

Ár 2011, mánudaginn 3. janúar, var haldinn fundur í áfrýjunarnefnd hugverkaréttinda á sviði iðnaðar. Fyrir var tekið:

**Mál 20/2009:**

**Árnason Faktor ehf. f.h. EnBW  
Energie Baden-Wuerttemberg  
AG**

**gegn**

**Einkaleyfastofunni**

**vegna ákvörðunar hennar frá  
29. október 2009 um að hafna  
skráningu vörumerkisins THE  
POWER PIONEERS  
(orðmerki), sbr. alþjóðlega  
skráningu nr. 913707.**

Kveðinn var upp svofelldur

*úrskurður:*

Með bréfi, dags. 28. desember 2009, skaut umboðsmaður áfrýjanda til áfrýjunarnefndar ákvörðun Einkaleyfastofu (ELS) frá 29. október 2009 um að hafna skráningu vörumerkisins THE POWER PIONEERS (orðmerki), sbr. alþjóðleg skráning nr. 913707 fyrir tilgreindar vörur í 9. og 37. flokki, vegna skorts á sérkenni skv. 1. mgr. 13. gr. laga um vörumerki, nr. 45/1997 (vml.). Umboðsmaður áfrýjanda krafðist þess að ákvörðun ELS yrði hrundið og merkið samþykkt til skráningar á Íslandi.

*Málavextir:*

I.

Með tilkynningu frá Alþjóðahugaverkastofnuninni (WIPO), dags. 15. mars 2007, kom fram að EbbW Energie Baden-Wuerttemberg AG færi fram á að alþjóðleg vörumerkjaskráning, nr. 913707 (THE POWER PIONEERS) gildi hér á landi sbr. 51. vml. fyrir tilgreindar vörur/þjónustu í 4., 6., 7., 9., 11., 12., 16., 17., 19., 32., 35., 36., 37., 38., 39., 40., 41., 42., 43., 44. og 45. flokki (sjá fylgiskjal I). Hin alþjóðlega vörumerkjaskráning byggði á þýskri vörumerkjaskráningu. Í bréfi þýskra skráningaryfirvalda til WIPO, dags. 18. maí 2007, var tilkynnt um að hin þýska grunnskráning merkisins hefði verið þrengd í flokkum 9 og 37 en

skráning merkisins í öðrum flokkum væri óbreytt. Með tilkynningu WIPO, dags. 28. nóvember 2007, var getið um þær vörur/þjónustu í 9. og 37. flokki, sem merkinu hefði ekki verið hafnað skráningu fyrir (sjá fylgiskjal II) en jafnframt tiltekið að alþjóðleg skráning merkisins fyrir aðrar vörur væri óbreytt.

Með bréfi ELS til WIPO, dags. 20. ágúst 2008, kom fram að skráningu merkisins hér á landi væri hafnað fyrir allar vörur og þjónustu í flokkum 9 og 37 þar sem merkið væri ekki hæft til að greina vöru eins aðila frá vörum annars, með vísun til 1. mgr. 13. gr. vml., en ekki virðist hafa verið tekin afstaða til skráningar merkisins í aðra flokka sem alþjóðaskráningin gildir fyrir þó af upphafsorðum í hinu staðlaða bréfi ELS megi ráða að umsókninni í heild sinni hafi verið hafnað.

Með bréfi umboðsmanns áfrýjanda til ELS, dags. 18. desember 2008, var vísað til þess að skv. 1. mgr. 2. gr. vml. gætu vörumerki verið hvers konar sýnileg tákn sem væru til þess fallin að greina vöru/þjónustu eins aðila frá vöru/þjónustu annars. Krafa þessi væri ítrekuð í 13. gr. laganna þar sem m.a. er mælt fyrir um að merki teljist ekki nægilega sérkennilegt ef það aðeins eða með smávægilegum breytingum eða viðbótum gefi til kynna m.a. tegund vöru, ástand, magn, notkun, verð, uppruna eða hvenær vara var framleidd. Sama eigi við um tákn eða orðasambönd sem teljast algeng í viðskiptum eða eru notuð í daglegu máli. Í 2. mgr. sömu greinar kæmi fram að við mat á sérkenni merkis ætti að líta til allra aðstæðna og því ljóst að tiltekið heildarmat þyrfti að fara fram þar sem litið væri til orðanna sem mynda vörumerkið og til þeirra vara/þjónustu sem því væri ætlað að auðkenna. Bent var á að áfrýjanda hefði aðeins verið synjað um skráningu á grundvelli 1. mgr. 13. gr. vml. til að auðkenna vörur í flokkum 9 og 37. flokki en sótt hefði verið um skráningu í mun fleiri flokkum. Umboðsmaðurinn benti á að vörulisti umsóknar áfrýjanda væri ítarlegur og að við mat á sérkenni merkja væri mikilvægt að líta á merkið í heild m.t.t. þeirra vara eða þjónustu sem því væri ætlað að auðkenna. Þá sagði orðrétt:

