Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

3 October 2013 *

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 74(2) — Regulation (EC) No 2868/95 — First and third subparagraphs of Rule 50(1) — Opposition by the proprietor of an earlier trade mark — Existence of the mark — Evidence submitted in support of the opposition after the expiry of the period set for that purpose — Failure to take account thereof — Discretion of the Board of Appeal — Provision to the contrary — Circumstances precluding additional or supplementary evidence from being taken into account)

In Case C-121/12 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 February 2012,

Bernhard Rintisch, residing in Bottrop (Germany), represented by A. Dreyer, Rechtsanwalt,

appellant,

the other parties to the proceedings being:

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by G. Schneider, acting as Agent,

defendant at first instance,

Valfleuri Pâtes alimentaires SA, established in Wittenheim (France), represented by F. Baujoin, avocate,

intervener at first instance,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, J. Malenovský, U. Lõhmus, M. Safjan and A. Prechal, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2013,

* Language of the case: English.

gives the following

Judgment

1 By his appeal, Mr Rintisch seeks to have set aside the judgment of the General Court of the European Union of 16 December 2011 in Case T-109/09 *Rintisch* v *OHIM – Valfleuri Pâtes alimentaires (PROTIVITAL)* ('the judgment under appeal'), by which that court dismissed his action for the annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 21 January 2009 (Case R 1660/2007-4) ('the contested decision'), relating to opposition proceedings between the appellant and Valfleuri Pâtes alimentaires SA ('Valfleuri').

Legal context

2 Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) was repealed and replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1), which entered into force on 13 April 2009. However, having regard to the material time, the present dispute continues to be governed by Regulation No 40/94.

3 The rules implementing Regulation No 40/94 are laid down by Commission Regulation (EC) No 2868/95 of 13 December 1995 (OJ 1995 L 303, p. 1), as amended by Commission Regulation (EC) No 1041/2005 of 29 June 2005 (OJ 2005 L 172, p. 4) ('the Implementing Regulation').

Regulation No 40/94

4 Article 74(2) of Regulation No 40/94 states that '[t]he Office may disregard facts or evidence which are not submitted in due time by the parties concerned'.

The Implementing Regulation

5 Rule 19 of the Implementing Regulation provides:

'1. The Office shall give the opposing party the opportunity to present the facts, evidence and arguments in support of his opposition or to complete any facts, evidence or arguments that have already been submitted pursuant to Rule 15(3), within a time-limit specified by it and which shall be at least 2 months starting on the date on which the opposition proceedings shall be deemed to commence in accordance with Rule 18(1).

2. Within the period referred to in paragraph 1, the opposing party shall also file proof of the existence, validity and scope of protection of his earlier mark or earlier right, as well as evidence proving his entitlement to file the opposition. In particular, the opposing party shall provide the following evidence:

(a) if the opposition is based on a trade mark which is not a Community trade mark, evidence of its filing or registration, by submitting:

...

(ii) if the trade mark is registered, a copy of the relevant registration certificate and, as the case may be, of the latest renewal certificate, showing that the term of protection of the trade mark extends beyond the time-limit referred to in paragraph 1 and any extension thereof, or equivalent documents emanating from the administration by which the trade mark was registered;

...

3. The information and evidence referred to in paragraphs 1 and 2 shall be in the language of the proceedings or accompanied by a translation. The translation shall be submitted within the time-limit specified for submitting the original document.

4. The Office shall not take into account written submissions or documents, or parts thereof, that have not been submitted, or that have not been translated into the language of the proceedings, within the time-limit set by the Office.'

6 Rule 20 of the Implementing Regulation, entitled 'Examination of the opposition', provides in paragraph 1:

'If until expiry of the period referred to in Rule 19(1) the opposing party has not proven the existence, validity and scope of protection of his earlier mark or earlier right, as well [as] his entitlement to file the opposition, the opposition shall be rejected as unfounded.'

