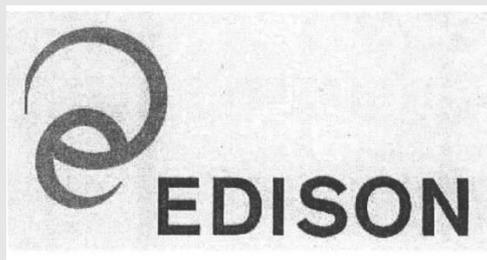


Court of Justice EU, 16 September 2020, Edison



TRADE MARK LAW

“Electrical energy” has not been wrongly excluded of the goods in Class 4 of the eighth edition of the classification of Nice:

- [the argument that the General Court failed to adopt a ‘functional’ approach is unfounded](#)

37 In the first place, in so far as, in the context of its first ground of appeal, Edison criticises the General Court for having failed to adopt a ‘functional’ approach for the purposes of assessing the scope of the terms ‘illuminants’, ‘fuels (including motor spirit)’ and ‘carburants’/‘motor fuel’, it must be noted at the outset that Edison does not identify the specific points of the judgment under appeal at which its argument is directed. (...)

38 In any event, even if that argument could be understood as seeking, in essence, to call into question the methodology followed by the General Court for the purposes of examining whether electricity comes within the terms ‘illuminants’, ‘fuels (including motor spirit)’ and ‘carburants’/‘motor fuel’, it must be noted that, in paragraphs 38 to 56 of the judgment under appeal, the General Court assessed the scope of those terms on the basis of a literal appraisal, the content and scope of which it provided, in paragraphs 29 to 37 of that judgment, in the light of the case-law of the Court of Justice.

39 It must be noted that Edison makes no criticism as regards the General Court’s application and interpretation of that case-law, nor, a fortiori, does it demonstrate that the approach adopted by the General Court in those paragraphs is vitiated by an error of law.

- [the complaint directed against a ground expressed for the sake of completeness cannot lead to the annulment and is therefore ineffective](#)
- [no contradictory reasoning by the General Court](#)
- [not shown or alleged that that assessment of evidence was vitiated by a distortion](#)
- [insufficiently explained that the General Court erred in law by referring to the judgment](#)
- [the argument by which Edison merely reproduces unchanged the complaint raised at first instance rejected as inadmissible](#)
- [value that the General Court attached to the evidence does not come within the jurisdiction of the Court of Justice](#)

LITIGATION

Complaints regarding infringement of its procedural rights inadmissible:

- [Edison merely reproduces verbatim the arguments that it had already raised before the General Court](#)

Complaint regarding infringement of Article 75 of the EU Trade Mark Regulation ungrounded:

- [the General Court carried out an extensive analysis](#)

Source: [ECLI:EU:C:2020:714](#)

Court of Justice EU, 16 September 2020

(S. Rodin, K. Jürimäe and N. Piçarra)

JUDGMENT OF THE COURT (Ninth Chamber)

16 September 2020 (*)

(Appeal – EU trade mark – Application for registration of a figurative mark including the word element EDISON – Interpretation of the terms in the heading of a class of the Nice Classification and in the accompanying alphabetical list)

In Case C-121/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 15 February 2019,

Edison SpA, established in Milan (Italy), represented by F. Boscarriol de Roberto and D. Martucci, avvocati, appellant,

the other party to the proceedings being:

European Union Intellectual Property Office (EUIPO), represented by J. Crespo Carrillo, acting as Agent, defendant at first instance,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, K. Jürimäe (Rapporteur) and N. Piçarra, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, Edison SpA seeks to have set aside the judgment of the General Court of the European Union of 7 December 2018, *Edison v EUIPO (EDISON)* (T-471/17, not published, ‘the judgment under appeal’, EU:T:2018:887), by which the General Court dismissed its action brought against the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 28 April 2017 (Case R 1355/2016-5), relating to the EU figurative trade mark EDISON.