Enska orðið power þýðir samkvæmt orðabok.is meðal annars máttur, kraftur, orka, raforka, vald, knýja og enska orðið pioneers þýðir samkvæmt sömu orðabók meðal annars brautryðjandi, frumkvöðull, frumherji eða landnemi. Saman geta orðin því myndað orðasambandið „kröftugu landnemarnir“ eða „máttugu frumherjarnir“. Með vísan til merkingar orðasambandsins getur það að okkar mati ekki talist lýsandi fyrir þær vörur og þjónustu sem merkið óskast skráð fyrir, þrátt fyrir að það innihaldi orðið POWER. Orðið PIONEERS veitir að okkar mati vörumerkinu fullnægjandi sérkenni í skilningi vörumerkjaréttarins og tekur af allan vafa um að verið sé að visa með beinum hætti til ákveðins orkugjafa. Getur vörumerki umbjóðanda okkar því ekki talist lýsandi eða almennt fyrir þær vörur sem það óskast skráð fyrir.

Vísað var til þess að fengi áfrýjandi merkið skráð öðlaðist hann ekki einkarétt á orðunum sem mynda merkið einum og sér heldur aðeins á þeirri samsetningu orða sem merkið samanstæði af. Öðrum væri því frjálst að lýsa vöru/þjónustu sinni í sitthvoru lagi sem og hinum samsettu orðum í venjubundinni notkun. Umboðsmaður áfrýjanda sagðist telja að merkið THE POWER PIONEERS hefði til að bera nægilegt sérkenni í skilningi vörumerkjaréttar til að teljast hæft til skráningar. Þá benti umboðsmaðurinn á að krafa 1. mgr. 13. gr. vml. væri annars vegar til komin til að unnt væri að greina vörur eiganda merkis frá vörum annarra og hins vegar til að koma í veg fyrir að einstakir aðilar fái einkarétt á orðum sem aðrir á því sem gætu haft þörf á að nota. Kvaðst umboðsmaðurinn telja að hið umdeilda merki uppfyllti þessar kröfur enda gæfi orðasamband þess ekki til kynna hvaða vöru/þjónustu því væri ætlað að auðkenna. Umboðsmaður áfrýjanda sagðist ekki taka undir röksemd ELS þess efnis að merkið samanstæði af orðum sem aðrir þyrftu að geta notað og fullyrti að það sjónarmið ætti aðeins við um orð sem væru mikið notuð í daglegu máli eða fagmáli eða ýmis smáorð. Umboðsmaðurinn benti á úrskurð dönsku einkaleyfastofunnar í svonefndu LITE-máli<sup>1</sup> og tók fram að hann teldi að við mat á aðgreiningarhæfi og sérkenni vörumerkja væri eðlilegt að leggja til grundvallar rök dómstóls Evrópubandalaganna (EB-dómstólsins), sbr. t.d. svonefnt DOUBLEMINT-mál.<sup>2</sup> Íslenskum yfirvöldum bæri enda að hafa túlkun dómstólsins á reglugerð nr. 40/94 um Evrópvöruumerki til hliðsjónar svo ekki yrði hætta á að frjáls flutningur vöru og þjónustu á EES-svæðinu yrði torveldaður. Þá var vísað til úrskurðar áfrýjunarnefndar í svonefndu SILK ESSENTIALS-máli<sup>3</sup> og vísað til þriggja viðmiða um það hvort vörumerki hefði nægilegt sérkenni til að bera: Í fyrsta lagi hvort orðmerki væri líklegt til að vera notað sem almenn lýsing á viðkomandi vöru. Í öðru lagi hvort orðasamband væri venjubundin orðnotkun sem væri notuð til að lýsa ákveðnum eiginleikum vöru/þjónustu og í þriðja lagi hversu mikilvægir eiginleikar væru fyrir vöru/þjónustu sem merkinu væri ætlað að auðkenna. Þá sagði orðrétt:

... má í fyrsta lagi sjá að ekki er líklegt að orðasambandið verði notað sem almenn lýsing á þeim vörum og þjónustu sem það óskast skráð fyrir. Í öðru lagi er orðasambandið ekki venjubundin orðnotkun eða notuð til þess að lýsa ákveðnum eiginleikum vörunnar og þjónustunnar og í þriðja og síðasta lagi þá eru viðkomandi eiginleikar ekki nauðsynlegir eða eftirsóknarverðir eiginleikar fyrir viðkomandi vörur og þjónustu. Af þessu má sjá að þrátt fyrir að vörumerki umbjóðanda okkar innihaldi orðið „power“ þá fellur merkið ekki á fyrrgreindum viðmiðum, er það því okkar mat að merkið uppfylli að öllu leyti þær kröfur sem Evrópudómstóllinn hefur lagt fram við mat á sérkenni vörumerkja.

<sup>1</sup> T-79/00 frá 27. febrúar 2002.

<sup>2</sup> C-191/01 P.

<sup>3</sup> Úrskurður áfrýjunarnefndar nr. 12/2004.