7 Rule 50 of the Implementing Regulation, entitled 'Examination of appeals', provides in paragraph 1:

'Unless otherwise provided, the provisions relating to proceedings before the department which has made the decision against which the appeal is brought shall be applicable to appeal proceedings *mutatis mutandis*.

...

Where the appeal is directed against a decision of an Opposition Division, the Board shall limit its examination of the appeal to facts and evidence presented within the time-limits set in or specified by the Opposition Division in accordance with [Regulation No 40/94] and these Rules, unless the Board considers that additional or supplementary facts and evidence should be taken into account pursuant to Article 74(2) of the Regulation.'

Regulation No 1041/2005

8 Recital 7 in the preamble to Regulation No 1041/2005 states:

'The provisions concerning the opposition procedure should be reframed completely [so] as to specify the admissibility requirements, to specify clearly the legal consequences of deficiencies and to bring the provisions in the chronological order of the proceedings.'

Background to the dispute

9 The background to the dispute was set out by the General Court in paragraphs 1 to 16 of the judgment under appeal in the following terms:

'1 On 6 January 2006, [Valfleuri] filed an application for registration of a Community trade mark with [OHIM] pursuant to … Regulation … No 40/94 …

2 The mark for which registration was sought is the word sign PROTIVITAL.

3 The goods in respect of which registration was sought are in, inter alia, Classes 5, 29 and 30 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 …

...

5 On 24 October 2006, … Mr … Rintisch … filed a notice of opposition under Article 42 of Regulation No 40/94 … against registration of the mark applied for in respect of the goods referred to in paragraph 3 above.

6 The opposition was based, inter alia, on the following earlier rights:

— German word mark PROTIPLUS, filed on 4 December 1995 and registered on 20 May 1996, under number 39549559, in respect of goods in Classes 29 and 32;

— German word mark PROTI, filed on 22 January 1997 and registered on 3 March 1997, under number 39702429, in respect of goods in Classes 29 and 32;

— German figurative mark … filed on 24 February 1996 and registered on 5 March 1997, under number 39608644, in respect of goods in Classes 29 and 32 …

...

8 On 16 January 2007, in order to prove the existence and the validity of the earlier marks referred to in paragraph 6 above, [Mr Rintisch] submitted to OHIM (i) registration certificates issued by the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office), dated March 1996, October 1996 and March 1997 respectively, and (ii) extracts from the Deutsches Patent- und Markenamt online register, dated 8 January 2007, which, for each of the earlier marks, contained the words "Marke eingetragen" ("registered mark") under the heading "Letzter Verfahrensstand" (latest procedural stage), and, for the earlier marks Nos 39549559 and 39608644, dates in 2006 under the heading "Verlängerungsdatum" (renewal date). A translation into the language of the proceedings was provided only for the registration certificate for each of the earlier marks.

9 On 23 January 2007, OHIM communicated to [Mr Rintisch] the date of the commencement of the adversarial stage of the opposition proceedings … In that communication, OHIM advised [Mr Rintisch] that a renewal certificate had to be provided for marks whose registration was more than 10 years old. Similarly, OHIM stated that the existence and the validity of the earlier marks relied on in support of the opposition had to be proved by official documents translated into the language of the proceedings. In that respect, OHIM set a time-limit of 4 June 2007 for the submission of evidence. Lastly, OHIM advised [Mr Rintisch] that, if the evidence for the existence and the validity of the earlier marks was not filed within the required time-limit, the opposition would be rejected without any examination as to its merits, in accordance with Rule 20(1) of [the Implementing Regulation].

10 On 11 September 2007, OHIM informed [Mr Rintisch] of its finding that he had failed to substantiate, within the time-limit laid down, the existence and the validity of the earlier marks. OHIM also informed [Mr Rintisch] that no further observations could be submitted, and that it would give its ruling on the opposition on the basis of the evidence before it.

