of Appeal misinterpreted the concept of 'principles of procedural law' referred to in Article 83 of Regulation No 207/2009.

46 The applicant relies on that article in support of its claim that, in the absence of provisions in Regulation No 207/2009 concerning the unilateral withdrawal of an application for a declaration of invalidity, it is appropriate to apply a principle generally recognised in Member States, namely that an application for a declaration of invalidity cannot be terminated without the consent of the proprietor of the contested mark, whatever the stage of the proceedings.

47 The applicant also maintains that the Board of Appeal was not entitled to discount the application of Article 83 of Regulation No 207/2009 on the sole ground that invalidity proceedings before the national trade mark offices were not provided for in certain EU Member States and that the principles applicable in court proceedings could not be applied to the procedures before the Board of Appeal.

48 In any event, according to the applicant, the consent of the proprietor of the contested mark is always required where withdrawal occurs at an advanced stage of the proceedings, in order to ensure that the withdrawing party does not use the closing of the proceedings in an abusive way.

49 EUIPO and the intervener dispute the applicant's arguments.

50 Article 83 of Regulation 207/2009 provides that, in the absence of procedural provisions in that regulation, the implementing regulation, the fees regulations or the rules of procedure of the Boards of Appeal, EUIPO is to take into account the principles of procedural law generally recognised in Member States. That provision applies only in the event of a lacuna or ambiguity in the procedural provisions (judgments of 3 December 2009, *Iranian Tobacco* v *OHIM — AD Bulgartabac (Bahman)*, T-223/08, not published, EU:T:2009:481, paragraph 26, and of 13 September 2010, *Travel Service* v *OHIM — Eurowings Luftverkehrs (smartWings)*, T-72/08, not published, EU:T:2010:395, paragraph 76).

51 It is clear that, in the present case, there are procedural provisions covering this matter. The Board of Appeal rightly referred expressly, in paragraph 18 of the contested decisions, to Article 85(3) of Regulation No 207/2009, which explicitly deals with the consequences of a withdrawal of an application for a declaration of invalidity. That article provides that the party who terminates proceedings by withdrawing the application for a declaration of invalidity is to pay the fees and the costs incurred by the other party. As EUIPO correctly noted, the logical reason for the existence of that provision can only be that the legislature wanted to confer on an applicant for a declaration of invalidity the right unilaterally to withdraw its application.

52 In addition, Decision 2009-1 of 16 June 2009 of the Presidium of the Boards of Appeal regarding instructions to parties in proceedings before the Boards of Appeal lays down no limit on the withdrawal of an application for a declaration of invalidity, and does no more than to state in Chapter II, 'Admissibility of the Appeal', Section 1, 'Withdrawal', paragraph 3 that the parties may withdraw their 'application for cancellation'.

53 Although those instructions are not expressly referred to in Article 83 of Regulation No 207/2009, they were laid down pursuant to the rules of procedure of the Boards of Appeal, to which reference is made in Article 83 of Regulation No 207/2009. In addition, in its case-law the Court refers to instructions to the parties in the context of a dispute relating to trade marks in the same way as it does to Regulation No 207/2009 and its implementing legislation (see, to that effect, order of 30 January 2014, *Fercal* v *OHIM*, C-324/13 P, not published, EU:C:2014:60, paragraph 11).

54 Therefore, the applicant cannot invoke various provisions of national law relating to the withdrawal of an application for a declaration of invalidity before the Board of Appeal and simultaneously ignore the instructions to the parties, which the parties are asked to follow 'carefully in order to ensure the smooth running of the proceedings', in accordance with paragraph 2 of that decision.

55 Lastly, paragraph 7.3.2, under heading D, 'Cancellation', section 1, 'Cancellation proceedings', of the Guidelines for Examination of European Union Trade Marks expressly states that the cancellation applicant can withdraw its application for cancellation at any time in the proceedings and that EUIPO is to inform the proprietor of the trade mark of the withdrawal, close the proceedings and take a decision on costs.