Því næst vísaði umboðsmaður áfrýjanda til ýmissa skráninga hér á landi sem innihalda orðið POWER, m.a. til að auðkenna vörur í flokkum 9 og 37. Hann taldi merki áfrýjanda ekki síður sérkennandi en þessi merki en hið umdeilda merki væri auk þess hvorki lýsandi né sérkennalaust og aðrir aðilar hefðu ekki þörf á að nota orðasamsetningu þess til að auðkenna vöru sína eða þjónustu. Að lokum kvað umboðsmaðurinn mikilvægt að skráningaryfirvöld gættu samræmis í afgreiðslu umsókna og krafðist þess að hið umdeilda merki yrði samþykkt til skráningar hér á landi fyrir nánar tilgreindar vörur í flokkum 9 og 37.

Í bréfi ELS til umboðsmanns áfrýjanda, dags. 4. febrúar 2009, sagði orðrétt:

Merki umbjóðanda yðar er orðmerkið THE POWER PIONEERS og óskast það skráð fyrir tilgreindar vörur og þjónustu í flokkum 9 og 37. Í ensk-íslenskri orðabók Máls & Menningar (útg. árið 1999), er m.a. að finna eftirfarandi þýðingu á orðinu *power*: *kraftur, afl, orka*. Samkvæmt sömu orðabók þýðir *pioneer* m.a. *brautryðjandi, frumkvöðull*. *The* er ákveðinn greinir og veitir orðasambandinu ekki sérkenni. Á íslensku væri unnt að útleggja orðasambandið sem *orkufrumkvöðlarnir*. Það er mat Einkaleyfastofunnar að orðasambandið THE POWER PIONEERS skorti sérkenni og aðgreiningarhæfi, sbr. 1. mgr. 13. gr. vörumerkjálaga. Þá telur Einkaleyfastofan einnig að orðasambandið sé lýsandi fyrir gæði þar sem um sé að ræða frumkvöðlastarfsemi á sviði orkumála.

Þá benti ELS á að þó svo að það væri viðurkennt og eðlilegt að stofnunin tæki mið af túlkun EB-dómstólsins væri ekki þar með sagt að sú túlkun ætti við um öll mál. Þá benti ELS á að fleiri viðmið væru fyrir hendi við mat á sérkenni merkja heldur en þau sem stuðst hefði verið við í DOUBLEMINT-máli EB-dómstólsins. ELS féllst ekki á skráningu merkisins en tók fram að hún mundi endurskoða ákvörðun sína ef fram kæmi takmörkun á vörulista.

Í bréfi umboðsmanns áfrýjanda til ELS, dags. 11. mars 2009, var vísað til þess að þrátt fyrir að vörumerki áfrýjanda mætti útleggja sem orkufrumkvöðlana þá væri það ekki lýsandi fyrir gæði vara í flokkum 9 og 37. Umboðsmaðurinn ítrekaði þau tvö sjónarmið sem búa að baki kröfunni um aðgreiningarhæfi og sérkenni og vísaði til athugasemda í frumvarpi því sem varð að gildandi vörumerkjálögum. Annars vegar að einfaldar myndir, mynd af vöru eða lýsing á henni með almennum orðum væri ekki til þess fallin að gefa vöru sérkenni í huga almennings og hins vegar að ekki væri talið réttmætt að einstakir aðilar helguðu sér almennar lýsingar á vöru enda mundi slíkt takmarka svigrúm annarra til að lýsa sinni vöru. Þá sagði umboðsmaðurinn að röksemdafærslu fyrir skráningarhæfi hins umdeilda merkis mætti skipta í tvennt: Í fyrsta lagi mætti spyrja hvort merkið væri til þess fallið að greina vörur eins eiganda merkis frá vöru/þjónustu annars og í öðru lagi hvort aðrir aðilar hefðu hefðu þörf á að nota merkið til að lýsa sínum vörum/þjónustu. Umboðsmaðurinn taldi hið umdeilda merki vel til þess fallið að greina vörur/þjónustu eins aðila frá öðrum þar sem hann taldi það ekki lýsandi