Legal context

The Nice Classification

2 In the eighth edition 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 (*the Nice*

Classification'), the heading of Class 4 corresponded to the following description:

'Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.'

3 Furthermore, the *'alphabetical list of goods'* in class order (*'the alphabetical list'*), which accompanied the eighth edition of the Nice Classification, mentioned, among the goods included as coming within Class 4 of that classification, *'carburants'/'motor fuel'*.

Regulation (EC) No 207/2009

4 Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) codified and repealed Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

5 Article 75 of Regulation No 207/2009, entitled *'Statement of reasons on which decisions are based'*, provided:

'Decisions of [EUIPO] shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.'

Background to the dispute and the decision at issue

6 Paragraphs 1 to 14 of the judgment under appeal set out the background to the dispute and the content of the decision at issue. For the purposes of the present case, these may be summarised as follows.

7 On 18 August 2003, Edison filed an application for registration of an EU trade mark with EUIPO.

8 Registration as a trade mark was sought for the following figurative sign:



9 The application for registration concerned, inter alia, all of the goods in Class 4 of the Nice Classification.

10 The version of the Nice Classification in force at the date of the application for registration was the eighth edition, which had been published in June 2001 and entered into force on 1 January 2002. It was replaced by the ninth edition, which was published in June 2006 and entered into force in January 2007.

11 The mark for which registration was sought was registered on 19 August 2013.

12 On 15 June 2015, Edison made a request for a surrender to be entered in respect of a portion of the goods in Class 4 for which the mark was registered. More specifically, it proposed that the list of goods originally claimed in that class be reworded as follows: *'Electrical energy; petroleum, fuels, hydrocarbon fuels, fuel gases, propane gas, natural gases, gas for lighting, coal, fuels derived from tar, petrol, kerosene, naphtha, diesel fuels, additives for fuels, benzene, benzol, coking coal, cutting fluids, ethanol, gas oil, lanolin, industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.'*

13 By letter of 22 June 2015, the examiner informed Edison that its request of 15 June 2015 could not be accepted in so far as it would lead to an extension of the list of goods claimed at the time of registration of the EU figurative mark EDISON.

14 By letters of 25 July 2015, 24 December 2015 and 22 April 2016, the appellant submitted its observations in that regard.

15 By decision of 13 June 2016, the examiner rejected Edison's request of 15 June 2015 solely in so far as it sought to include *'electrical energy'* in the list of goods in Class 4 claimed at the time of registration of the EU figurative mark EDISON.

16 On 25 July 2016, Edison lodged an appeal before EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009, against the examiner's decision.

17 By decision of 28 April 2017 (*'the decision at issue'*), the Fifth Board of Appeal of EUIPO dismissed the action. In particular, it found that the eighth edition of the Nice Classification did not use the expression *'electrical energy'* either in the wording of the general indications or in the alphabetical list of the goods included as regards Class 4. Pursuant to Communication No 2/12 of the Executive Director of EUIPO of 20 June 2012 concerning the use of class headings in lists of goods and services for Community trade mark applications and registrations, it therefore found that Edison could not have intended to claim that product when it filed the application for registration.

18 Furthermore, the Board of Appeal rejected Edison's argument that *'carburants'/'motor fuel'*, as a product included in the alphabetical list as coming within Class 4, and the specification *'including motor spirit'* in the heading of that class encompass any material capable of powering an engine, including non-combustible materials such as electrical energy. In that regard, the Board of Appeal considered in particular that use of electricity as a means of powering an engine had still been negligible within the European Union at the time of the application for registration and that the items of evidence produced by Edison were insufficient to establish that electrical energy had formed a portion of the goods in Class 4 claimed at the time of registration of the EU figurative mark EDISON, as an *'alternative fuel'*. Moreover, it held that the category of goods covered by the English term *'fuel'* included only combustible materials that can be used to produce electrical energy and not electrical energy itself, which is an intangible product.