11 On 19 September 2007, the Opposition Division rejected the opposition on the ground that [Mr Rintisch] had failed to prove, within the time-limit set, the existence and the validity of the earlier marks relied on in support of the opposition. First of all, the Opposition Division found that, although it could be considered, on the basis of the certificates submitted to OHIM on 16 January 2007, that the earlier marks had been registered in 1995, 1996 and 1997 respectively, that was not sufficient to establish that they were valid as at 4 June 2007 ... In addition, the Opposition Division found that, in accordance with Rule 19(4) of [the Implementing Regulation], the online extracts, dated 8 January 2007, could not be taken into account for the purposes of proving that the earlier marks had been renewed, since they had not been translated into the language of the proceedings.

12 On 23 October 2007, [Mr Rintisch] filed a notice of appeal with OHIM against the Opposition Division's [decision], pursuant to Articles 57 to 62 of Regulation No 40/94 … In the appeal, [Mr Rintisch] requested that the Board of Appeal refuse to register the mark applied for on the basis that there was a likelihood of confusion. To that end, he included as an annex to the written pleading setting out the grounds of the appeal, for each of the earlier marks, inter alia, an extract from the online register and a declaration from the Deutsches Patent- und Markenamt, together with a translation of that declaration into the language of the proceedings. The declaration stated that the earlier marks had been renewed, before the date on which the notice of opposition was filed, until 2015, 2016 and 2017 respectively.

13 By [the contested decision], the Fourth Board of Appeal of OHIM dismissed the appeal without assessing the merits of the opposition. It found that the Opposition Division had been correct to conclude that the [appellant] had not duly substantiated, within the time-limits laid down, the existence and the validity of the earlier marks relied on in support of the opposition.

14 In particular, the Board of Appeal considered, first, that the registration certificates submitted to OHIM on 16 January 2007 were not sufficient to prove that the earlier marks were still in force at the date on which the notice of opposition was filed. Second, it found that the fact that the online extracts from the register, dated 8 January 2007, had not been translated was sufficient justification in itself for refusing to take them into account.

15 The Board of Appeal also found that the documents included as an annex to the written pleading setting out the grounds of his appeal on 23 October 2007 could not be taken into account, on the ground that they had been filed after the expiry of the time-limit set by OHIM, that is, after 4 June 2007.

16 Lastly, the Board of Appeal stated that neither the Opposition Division nor the Board of Appeal itself had discretion under Article 74(2) of Regulation No 40/94 … to take into account documents that had not been filed before expiry of the time-limit set by OHIM, having regard to Rule 20(1) of [the Implementing Regulation] which provides expressly that an action must be dismissed where documentary evidence is submitted late. The Board of Appeal further stated that, in any event, even if it were to be held that it enjoyed a discretion to accept documents filed late with the Opposition Division, the Board would have exercised such a discretion against [Mr Rintisch] …'

The procedure before the General Court and the judgment under appeal

10 By application lodged at the General Court Registry on 17 March 2009, Mr Rintisch brought an action seeking the annulment of the contested decision.

11 In support of that action, he relied on three pleas in law, only the second of which is at issue in this appeal. That plea alleged infringement by the Board of Appeal of Article 74(2) of Regulation No 40/94 and misuse of powers.

12 The General Court noted, first, in paragraphs 31 and 32 of the judgment under appeal – referring to paragraph 42 of the judgment in Case C-29/05 P *OHIM* v *Kaul* [2007] ECR I-2213 – that it is clear from Article 74(2) of Regulation No 40/94 that, as a general rule and unless otherwise provided, the submission of facts and evidence by the parties remains possible after the expiry of the time-limits to which such submission is subject under the provisions of that regulation and that OHIM is in no way prohibited from taking account of facts and evidence which are submitted or produced late. The General Court then rejected the first part of the plea thus put forward by Mr Rintisch, finding essentially as follows, in paragraphs 33 to 42 of the judgment under appeal:

> '33 … [T]he possibility for parties to proceedings before OHIM to submit facts and evidence after the expiry of the periods specified for that purpose is conditional upon there being no provision to the contrary …
>
> 34 In the present case, the Board of Appeal found … that there was an express provision to the contrary, according to which, as held in the case-law, the rejection of the opposition was mandatory, and not merely an option subject to OHIM's discretion. The Board of Appeal considered that Rule 20(1) of [the Implementing Regulation], applicable to proceedings before it pursuant to Rule 50(1) of that regulation, prevented the discretion under Article 74(2) of Regulation No 40/94 from being exercised by it.
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> ...
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> 37 It is clear from reading [Rule 20(1) and the first and third subparagraphs of Rule 50(1) of the Implementing Regulation] together that, in the absence of any provision to the contrary, the Board of Appeal is bound to apply Rule 20(1) of [the Implementing Regulation] in the proceedings before it and, therefore, to find that the submission of evidence after the expiry of the period specified for that purpose by OHIM, in order to establish the existence, validity and scope of protection of the earlier mark, results in the rejection of the opposition without the Board of Appeal having a discretion in that regard ...
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> 38 [Mr Rintisch] submits that the end of the third subparagraph of Rule 50(1) of [the Implementing Regulation], and, in particular, the reference therein to Article 74(2) of Regulation No 40/94, is precisely the provision to the contrary which would, in all events, preclude Rule 20(1) of that regulation from being applied to proceedings before the Board of Appeal. However, that argument cannot be upheld.
>
> 39 It must be noted at the outset that, since the notice of opposition was filed on 24 October 2006, the version of [the Implementing Regulation] applicable to the present case is that in force after the amendment by … Regulation … No 1041/2005 ... In particular, according to recital 7 of that regulation, one of the aims of that amendment was to reframe completely the provisions concerning the opposition procedure in order to specify clearly, inter alia, the legal consequences of procedural deficiencies.
>
> 40 In addition to the risk of applying circular reasoning to the provisions in question, accepting the interpretation put forward by [Mr Rintisch] would result in the scope of Rule 20(1) of [the Implementing Regulation], as amended, being limited significantly.
>
> 41 If the evidence to establish the existence, validity and scope of an earlier mark – which, in accordance with the new wording of Rule 20(1) of [the Implementing Regulation], applicable to the present case, cannot be taken into account by the Opposition Division when it is filed late –

could nevertheless be taken into consideration by the Board of Appeal by virtue of its discretionary power under Article 74(2) of Regulation No 40/94, the legal consequence laid down expressly in Regulation No 1041/2005 for that type of deficiency, namely the rejection of the opposition, might, in certain cases, have no practical effect.

42 It must therefore be held that the Board of Appeal did not err by finding that, in the circumstances of the present case, there was a provision which prevented evidence submitted late to OHIM by [Mr Rintisch] from being taken into account and that, therefore, the Board of Appeal did not have any discretion under Article 74(2) of Regulation No 40/94.'

13 The General Court then rejected the second part of the second plea in law, on the following ground:

'48 … [A]s regards the alleged misuse of powers by the Board of Appeal, the Court finds that the application does not satisfy the minimum requirements for the admissibility of a complaint laid down in Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1)(c) of the Rules of Procedure of the General Court … In the present case, the [appellant's] complaint, as submitted in the application, does not include any argument to demonstrate how the Board of Appeal misused its powers. The present complaint must therefore be declared inadmissible.'

14 Since it also rejected the other pleas in law relied on by Mr Rintisch in support of his action, the General Court dismissed the action.

Forms of order sought by the parties before the Court of Justice

15 By his appeal, Mr Rintisch asks the Court of Justice to set aside the judgment under appeal and order OHIM to pay the costs.

16 OHIM and Valfleuri contend that the Court should dismiss the appeal and order Mr Rintisch to pay the costs.

The appeal

17 In support of his appeal, the appellant relies on two grounds of appeal, alleging infringement of Article 74(2) of Regulation No 40/94 and misuse of power by the Board of Appeal, respectively.

The first ground of appeal, alleging infringement of Article 74(2) of Regulation No 40/94

Arguments of the parties

18 Mr Rintisch submits that the General Court misinterpreted Article 74(2) of Regulation No 40/94 and Rule 50(1) of the Implementing Regulation.