fyrir gæði þeirra vara og þjónustu í flokkum 9 og 37 sem merkinu væri ætlað að auðkenna. Þá taldi hann að aðrir aðilar hefðu ekki þörf á að nota orðasambandið til að lýsa sínum vörum/þjónustu og þó svo að áfrýjandi fengi einkarétt á notkun merkisins takmarkaði það ekki svigrúm annarra til að kynna sínar vörur/þjónustu. Því næst tók umboðsmaðurinn fram að það væri ályktun ELS að um frumkvöðlastarfsemi á sviði orkumála væri að ræða en áfrýjandi gæfi sig ekki út fyrir að vera slíkur frumkvöðull og benti hann jafnframt á að merkið hefði verið samþykkt til skráningar í Danmörku, Svíþjóð, Bretlandi og Sviss. Umboðsmaður áfrýjanda byggði á því til vara að hið umdeilda merki væri vísbendandi (e. suggestive) þar sem það gæfi til kynna að um frumkvöðlastarfsemi gæti verið að ræða án þess þó að vísa til þess hvers kyns þjónustan væri. Umboðsmaðurinn benti á að hann teldi orðasamsetninguna ekki lýsandi fyrir tegund eða eiginleika þeirra vara og þjónustu í flokkum 9 og 37 sem merkinu væri ætlað að auðkenna og sagðist ekki sjá að það að veita einu fyrirtæki einkarétt á orðasamsetningunni gæti verið takmarkandi fyrir aðra aðila. Sagði hann að hafa yrði í huga að ef orð sem væru þekkt úr tungumálinu yrðu skráð sem vörumerki veitti það eiganda skráningarinnar ekki rétt til að banna öðrum að nota viðkomandi orð sem hluta af málinu í eðlilegri notkun en eiganda merkis væri aðeins heimilt að banna öðrum að nota heiti og ruglingslega lík heiti sem vörumerki fyrir eins eða svipaða vöru eða þjónustu sbr. 4. gr. vml.

Með bréfi ELS til umboðsmanns áfrýjanda, dags. 3. júní 2009, var vísað til þess að orðið frumkvöðull væri í orðabók skilgreint sem maður sem kemur auga á nýja möguleika í atvinnurekstri og hrinti þeim í framkvæmd. ELS kvaðst telja hið umdeilda orðasamband mynda þau tengsl við neytendur að þeir héldu að um væri að ræða frumkvöðlastarfsemi á sviði orku. Þá ítrekaði ELS að hún teldi merkið skorta sérkenni og aðgreiningahæfi fyrir hluta af þeim vörum og þeirri þjónustu sem það óskaðist skráð fyrir ásamt því að vera lýsandi fyrir gæði. Þær vörur og sú þjónusta sem höfnunin náði til voru eftirfarandi: installations for energy generation, mainly comprising electric fuel cells; gasometers; electrochemical fuel cells for power generation; photovoltaic installations for power generation; gas checking devices (included in this class) í 9. flokki og building trade, namely construction of waste treatment plants, construction of power stations, especially hydroelectric power stations, nuclear power stations, coal-fired power stations, gas and steam turbine power stations, combined heating and power stations, heating stations; construction of landfill gas-fired power stations and natural gas/solar heat plants; construction of solar power stations, wind power stations, hydropower stations, biogas power stations; construction of power stations, especially hydropower stations, nuclear power stations, coal-fired power stations, gas and steam turbine

power stations, cogeneration systems, combined heating and power stations, heating stations, refuse incineration plants, energy-from-waste plants, hydropower and wind power stations, photovoltaic installations and transformer stations; repair business, namely repair of energy networks, waste treatment plants, irrigation plants; construction and maintenance of energy generation and distribution plants, fuel cells, wind power stations and photovoltaic installations; maintenance of energy, fresh water and waste water plants and networks; realisation (construction) of cathodic corrosion protection plants; construction and maintenance of waste water and fresh water plants; installation of electric counters and meters for current, gas and water; information technology equipment as well as photovoltaic plants, utility service lines (e.g. gas and electricity), buildings and their parts; construction of gas plants, especially liquefied gas plants; construction of gas storage plants; construction and servicing of gas transport lines plus related installations, especially mixing, measuring and control stations as well as stations for transfer of gas, storage plants and telecommunication plants; services in the field of the repair business, namely repair of waste treatment plants, power stations, energy generation and distribution plants, waste water and fresh water plants and networks; realisation (construction) of consumer installations (for gas/natural gas, local heating, cold) í 37. flokki.

ELS tilgreindi þær vörur og þá þjónustu sem höfnun á skráningu næði til og sagðist telja orðasambandið THE POWER PIONEERS ekki vera til þess fallið að greina þær vörur og þá þjónustu frá sams konar vörum/þjónustu annarra. Þá taldi stofnunin að það yrði takmarkandi fyrir aðra aðila ef áfrýjanda yrði veittur einkaréttur á að nota orðasambandið THE POWER PIONEERS. ELS gat þess að ákvarðanir skráningaryfirvalda í hverju ríki væru sjálfstæðar og þrátt fyrir að rétt gæti verið að líta til framkvæmdar í öðrum löndum væri vörumerkjarétturinn landsbundinn sem leiddi til þess að afstaða skráningaryfirvalda erlendis hefði ekki afgerandi úrslit á skráningar merkja hér á landi. Var því ekki fallist á skráningu merkis áfrýjanda nema fyrir ákveðnar vörur í flokkum 9 og 37.