The procedure before the General Court and the judgment under appeal

19 By application lodged at the Registry of the General Court on 28 July 2017, Edison brought an action seeking annulment of the decision at issue.

20 In support of its action, Edison raised a single plea in law alleging that that decision unlawfully excluded electrical energy from the goods in Class 4 of the eighth edition of the Nice Classification, by ruling that that product did not come within the terms *'fuels (including motor spirit)'*, *'illuminants'* and *'carburants'/'motor*

fuel', within the meaning of the eighth edition of the Nice Classification.

21 By the judgment under appeal, the General Court rejected that single plea in law and, therefore, dismissed the action.

Forms of order sought by the parties to the appeal

22 By its appeal, Edison claims that the Court of Justice should:

- set aside the judgment under appeal, and
- order EUIPO to pay the costs.

23 EUIPO contends that the appeal should be dismissed and that Edison should be ordered to pay the costs.

The appeal

24 In support of its appeal, Edison relies on two grounds, the first one alleging that the interpretation of the terms '*illuminants*', '*fuels (including motor spirit)*' and '*carburants*'/'*motor fuel*', within the meaning of the eighth edition of the Nice Classification, was incorrect, and the second one alleging infringement of its procedural rights and of Article 75 of Regulation No 207/2009.

The first ground of appeal

Arguments of the parties

25 By its first ground of appeal, Edison criticises the General Court on the ground that it erroneously excluded electrical energy from Class 4 of the eighth edition of the Nice Classification.

26 In the first place, Edison alleges that the General Court erred in law, by stating, in paragraphs 41, 46 and 54 of the judgment under appeal, that proof that electrical energy does not come within Class 4 of the eighth edition of the Nice Classification follows from the fact that the term '*electrical energy*' is included on an indicative and non-exhaustive list published by EUIPO, containing examples of goods and services that, despite being included on the alphabetical list of goods in Class 4 since the ninth edition of the Nice Classification, are '*not clearly covered by the literal meaning*' of the heading of that class. According to Edison, that list is merely a communication on the part of EUIPO which is not legally binding and which may be challenged in legal proceedings. Furthermore, that list, which was drawn up on 8 February 2016, does not apply to its request to restrict the list of goods, which had been lodged on 15 June 2015.

27 In the second place, Edison submits that the General Court failed correctly to assess the scope of the terms '*illuminants*', '*fuels (including motor spirit)*' and '*carburants*'/'*motor fuel*', within the meaning of the eighth edition of the Nice Classification, with the result that it erroneously excluded electrical energy from Class 4 of that classification. According to Edison, the General Court took account solely of the '*ontological*' characteristics of electrical energy, ignoring its '*functional*' characteristics.

28 According to Edison, the General Court thus failed to apply not only the assessment criteria laid down by Advocate General Bot in his Opinion in Chartered Institute of Patent Attorneys (C-307/10, EU:C:2011:784) but also the functional approach adopted by WIPO, as published on its website. Edison

states, invoking the judgment of 19 June 2012, Chartered Institute of Patent Attorneys (C-307/10, EU:C:2012:361), that, as regards the '*category*' definitions, the general indications in the class headings of the Nice Classification must not be given '*the best-known meaning or the one that first comes to mind*' but rather, their meaning in the language of market operators and regulators must be sought. It asserts that, contrary to what is stated in the decision at issue, economic operators, like the competent authorities, were aware, in the course of 2003, when the application for registration of the figurative mark at issue was lodged, of the importance of electrical energy as an alternative fuel. In support of its arguments, Edison refers to various regulatory texts and works.

29 In the third place, Edison submits that the General Court's reasoning is contradictory in that it refers, in paragraph 44 of the judgment under appeal, to a statement published by the World Intellectual Property Organisation (WIPO) and available on its website, according to which, '*even though electrical energy is intangible, it is considered analogous to other tangible fuels, such as gasoline and kerosene that are in Class 4*'. According to Edison, that statement supports the exact opposite, that is, that the functional characteristic of electricity, which is its capacity to produce energy, must prevail over its ontological characteristics.