19 He thus argues that the General Court disregarded the third subparagraph of Rule 50(1) of the Implementing Regulation, although the latter is a special provision for the examination of appeals which expressly provides for the application of Article 74(2) of Regulation No 40/94 and therefore confers on the Board of Appeal a discretion to decide whether additional or supplementary facts and evidence should be taken into account. In addition, the General Court erred in failing to distinguish between new facts and the late submission of additional or supplementary facts and evidence within the meaning of the third subparagraph of Rule 50(1) of the Implementing Regulation.

20 OHIM disputes the interpretation of the relevant provisions put forward by the appellant. It contends that the General Court correctly pointed out that Rule 20(1) of the Implementing Regulation must be regarded as a provision to the contrary, as referred to in the judgment in *OHIM* v *Kaul*, inasmuch as it is a mandatory provision linked to an absolute time-limit.

21 Valfleuri contends that Rules 19(4) and 20(1) of the Implementing Regulation are express and mandatory provisions which rule out the possibility of OHIM extending the period available to the opponent to establish the existence and validity of the earlier marks. Consequently, OHIM does not, in the situation in question, have the discretion provided for in Article 74(2) of Regulation No 40/94.

Findings of the Court

22 Article 74(2) of Regulation No 40/94 provides that OHIM may disregard facts or evidence which are not submitted in due time by the parties concerned.

23 As the Court has held, it results from the wording of that provision that, as a general rule and unless otherwise specified, the submission of facts and evidence by the parties remains possible after the expiry of the time-limits to which such submission is subject under the provisions of Regulation No 40/94 and that OHIM is in no way prohibited from taking account of facts and evidence which are submitted or produced late (*OHIM* v *Kaul*, paragraph 42, and Case C-621/11 P *New Yorker SHK Jeans* v *OHIM* [2013] ECR, paragraph 22).

24 In stating that the latter 'may', in such a case, decide to disregard evidence, Article 74(2) grants OHIM broad discretion to decide, while giving reasons for its decision in that regard, whether or not to take such evidence into account (*OHIM* v *Kaul*, paragraph 43, and *New Yorker SHK Jeans* v *OHIM*, paragraph 23).

25 Since the first ground of appeal put forward by the appellant relates only to the discretion which he claims OHIM's Board of Appeal enjoys, it is appropriate, in order to determine whether there is a provision to the contrary liable to preclude such discretion, to refer to the rules governing the appeal proceedings.

26 In that regard, the first subparagraph of Rule 50(1) of the Implementing Regulation lays down that, unless otherwise provided, the provisions relating to proceedings before the department which has made the decision against which the appeal is brought are to be applicable to appeal proceedings *mutatis mutandis*.

27 The General Court found, in paragraph 37 of the judgment under appeal, that it followed from that provision that the Board of Appeal was bound to apply Rule 20(1) of the Implementing Regulation and, therefore, to find that the submission of evidence after the expiry of the period specified for that purpose by OHIM, in order to establish the existence, validity and scope of protection of the earlier mark, entails the rejection of the opposition, and the Board of Appeal has no discretion in that regard.

28 In so doing, the General Court adopted an incorrect interpretation of Rule 50(1) of the Implementing Regulation, which misconstrues the scope of the third subparagraph of that provision.

29 Although the first subparagraph of Rule 50(1) lays down the principle that the provisions relating to proceedings before the department which has made the decision against which the appeal is brought are to be applicable to appeal proceedings *mutatis mutandis*, the third subparagraph of Rule 50(1) constitutes a special rule derogating from that principle. That special rule is specific to the appeal proceedings brought against the Opposition Division's decision and specifies the rules, before the Board of Appeal, governing the facts and evidence submitted after the expiry of the time-limits set or specified at first instance.