Með bréfi umboðsmanns áfrýjanda til ELS, dags. 27. ágúst 2009, var því mótmælt að merkinu ætti að synja um skráningu á þeim grundvelli að það myndaði tengsl í hugum neytenda við þær vörur/þjónustu sem því væri ætlað að auðkenna. Sagði umboðsmaðurinn að vísbendandi merki eða merki sem leiddu huga neytenda að því sem merkinu væri ætlað að auðkenna væru skráningarhæf. Ekki væri rétt að rugla þessu við það sem lægi til grundvallar mati á hættu á ruglingi með merkjum en ekkert í vörumerkjalögnum kæmi í veg fyrir að vörumerki, sem myndaði tengsl eða leiddi hugann til þeirra vara/þjónustu sem því væri ætlað að auðkenna,

fengist skráð svo lengi sem það lýsti ekki vöru/þjónustu beint, eða með smávægilegum breytingum. Sem dæmi tók umboðsmaðurinn merkin HESTURINN OKKAR og OKKAR LÍF.<sup>4</sup> Þá sagði orðrétt:

Ágætt viðmið við mat á því hvort vörumerki teljist lýsandi er hvað ætla megi að komi upp í huga neytenda sem heyrir merkið first. Ef viðkomandi heyrir THE POWER PIONEERS án þess að vita nánari deili á því þá kemur í raun ekkert upp í hug annað en það sem orðin hvor fyrir sig gefa til kynna. Orðasambandið lýsir á engan hátt þeim vörum og þjónustu sem um ræðir en vekur mögulega áhuga og forvitni neytenda um að kynna sér frekar starfsemi umbjóðanda okkar. Sérstaklega ber að hafa í huga að nákvæmlega þessi orðasamsetning, sem umbjóðandi okkar notar sem auðkenni á tilteknum vörum og þjónustu, er á engan hátt venjubundin orðnotkun til að lýsa eiginleikum þeirrar vöru og þjónustu sem vörumerkinu er ætlað að auðkenna.

Umboðsmaðurinn sagðist telja merkið í heild sinni gefa vörunni sérkenni í huga almennings og ítrekaði að fengi áfrýjandi merkið skráð öðlaðist hann ekki einkarétt á sérhverju orði orðasambandsins heldur aðeins á samsetningunni. Þá ítrekaði hann að íslenskum yfirvöldum bæri að taka tillit til túlkunar EB-dómstólsins og vísaði til svonefnds BABY DRY-máls hans.<sup>5</sup> Þá vísaði hann til þess að samsetning orðanna þriggja í merkinu væri ekki hefðbundin orðnotkun til að lýsa þeim vörum/þjónustu sem merkingu hefði verið synjað skráningu í og því væri engin leið fyrir neytendur að átta sig beint á því um hvaða vöru eða þjónustu væri að ræða. Áfrýjandi hefði því skapað nýyrði sem væri ekki vanaleg lýsing á þeim vörum/þjónustu sem hér væri um að ræða eða eðli þeirra og því ætti merkið að teljast skráningarhæft auk þess sem hrynjandin í því væri til þess fallin að gefa merkinu aukið sérkenni. Þá ítrekaði umboðsmaðurinn fyrri röksemdir, m.a. tilvísun til svonefnds DOUBLEMINT-máls EB-dómstólsins. Þá kvaðst hann ósammála því mati ELS að hið umdeilda merki væri lýsandi fyrir gæði þótt hann féllist á að orðið POWER væri til þess fallið að vekja upp jákvæð hughrif af einhverju áhrifamiklu, sterku, orkumiklu og að PIONEERS ætti að vísa til brautryðjenda, frumherja eða frumkvöðla. Hins vegar sagðist hann ekki fallast á að samsetning orðanna vísaði til eða væri lýsandi fyrir gæði varanna og þjónusturnnar. Þá ítrekaði hann fyrri röksemdir sínar um vísbendandi merki og vísaði til norræna fræðimanna máli sínu til stuðnings. Þá sagði orðrétt:

...er um að ræða enska orðið POWER sem er margrætt orð sem getur m.a. þýtt máttur, kraftur, afl, styrkur, hæfileiki, hæfni, geta, heimild, umboð, vald, valdhafi, veldi og orka. PIONEERS getur útlagst á íslensku líkt og komið hefur fram sem brautryðjandi, frumkvöðull, landnemi o.fl. Einkaleyfastofa einblínir á aðeins eina mögulega þýðingu orðsins POWER sem er „orka” og telur því að merkið sé lýsandi fyrir áður nefndar vörur í flokki 9 og þjónustu í flokki 37. Þessari nálgun erum við ósammála. Þegar um er að ræða margræð orð líkt og POWER í samhengi við önnur orð líkt og hér um ræðir þá getur Einkaleyfastofa ekki gefið sér að skilningur eða skynjun neytenda

<sup>4</sup> Skráningar nr. 2/2003 og 457/2009.

<sup>5</sup> C-383/99 P.

verði allur á sama veg og að sú merking sem að neytendur leggi í vörumerki umbjóðanda okkar verði með sama hætti og Einkaleyfastofu þ.e. að um sé að ræða frumkvöðlastarfsemi á sviði orku en ekki „máttugu frumherjarnir“ eða „kröftugu landnemarnir“ svo eitthvað sé nefnt.