30 In the fourth place, Edison criticises the General Court for ruling that the decision to include electricity in Class 4 of the ninth edition of the Nice Classification was not sufficient to demonstrate that, in the view of the competent authorities, electricity already came within that class under the scheme of the eighth edition of that classification. Edison states in this regard that the General Court, in paragraph 41 of the judgment under appeal, erroneously based its reasoning on the fact that such a decision to include electrical energy was not taken by the WIPO Committee of Experts until October 2003, that is to say, after the application for registration at issue had been filed. According to Edison, that decision to include electrical energy was drafted in June 2003, that is to say, before its application for registration of the figurative mark was filed, in August 2003. The General Court therefore demonstrated excessive formalism by choosing to take into consideration the date on which the decision to include electrical energy had been adopted.

31 In the fifth place, Edison disputes the case-law relied on by the General Court in paragraph 48 of the judgment under appeal for the purposes of assessing the scope of the term '*carburants*'/'*motor fuel*'. Edison submits, in this regard, that the judgment of 14 March 2017, Edison v EUIPO – Eolus Vind (e) (T-276/15, not published, EU:T:2017:163), is not relevant since it is vitiated by errors.

32 In the sixth place, Edison asserts, referring to the customs tariff nomenclature and to the judgments of 15 July 1964, Costa (6/64, EU:C:1964:66), and of 27 April 1994, Almelo (C-393/92, EU:C:1994:171), that electrical energy is considered, under both EU law and national law, to be a product within the meaning of

Article 28 TFEU. It also submits that electrical energy should be regarded, in trade mark law, as is already the case in competition law, in the same way as coal, natural gas and petroleum, and that it would therefore be discriminatory to draw a distinction, in trade mark law, between electrical energy and those other goods. Thus, like those goods, electrical energy must be considered to come within the concept of *'carburants'/'motor fuel'*, as a product included on the alphabetical list of goods in Class 4 of the eighth edition of the Nice Classification.

33 In the seventh place, Edison disputes the General Court's assessment of various items of evidence that it produced in order to show that electrical energy comes within the concept of *'carburants'/'motor fuel'*, and consequently, within Class 4 of the eighth edition of the Nice Classification.

34 First, Edison criticises the General Court for having ruled, in paragraph 51 of the judgment under appeal, that the positions adopted by the European Environment Agency (EEA), the Department of Energy and Climate Change (United Kingdom) or the Sustainable Energy Authority (Ireland) were irrelevant for the interpretation of that concept of *'carburants'/'motor fuel'*.

35 Secondly, Edison criticises the General Court on the ground that it failed to examine certain documents that Edison had submitted before the Board of Appeal in order to show that, since the end of the 1970s, electrical energy has been regarded as an *'alternative fuel'* in the public debate.

36 EUIPO contends that the first ground of appeal must be rejected as being in part inadmissible and in part unfounded.

Findings of the Court

37 In the first place, in so far as, in the context of its first ground of appeal, Edison criticises the General Court for having failed to adopt a *'functional'* approach for the purposes of assessing the scope of the terms *'illuminants'*, *'fuels (including motor spirit)'* and *'carburants'/'motor fuel'*, it must be noted at the outset that Edison does not identify the specific points of the judgment under appeal at which its argument is directed. However, under Article 169(2) of the Rules of Procedure of the Court of Justice, the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested (order of 7 June 2018, *Gaki v Europol*, C-671/17 P, not published, EU:C:2018:416, paragraph 36 and the case-law cited).

38 In any event, even if that argument could be understood as seeking, in essence, to call into question the methodology followed by the General Court for the purposes of examining whether electricity comes within the terms *'illuminants'*, *'fuels (including motor spirit)'* and *'carburants'/'motor fuel'*, it must be noted that, in paragraphs 38 to 56 of the judgment under appeal, the General Court assessed the scope of those terms on the basis of a literal appraisal, the content and scope of which it provided, in paragraphs 29 to 37 of that judgment, in the light of the case-law of the Court of Justice.