56 Admittedly, while those guidelines are not legally binding, the fact remains that Decision No EX-16-7 of the Executive Director of EUIPO of 1 February 2017 on the adoption of those guidelines was also adopted pursuant to Regulation No 207/2009, namely on the legal basis cited in Article 128(4)(a) (now Article 157(4)(a) of Regulation 2017/1001).

57 It follows that the issue raised by the applicant's arguments in the present case is covered by the applicable procedural provisions. Consequently Article 83 of Regulation No 207/2009 does not apply in the present case

58 Even if Article 83 of Regulation No 207/2009 were applicable, it is doubtful that the 'principles of procedural law generally recognised' can be inferred from the national provisions and case-law relating to civil procedure, given that, notwithstanding the guarantees of independence that they and their members enjoy, the Boards of Appeal are still EUIPO bodies and not courts (see judgment of 8 March 2012, *Arrieta D. Gross* v *OHIM — International Biocentric Foundation and Others (BIODANZA)*, T-298/10, not published, EU:T:2012:113, paragraph 105).

59 With regard to the applicant's argument that the intervener committed an abuse of procedure when it withdrew its applications for declarations of invalidity at an advanced stage of proceedings after filing counterclaims with the tribunal de grande instance de Paris (Regional Court, Paris), the following observations must be made.

60 It follows from the case-law of the Court that, according to Article 56(1)(a) of Regulation No 207/2009 (now Article 63(1)(a) of Regulation 2007/1001), an application for a declaration of invalidity based on an absolute ground for invalidity does not require the applicant to show an interest in bringing proceedings in so far as the aim of the absolute grounds for refusal of registration is to protect the public interest underlying them. Because EUIPO's assessment must be made exclusively in the light of the public interest underlying Article 7(1)(b) and (c) and Article 56(1)(a) of Regulation No 207/2009, the potential or actual economic interest pursued by the applicant for a declaration of invalidity is irrelevant. Consequently, there can be no question of an 'abuse of rights' on the part of the applicant

for a declaration of invalidity. It follows that the question of the abuse of rights is irrelevant in invalidity proceedings under Article 56(1)(a) of Regulation No 207/2009 (order of 19 June 2014, *Donaldson Filtration Deutschland* v *ultra air*, C-450/13 P, EU:C:2014:2016, paragraphs 39, 42 and 46).

61 A fortiori, the withdrawal by the intervener of its applications for declarations of invalidity cannot be considered to have resulted from an intention 'to abuse the system', as the applicant claims.

62 In any event, the withdrawal of the applications for declarations of invalidity by the intervener has no legal consequence for the applicant, who remains the proprietor of the contested marks. The applicant cannot claim that the registered marks should have enhanced protection.

63 Last, it must be held that the applicant has not submitted any persuasive evidence, in its written pleadings or at the hearing, to establish that its rights have been abused.

64 In the light of the foregoing, the first part of the second plea in law must be rejected as being unfounded.

Second part of the second plea: failure sufficiently to take the national provisions into account

65 By the second part of the second plea, the applicant claims that the Board of Appeal was wrong merely to examine the procedural provisions applicable in five Member States, without mentioning the evidence adduced by the applicant with respect to the other Member States, in order to establish that the principle that a trade mark 'invalidity action' cannot in certain circumstances be unilaterally withdrawn constitutes a generally recognised principle of procedural law in the Member States. Furthermore, the Board of Appeal did not state the reasons why court proceedings and proceedings before the offices are not comparable.

66 The Board of Appeal thus failed properly to state reasons for its decision, to analyse the wording and scope of the national provisions applicable in the various Member States and to exercise its power of verification.

67 Since Article 83 of Regulation No 207/2009 is inapplicable in the present case, the applicant's arguments that national provisions were insufficiently taken into account are ineffective.

68 Taking into account the foregoing, the second part of the second plea in law and, consequently, the second plea in law in its entirety must be rejected.

Costs

69 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

70 Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the forms of order sought by EUIPO and the intervener.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the actions;

2. Orders CeramTec GmbH to bear its own costs and pay those incurred by the European Union Intellectual Property Office (EUIPO) and C5 Medical Werks.

Collins Barents Passer

Delivered in open court in Luxembourg on 3 May 2018.

E. Coulon
Registrar

S. Frimodt Nielsen
President