Í bréfi ELS til umboðsmanns áfrýjanda, dags. 29. október 2009, ítrekaði hún fyrri röksemdir sínar um að hún teldi orðasambandið m.a. lýsandi fyrir gæði þar sem í starfsemi áfrýjanda fælist það að koma auga á nýja möguleika í atvinnurekstri á sviði orkumála. Þá benti ELS á að í 1. mgr. 13. gr. vml. kæmi fram orðasambandið „að gefa til kynna“ og sagði mat sitt byggjast á því að hið umdeilda merkið gæfi til kynna að um væri að ræða frumkvöðlastarfsemi á sviði orku og skorti af þeim sökum sérkenni og aðgreiningarhæfi. ELS ítrekaði mat sitt á merkinu og tók fram að ef a.m.k. ein af hugsanlegum merkingum gæfi til kynna eiginleika vöru/þjónustu þá bæri að hafna skráningu merkis og vísaði til dóms EB-dómstólsins í tengslum við það.<sup>6</sup> Þá gat stofnunin þess að hún teldi þau dæmi sem umboðsmaður áfrýjanda vísaði til máli sínu til stuðnings ekki vera sambærileg þessu tilviki og féllst ekki á skráningu merkisins fyrir ákveðnar umsóttar vörur og þjónustu í flokkum 9 og 37 en tilgreindi að merkið yrði skráð fyrir aðrar umsóttar vörur og þjónustu í þessum flokkum. Ekki var minnst á aðrar vörur og þjónustu sem hin alþjóðlega vörumerkjaskráning tekur til.

## II.

Umboðsmaður áfrýjanda skaut ákvörðun ELS til áfrýjunarnefndar með bréfi, dags. 28. desember 2009, þar sem hann krafðist þess að ákvörðun ELS yrði hrundið og merkið samþykkt til skráningar á Íslandi. Í greinargerð hans, dags. 6. apríl 2010, ítrekaði hann tilvísun í 2. gr. og 13. gr. vml. og benti á að ELS hefði hafnað skráningu merkisins með hliðsjón af merkingu þess, þ.e. *orkufrumkvöðlarnir*. Umboðsmaðurinn tók fram að þó svo að vörumerki samanstandi af almennu orði sem hafi ákveðna merkingu í huga folks þurfi það ekki að þýða að um lýsandi merki sé að ræða eða að ástæða sé til að synja um skráningu þar sem það innhaldi algengt tákni eða orðasamband og því yrði að líta á merki í heild. Umboðsmaðurinn ítrekaði að hann teldi merkið ekki lýsandi og að samsetning orðanna gæfi ekki til kynna hvaða vörur eða þjónustu væri um að ræða. Þá sagði hann ekki ljóst hvernig orðið *orkufrumkvöðlarnir* gæti verið lýsandi fyrir þær vörur og þjónustu sem um ræðir. Orðið *POWER* gæti vísað til þess að starfsemi áfrýjanda tengdist framleiðslu og dreifingu orku en neytendur gætu talið að vísað væri til þess að um kraftmikið fyrirtæki væri að ræða. Orðið *PIONEERS* gæti sömuleiðis vísað til þess að áfrýjanda væri í frumkvöðlastarfsemi eða að

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<sup>6</sup> C-265/00 BIOMILD.



fyriertæki hans væri framsækið og leiðandi á ákveðnu sviði en þær vörur og sú þjónusta sem merkinu hafi verið synjað um skráningu á vísuðu ekki til frumkvöðlastarfsemi heldur væri um að ræða hefðbundna starfsemi áfrýjanda. Þá ítrekaði hann ýmis dæmi úr framkvæmd, varakröfu sína um að merkið teldist vísbendandi og benti á dóma EB-dómstólsins í svonefndum NETMEETING-máli og OILGEAR-máli.<sup>7</sup> Umboðsmaður áfrýjanda gat þess að hann teldi hið umdeilda merkið a.m.k. fela í sér lágmarkssérkenni þar sem merkið sjálft gæfi ekki skýrt í ljós fyrir neytanda hver varan og þjónusta væri sem því væri ætlað að auðkenna. Getið var um svonefnt EASYBANK-mál EB-dómstólsins<sup>8</sup> og voru lokaorð umboðsmannsins þau að merki sem gæfu vísbendingu um eiginleika vöru væru skráningarhæf og stæðu ekki í vegi fyrir því að aðrir notuðu orðin sem vörumerkið samanstæði af enda aðeins óskað eftir vernd fyrir samsetningu orðanna sem slíkra en ekki fyrir orðin ein og sér.