30 The third subparagraph of Rule 50(1) of the Implementing Regulation must therefore be applied, at this particular stage of the appeal proceedings against the Opposition Division's decision, in place of the provisions relating to the proceedings before that division, which include Rule 20(1) of the Implementing Regulation.

31 It must be emphasised here that that special rule was introduced in the Implementing Regulation when it was amended by Regulation No 1041/2005, which, according to recital 7 thereof, seeks to specify clearly the legal consequences of procedural deficiencies in the opposition proceedings. That statement confirms that the consequences, before the Board of Appeal, of the delay in the submission of evidence before the Opposition Division must be determined on the basis of that rule.

32 Under the third subparagraph of Rule 50(1) of the Implementing Regulation, where the appeal is directed against a decision of an Opposition Division, the Board of Appeal must limit its examination of the appeal to facts and evidence presented within the time-limits set in or specified by the Opposition Division, unless the Board considers that additional or supplementary facts and evidence must be taken into account pursuant to Article 74(2) of Regulation No 40/94.

33 The Implementing Regulation therefore expressly provides that the Board of Appeal enjoys, when examining an appeal directed against a decision of the Opposition Division, the discretion deriving from the third subparagraph of Rule 50(1) of the Implementing Regulation and from Article 74(2) of Regulation No 40/94 to decide whether or not to take into account additional or supplementary facts and evidence which were not presented within the time-limits set or specified by the Opposition Division.

34 Consequently, in finding, in paragraph 42 of the judgment under appeal, that Rule 20(1) of the Implementing Regulation constituted a provision to the contrary which prevented evidence submitted late to OHIM by the appellant from being taken into account by the Board of Appeal, with the result that the Board of Appeal did not have any discretion under Article 74(2) of Regulation No 40/94 for the purposes of taking into account that evidence, the General Court committed an error of law which vitiates its judgment.

35 However, it should be pointed out that where the grounds of a judgment of the General Court disclose an infringement of EU law but the operative part of the judgment is shown to be well founded for other legal reasons, the appeal must be dismissed (Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 58, and Case C-352/09 P *ThyssenKrupp Nirosta* v *Commission* [2011] ECR I-2359, paragraph 136).

36 It follows from the considerations in paragraph 34 of this judgment that the Board of Appeal erred in law in finding, in paragraphs 38 to 40 of the contested decision, that it followed from Rule 20(1) of the Implementing Regulation that it did not have any discretion to decide whether or not it was necessary to take into account evidence which was submitted late of the existence, validity and scope of protection of the earlier mark.

37 None the less, it must be pointed out that the Board of Appeal stated, in paragraph 42 of the contested decision, that, if it were held that it enjoyed a discretion to decide whether or not it is necessary to take into account documents submitted late, it would exercise that discretion against the opponent. Then, in paragraphs 43 to 46 of that decision, it set out the reasons for that conclusion.

38 Those reasons – given as alternative grounds by the Board of Appeal for refusing to take into account the evidence submitted late by Mr Rintisch – are capable of remedying the defect vitiating the contested decision only if they permit the inference that the Board of Appeal actually exercised its discretion under Article 74(2) of Regulation No 40/94, for the purposes of deciding, in a reasoned manner and having regard to all the relevant circumstances, whether it was necessary to take into

account the evidence submitted to it late, in order to give its decision (see, to that effect, Case C-610/11 P *Centrotherm Systemtechnik* v *OHIM and centrotherm Clean Solutions* [2013] ECR, paragraph 110).

39 In that regard, the Court has held, inter alia, that where OHIM is called upon to give judgment in the context of opposition proceedings, taking into account facts or evidence produced late is particularly likely to be justified where OHIM considers, first, that the material which has been produced late is, on the face of it, likely to be genuinely relevant to the outcome of the opposition brought before it and, second, that the stage of the proceedings at which that late submission takes place and the circumstances surrounding it do not argue against such matters being taken into account (*OHIM* v *Kaul*, paragraph 44, and *Centrotherm Systemtechnik* v *OHIM and centrotherm Clean Solutions*, paragraph 113).

