Operative part

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 February 2008 (Case R 809/2007-2);

2. Orders OHIM to bear its own costs and to pay those of Abbott Laboratories.

Judgment of the General Court (Sixth Chamber) of 13 September 2010 — Enercon v OHIM — BP (ENERCON)

(Case T-400/08)

(Community trade mark — Opposition proceedings — Application for the Community word mark ENERCON — Earlier Community word mark ENERGOL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Partial refusal to register)

Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 22, 34-35)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2008 (Case R 957/2006-4), relating to opposition proceedings between BP plc and Enercon GmbH.

Information relating to the case

Applicant for the Community trade mark:	Enercon GmbH
Community trade mark sought:	Word mark ENERCON for goods in Classes 1, 2 and 4
Proprietor of the mark or sign cited in the opposition proceedings:	BP plc
Mark or sign cited in opposition:	Community trade mark registration No 137828 of the word mark ENERGOL for goods in Classes 1 and 4
Decision of the Opposition Division:	Opposition upheld, save for goods found dissimilar
Decision of the Board of Appeal:	Appeal dismissed in respect of goods found dissimilar and appeal dismissed as to the remainder

Operative part

The Court:

1. Dismisses the action;

2. Orders Enercon GmbH to pay the costs.