Í greinargerð ELS til áfrýjunarnefndar, dags. 18. júní 2010, var fjallað um það að með 1. mgr. 13. gr. vml. væri lögð áhersla á að vörumerki væri nægilega sérkennilegt, þ.e. væri auðkennandi, til að geta talist vörumerki. Sérkenni væri forsenda þess að vörumerki gæti gegnt hlutverki sínu. ELS ítrekaði að hún teldi orðasambandið THE POWER PIONEERS mynda þau tengsl í hugum neytenda að um frumkvöðlastarfsemi á sviði orku væri að ræða og kvað það enn vera mat sitt að merkið skorti sérkenni og aðgreiningarhæfi fyrir hluta þeirra vara og þjónustu sem það óskaðist skráð fyrir., sbr. 1. mgr. 13. gr. vml. ásamt því að vera lýsandi fyrir gæði. ELS ítrekaði að hún hafnaði skráningu hins umdeilda merkis fyrir hluta þeirra vara, sbr. fylgiskjal III, og þjónustu sem sótt var um en taldi jafnframt upp hvaða vörur og þjónustu í flokkum 9 og 37 merkið teldist vera skráningarhæft fyrir, sbr. fylgiskjal II.. Ekki var kveðið á um skráningarhæfi merkisins í öðrum flokkum sem merkið er skráð fyrir í hinni alþjóðlegu vörumerkjaskráningu nr. 913707.

Málið var tekið til úrskurðar á fundi nefndarinnar þann 23. september 2010.

*Niðurstaða:*

### III.

Deilt er um hvort orðmerkið THE POWER PIONEERS hafi til að bera nægilegt sérkenni til að vera skráningarhæft skv. 1. mgr. 13. gr. vml. fyrir tilgreindar vörur og þjónustu í flokkum 9

<sup>7</sup> Mál nr. R-26/1998-3 og R-36/1998-2.

<sup>8</sup> T87/00

og 37, sbr. fylgiskjal III. Umsókn um skráningu umdeilds orðmerkis er á grundvelli tilkynningar alþjóðaskrifstofu WIPO um að eigandi hinnar alþjóðlegu skráningar orðmerkisins THE POWER PIONEERS, nr. 913707, óski eftir því að skráning hans öðlist gildi hér á landi, sbr. 51. gr. vml. Hin alþjóðlega skráning tekur til mun fleiri flokka en um er deilt í þessu máli en ELS virðist ekki hafa tekið afstöðu til skráningarhæfni þeirra. Áfrýjun málsins af hálfu áfrýjanda tekur einungis til höfnunar ELS á tilgreindum vörum og þjónustu í flokkum 9 og 37.

Merki sem eingöngu teljast lýsandi uppfylla ekki skilyrði 13. gr. vml. Sama á við um tákni eða orðasambönd sem teljast algeng í viðskiptum eða notuð eru í daglegu máli. Smávægilegar breytingar eða viðbætur á þannig merkjum breyta engu um sérkenni þeirra. Skilyrðið um að merki skuli hafa sérkenni er rökstutt með því annars vegar að lýsandi merki séu ekki til þess fallin að greina vörur eða þjónustu merkiseiganda frá vörum eða þjónustu annarra og hins vegar að enginn skuli fá einkarétt á orðum sem aðrir á viðkomandi sviði viðskipta hafi þörf á að nota. Við mat á því hvort merki uppfylli skilyrði um sérkenni þarf að meta hvert tilvik fyrir sig og aðstæður allar, eins og fyrir hvaða vörur merki óskast skráð, fyrri notkun o.fl. Ekki er því sjálfkrafa hægt að byggja á eldri fordæmum eða mati á öðrum merkjum. Orðmerki á erlendu tungumáli getur einnig skort sérkenni á Íslandi ef um er að ræða tungumál sem gera má ráð fyrir að þorri almennings þekki til, eins og t.d. er um ensku.

Meginhlutverk vörumerkja er að greina vörur eða þjónustu eins aðila frá vörum og þjónustu annarra, sbr. 1. mgr. 2. gr. vml. Í því felst hvorki krafa um frumleika á sviði málvísinda, listræna sköpun né hugmyndaauðgi. Nægilegt er að almenningi sé kleift að greina vörur eða þjónustu frá vörum eða þjónustu annarra. Orðmerkið THE POWER PIONEERS má þýða á íslensku sem orkufrumkvöðlar. Orðasambandið hefur jákvæða merkingu fyrir vörur og þjónustu á sviði orkumála. Það er þó ekki sjálfgefið að það sé þar með lýsandi fyrir slíka vörur eða þjónustu, gæði hennar, tegund, ástand eða annað eðli hennar. Orðið POWER eitt sér væri hugsanlega ekki skráningarhæft fyrir vörur og þjónustu sem framleiða eða tengjast orku en hið sama gildir ekki sjálfkrafa um orðið PIONEER. Þótt frumkvöðlar geti vissulega komið að starfsemi á sviði orku, líkt og öðrum sviðum, þá er orðið ekki lýsandi í skilningi vml. fyrir slíka starfsemi. Því verður ekki talið að orðasambandið THE POWER PIONEERS sé lýsandi eða skorti aðgreiningareiginleika fyrir þær vörur í flokki 9 og 37 sem óskað er skráningar fyrir. Ekki liggur fyrir að orðasambandið THE POWER PIONEERS sé algengt orðalag um viðskipti á sviði orkumála. Orðasamsetningin er hvorki algeng í daglegu máli né verður talið að aðrir hafi þörf á að nota hana í atvinnuskyni umfram það sem 1. mgr. 6. gr. vml. heimilar.