39 It must be noted that Edison makes no criticism as regards the General Court's application and interpretation of that case-law, nor, a fortiori, does it demonstrate that the approach adopted by the General Court in those paragraphs is vitiated by an error of law.

40 Edison merely invokes, in support of the *'functional'* approach which it advocates, the assessment criteria set out by Advocate General Bot in his Opinion in *Chartered Institute of Patent Attorneys* (C-307/10, EU:C:2011:784, points 74 and 75).

41 However, as rightly held by the General Court in paragraph 29 of the judgment under appeal, it is apparent from paragraph 61 of the judgment of 19 June 2012, *Chartered Institute of Patent Attorneys* (C-307/10, EU:C:2012:361), that the goods for which the protection by the trade mark is sought must be identified by the applicant in its application for registration with sufficient clarity and precision in order to enable the competent authorities and the economic operators, on that basis alone, to determine the extent of the protection sought. By contrast, in that judgment, the Court did not follow the approach proposed by Advocate General Bot in point 74 of his Opinion in that case, which consisted in stating that the economic operators must be able to identify precisely *'the essential objective characteristics and properties of the goods and services covered'*.

42 In the light of the foregoing, that argument must in any event be rejected as unfounded.

43 In the second place, in so far as Edison criticises the General Court on the ground that it erred in law by erroneously referring, in paragraphs 41, 46 and 54 of the judgment under appeal, to an indicative and non-exhaustive list published by EUIPO, containing examples of goods and services which, despite being included on the alphabetical list of goods in Class 4 since the ninth edition of the Nice Classification, are *'not clearly covered by the literal meaning'* of the heading of that class, in order to conclude that electrical energy is excluded from the heading of Class 4 of the Nice Classification, it must be stated that such an argument is ineffective.

44 It must be noted, in this regard, that complaints directed against a ground expressed for the sake of completeness in a decision of the General Court cannot lead to the annulment of that decision and are therefore ineffective (see, to that effect, judgment of 26 March 2019, *Commission v Italy*, C-621/16 P, EU:C:2019:251, paragraph 57 and the case-law cited).

45 It follows from the term *'incidentally'*, contained in paragraphs 41, 46 and 54 of the judgment under appeal, that the General Court referred to the list published by EUIPO only for the sake of completeness, in order to conclude that electrical energy does not come within the terms *'illuminants'*, *'fuels (including motor spirit)'* and *'carburants'/'motor fuel'*, within the meaning of Class 4 of the eighth edition of the Nice Classification.

46 As is apparent from paragraphs 39, 43 and 48 of the judgment under appeal, the main reason why the General Court regarded electrical energy as not coming within Class 4 of the Nice Classification is that, in accordance with their customary and ordinary meaning, the terms

'illuminants', 'fuels (including motor spirit)' and 'carburants'/'motor fuel' do not include electrical energy.

47 In the third place, in so far as Edison criticises the General Court on the ground that it vitiated its reasoning by a contradiction when it referred, in paragraph 44 of the judgment under appeal, to a statement published by WIPO on its website, in order to conclude that electrical energy does not come within 'fuels (including motor spirit)', it must be noted that that argument is based on an incomplete reading of that judgment. Although the General Court held, in paragraph 44 of the judgment under appeal, that it was apparent from that statement that 'even though electrical energy is intangible, it is considered analogous to other tangible fuels, such as gasoline and kerosene that are in Class 4', it nevertheless added, in the same paragraph, that, despite that similarity from a functional perspective, electrical energy is not covered by the literal meaning of the concept of 'fuel'.