40 In this case, since Mr Rintisch based his opposition, inter alia, on three registered German marks, the evidence of the existence, validity and scope of protection of those marks which he had to submit during the opposition proceedings is set out precisely and exhaustively in Rule 19(2)(a)(ii) of the Implementing Regulation. Mr Rintisch was therefore deemed to be aware, even before filing his opposition, of the precise documents which he had to produce in support of it. Consequently, the Board of Appeal must, in those circumstances, exercise its discretion restrictively and may allow the late submission of such evidence only if the surrounding circumstances are likely to justify the appellant's delay in the submission of proof required of him.

41 In stating the reasons for its decision, the Board of Appeal emphasised in particular that Mr Rintisch was in possession of the proof of renewal of the marks at issue as from 15 January 2007 and that he did not put forward any reasons why he withheld that document until October 2007.

42 It is therefore apparent from the contested decision that the circumstances surrounding the late submission of the evidence of the existence, validity and scope of protection of the marks at issue are not capable of justifying the appellant's delay in the submission of proof required of him.

43 The fact that Mr Rintisch produced, within the time-limit set by the Opposition Division, extracts from the Deutsches Patent- und Markenamt online register referring to the renewal of the marks at issue, in a language other than that of the language of the proceedings, cannot call in question that analysis, since it is clear from Rule 19(4) of the Implementing Regulation that OHIM must not take into account documents that have not been submitted, or that have not been translated into the language of the proceedings, within that time-limit.

44 It follows that the Board of Appeal was justified in refusing to take into account the evidence submitted by Mr Rintisch after the expiry of the periods specified for that purpose by the Opposition Division, and there was no need for it to rule on the possible relevance of that evidence or to determine whether the stage of the proceedings at which that late submission takes place precludes such evidence from being taken into account.

45 Contrary to Mr Rintisch's claims, the Board of Appeal is not required, when exercising its discretion under Article 74(2) of Regulation No 40/94, to examine the three criteria referred to in paragraph 39 above when one of those criteria alone is sufficient to establish that it must not take into account the evidence submitted late at issue (see, to that effect, order of 4 March 2010 in Case C-193/09 P *Kaul* v *OHIM*, paragraph 38).

46 In those circumstances, the error in law identified in paragraph 34 above, which vitiates the judgment under appeal, has no effect on the examination of the appeal, since the General Court's rejection, in paragraph 47 of that judgment, of the first part of the second plea in law, alleging infringement of Article 74(2) of Regulation No 40/94, is well founded on legal grounds other than those given by the General Court, and cannot therefore lead to the setting aside of that judgment.

The second ground of appeal, alleging misuse of power by the Board of Appeal

Arguments of the parties

47 Mr Rintisch submits that the General Court underestimated the fact that the Board of Appeal had misused its powers.

48 OHIM states that no arguments supporting the second ground of appeal can be found in the appeal.

Findings of the Court

49 As regards the second ground of appeal, it must be noted, first, that the appellant confines himself to general assertions and in no way identifies the paragraphs of the judgment under appeal which he criticises and, second, that he does not state the legal arguments relied on in support of that ground of appeal.

50 According to consistent case-law, it follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court, and Article 112(1)(c) of the Rules of Procedure of the Court, in the version in force at the date when the appeal was brought (now Article 168(1)(d) of the Rules of Procedure of the Court), that an appeal must state precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or plea concerned is inadmissible (Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 426, and Case C-487/06 P *British Aggregates* v *Commission* [2008] ECR I-10515, paragraph 121).

51 Since the second ground of appeal put forward by Mr Rintisch in support of his appeal does not meet those requirements, it must therefore be rejected as being inadmissible.

52 As none of the grounds relied on by the appellant in support of his appeal can be upheld, the appeal must be dismissed.

Costs

53 In accordance with 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, 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.

54 Since OHIM and Valfleuri have applied for costs and the appellant has been unsuccessful, the latter must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders Mr Bernhard Rintisch to pay the costs.

[Signatures]