

Case T-32/04

Lichtwer Pharma AG

v

**Office for Harmonization in the Internal Market
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Opposition proceedings — Application for Community word mark Lyco-A — Admissibility of the appeal before the Board of Appeal — Cost of proceedings — Apportionment)

Judgment of the Court of First Instance (Fifth Chamber), 16 November 2006 II - 4429

Summary of the Judgment

- 1. Community trade mark — Procedural provisions
(Council Regulation No 40/94, Art. 81(4))*

2. *Community trade mark — Procedural provisions*
(*Council Regulation No 40/94, Art. 81(4)*)

1. It is clear from the wording of Article 81(4) of Regulation No 40/94 on the Community trade mark that the Board of Appeal has a wide discretion in the apportionment of procedural costs in the context of a case which does not proceed to judgment. In such circumstances, the Community Court cannot substitute its assessment for that of the Board of Appeal. Nevertheless, it is for the Community Court to check whether or not, having regard to the considerations which may have led to its assessment, the Board of Appeal exceeded the limits of its discretion and used that discretion in a manifestly wrongful manner.

(see para. 18)

2. Since parallel opposition proceedings are based on different facts, assessment of the likelihood of confusion between the conflicting trade marks in each of

those sets of proceedings involves taking into consideration all of the facts and law relied on in each case by the parties. In those circumstances, the fact that an opposition is upheld, although it deprives the parallel proceedings of their purpose, does not in any way make it possible to determine which of the parties to those parallel proceedings would have been unsuccessful. Identification of the unsuccessful party in given proceedings may be based only on the purpose and factual and legal framework of those proceedings, as defined by the parties' claims. Furthermore, an order pursuant to Article 81(4) of Regulation No 40/94 on the Community trade mark requiring the applicant for a trade mark for which registration has been refused to pay the costs in all potential parallel proceedings cannot automatically follow from the decision upholding one of the oppositions filed against that application.

(see paras 21-23)