48 In the fourth place, as regards Edison's argument that the General Court failed to take account of the fact that electrical energy is included in the indicative and non-exhaustive list published by EUIPO, containing examples of goods and services that, despite being included on the alphabetical list of goods in Class 4 since the ninth edition of the Nice Classification, are 'not clearly covered by the literal meaning' of the heading of that class, it must be noted that the General Court has exclusive jurisdiction to assess the value which should be attached to the items of evidence produced before it (see, to that effect, order of 11 November 2003, *Martinez v Parliament*, C-488/01 P, EU:C:2003:608, paragraph 53 and the case-law cited).

49 The General Court cannot, subject to its obligation to observe general principles and the Rules of Procedure relating to the burden of proof and the adducing of evidence and not to distort the true sense of the evidence, be required to give express reasons for its assessment of the value of each piece of evidence presented to it, in particular where it considers that that evidence is unimportant or irrelevant to the outcome of the dispute (judgment of 3 December 2009, *Evropaïki Dynamiki v Commission*, C-476/08 P, not published, EU:C:2009:752, paragraph 17 and the case-law cited).

50 In the present case, it must be noted that, in paragraph 41 of the judgment under appeal, the General Court examined the decision to include 'electrical energy' on the indicative and non-exhaustive list published by EUIPO, and took the view that that decision was not probative, in so far as, at the time when the application for registration at issue was filed, that decision was still being drawn up. Edison has not shown, or even alleged, that that assessment was vitiated by a distortion. The arguments raised in that regard are therefore inadmissible.

51 In the fifth place, in so far as Edison criticises the General Court on the ground that it erred in basing its reasoning, in paragraph 48 of the judgment under appeal, on the judgment of 14 March 2017, *Edison v EUIPO – Eolus Vind* (e) (T-276/15, not published,

EU:T:2017:163), it must be stated that Edison merely complains that that judgment cannot serve as a precedent and that it contains errors of logic. Edison does not, however, indicate, with sufficient precision, the reasons why the General Court's reference to that judgment is such as to vitiate, by an error of law, the reasoning in the judgment under appeal. It follows that that argument must be rejected as inadmissible.

52 As follows from Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, an appeal must indicate 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 the ground of appeal in question will be dismissed or rejected as inadmissible (judgment of 21 January 2016, *Galp Energía España and Others v Commission*, C-603/13 P, EU:C:2016:38, paragraph 43 and the case-law cited).

53 In the sixth place, the argument by which Edison merely reproduces unchanged the complaint raised at first instance before the General Court, alleging that electrical energy must be regarded, on the same basis as coal, gas and petroleum, as a motor fuel, must be rejected as inadmissible since Edison does not identify any error of law made by the General Court in that regard in the judgment under appeal.

54 It should be noted in this regard that an appeal is inadmissible in so far as it merely repeats the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by the General Court, without even including an argument specifically identifying the error of law allegedly vitiating the judgment of the General Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake on appeal (judgment of 26 January 2017, *Mamoli Robinetteria v Commission*, C-619/13 P, EU:C:2017:50, paragraph 43 and the case-law cited).

55 In the seventh place, as regards, first, Edison's argument according to which the General Court erred in holding, in paragraph 51 of the judgment under appeal, that the positions adopted by the EEA, the Department of Energy and Climate Change and the Sustainable Energy Authority are irrelevant for the interpretation of the concept of 'carburants'/'motor fuel' as perceived by economic operators, suffice it to state that the appeal is limited to points of law. The General Court thus has exclusive jurisdiction to establish and assess the relevant facts and to assess the value which should be attached to the items of evidence produced to it, unless there has been a distortion of the facts or evidence (judgment of 19 October 2017, *Agriconsulting Europe v Commission*, C-198/16 P, EU:C:2017:784, paragraph 69 and the case-law cited).

56 Secondly, as regards the claim that the General Court failed to examine certain annexes submitted before the

Board of Appeal, it is apparent from paragraphs 52 and 53 of the judgment under appeal that, while the General Court did not provide an account of each of those annexes, it nevertheless examined them in their entirety and considered them to be insufficient to prove that economic operators perceived the concept of '*carburants*'/'*motor fuel*', at the date of the filing of the application for registration, as covering electrical energy.

57 That criticism thus seeks to call into question the value that the General Court attached to the items of evidence produced before it, which, according to the case-law cited in paragraph 55 of the present judgment, does not come within the jurisdiction of the Court of Justice.

58 It follows that that argument is inadmissible.

59 The first ground of appeal must therefore be rejected as in part inadmissible, in part ineffective and in part unfounded.

The second ground of appeal

Arguments of the parties

60 By its second ground of appeal, Edison alleges that the judgment under appeal disregarded its procedural rights and infringed Article 75 of Regulation No 207/2009.

61 First, Edison criticises the General Court on the ground that it confirmed the decision at issue, even though that decision had been taken in disregard of its procedural rights. According to Edison, in failing to dispose of the substance of the request for a surrender to be entered, EUIPO reversed the burden of proving the unlawfulness of the refusal of the partial surrender as regards electrical energy, with the result that Edison was forced to put forward reasons to justify the inclusion instead of disputing EUIPO's reasons for the exclusion. 62 Secondly, Edison submits that the General Court merely confirmed the decision at issue even though that decision was vitiated by a lack of reasoning, in so far as it did not state reasons to justify the exclusion of electricity from '*illuminants*', '*fuels (including motor spirit)*' and '*carburants*'/'*motor fuel*', within the meaning of Class 4 of the eighth edition of the Nice Classification. Furthermore, Edison expresses the view that it is illogical to state, as the General Court did, that there are electric cars on the market and at the same time to deny that economic operators regard electrical energy as a motor fuel, even if only an alternative one.

63 EUIPO contends that the second ground of appeal should be rejected.

Findings of the Court

64 In the first place, in so far as Edison complains that the General Court confirmed the decision at issue, whereas that decision had been adopted in infringement of its procedural rights, it must be stated that Edison merely reproduces verbatim the arguments that it had already raised before the General Court, without identifying the specific error of law alleged to vitiate the judgment under appeal or, a fortiori, specifying the precise paragraphs of that judgment allegedly containing such an error of law.

65 Therefore, in accordance with the case-law cited in paragraph 54 of the present judgment, that argument must be rejected as inadmissible.

66 In the second place, in so far as Edison criticises the General Court on the ground that it confirmed the decision at issue, whereas that decision is vitiated by a lack of reasoning, suffice it to note that the General Court carried out an extensive analysis, in paragraphs 39 to 42, 43 to 47 and 48 to 54 of the judgment under appeal, of the reasons justifying the exclusion of electricity from '*illuminants*', '*fuels (including motor spirit)*' and '*carburants*'/'*motor fuel*', within the meaning of Class 4 of the eighth edition of the Nice Classification.

67 Moreover, Edison's claim that the judgment under appeal is vitiated by contradictory reasoning must also be rejected as unfounded in so far as it is the result of an incomplete reading of that judgment, in particular of its paragraphs 52 and 53. While the General Court conceded, in paragraph 52 of that judgment, that, having regard to the items of evidence produced by Edison, '*certain*' car models powered partially or entirely by electrical energy had already been placed on the market, it nevertheless held in the following paragraph of that judgment that the development, on the European market, of car models powered by electrical energy had not '*in reality*' taken place until several years after the application for registration at issue had been filed. Thus, that analysis cannot be vitiated by any contradiction.

68 It follows that the second ground of appeal must be rejected as in part inadmissible and in part unfounded.

69 Having regard to all of the foregoing considerations, the appeal must be dismissed in its entirety.

Costs

70 In accordance with Article 138(1) of the Rules of Procedure of the Court of Justice, applicable to the procedure on appeal in accordance with 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. As Edison has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by EUIPO.

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

1. Dismisses the appeal;
2. Orders Edison SpA to pay, in addition to its own costs, the costs incurred by the European Union Intellectual Property Office (EUIPO).

[Signatures]

* Language of the case: Italian.