Af þeim sökum verður talið að orðmerkið THE POWER PIONEERS sé skráningarhæft fyrir allar þær vörur í flokkum 9 og 37 sem sótt var um skráningu fyrir hér á landi samkvæmt alþjóðlegri vörumerkjaskráningu nr. 913707, með síðari breytingum. Ákvörðun Einkaleyfastofunnar, dags. 29. október 2009, um að hafna skráningu merkisins THE POWER PIONEERS fyrir ákveðnar vörur og þjónustu í flokkum 9 og 37 er því hnekk.

Úrskurð þennan kváðu upp Rán Tryggvadóttir formaður áfrýjunarnefndar, Hafdís Ólafsdóttir aðjúnt og Sigurður R. Arnalds dósent.

*Úrskurðarorð:*

Ákvörðun Einkaleyfastofu, dags. 29. október 2009, um að hafna skráningu merkisins THE POWER PIONEERS fyrir ákveðnar vörur og þjónustu í flokkum 9 og 37, er hnekk.

Rán Tryggvadóttir

Hafdís Ólafsdóttir

Sigurður R. Arnalds

Rétt endurrit staðfestir

## **Fylgiskjal I.**

Vörulistinn er á ensku. Sótt var um skráningu merkisins  
THE POWER PIONEERS fyrir eftirtaldar vörur og þjónustu:

Class 4: Technical oils and greases; lubricants; dust absorption, dust wetting and dust bonding agents; fuels (incl. motor fuels) and luminous materials; candles, wicks; gases as fuels; liquefied gases, industrial gases; liquefied and compressed gas.

Class 6: Door chains; window handles with additional lock; lateral hinge safety device for windows; safety hardware; safety rosettes; safety striking plates; mechanical forced locking; protective plates for doors and windows; safety chains; mechanical break open catches; mechanical safety devices, especially safety devices for blinds; cellar shaft safety devices; cellar window safety devices; cellar safety gratings; locks (except electric locks), especially padlocks; long shackle type connectors, cable locks, helix cable locks; mortise locks; padlocks; armoured bolt locks; chain locks; additional case locks; alarm door locks; long shackle type connectors; all above mentioned goods out of metal.

Class 7: Machines, namely automatic filling machines, heel production machines, suction machines for industrial purposes, separators (machines), painting machines, drive mechanisms except for land crafts, ash screens (machines), draught frames, mining machines, concrete mixing plants, binding machines, tin printing machines, drilling machines, crushers, comminution machines, stampers (machines), steam engines, compressed air machines, printing machines, wrapping machines, electromechanical machines for the chemical industry, degreasing machines, earth movers, crude oil refining machines, ore dressing machines, moulding machines, milling machines, dyeing machines, hoisting machines, filling machines, blowers, screw taps, thread cutters, foundry machines, glass processing machines, railway track machinery, ditch excavation machines, engraving machines, electric hand drills, stapling machines, planing machines, adjusting machines, kneading machines, agricultural machines, chisel machines, knife grinding machines, metal working machines, riveting machines, paper production machines, polishing machines and apparatus (electric), embossing machines, straightening machines, stirring machines, tracklaying machines, grinding machines, cutting machines, welding machines (electric), screening machines, sorting machines for industrial purposes, dish washers, stone shaping machines, franking machines, road making machines, tobacco processing machines, tar spraying machines, dividing machines, typographical machines, whitewashing machines, packaging machines, washing machines, hosiery machines, centrifugal machines, comminution machines for industrial purposes, cutting machines and machine tools; motors (except motors for land crafts); clutches and devices for power transmission (except those for land crafts); not manually operated agricultural devices; incubators for eggs; electrical food processors including domestic electrical blending mixers (included in this class); installations for energy generation, namely wind power generators, machine driven hand tools; installations for energy generation mainly comprising dynamos and/or electric generators and/or current generators and/or turbines (except for land crafts), hydraulic turbines or AC generators; crude oil refining machines; gas cleaning devices.

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, controlling, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, storing, regulating and controlling electricity; electric measuring devices and instruments; magnetic recording

carriers, disk records; automatic vending machines and mechanisms for coin operated machines; cash registers; calculating machines; software, data processing equipment and computers; web pads; electric devices and products of information and communication technology (included in this class); electric devices, hardware and software for remote operation and remote control of devices and installations in the domestic field and in the garden; electronic computer networks (included in this class); electronic hotel guides; electric devices, hardware and software for the purpose of detecting functional defects (also by remote diagnosis) as well as of data transmission regarding such functional defects and the repair of such functional defects on domestic appliances and installations as well as in the garden (included in this class); fire-extinguishing apparatus; alarm systems; domestic safeguarding devices (alarm systems); burglar alarm systems; safety cameras; devices for reception, recording, transmission, processing, output and reproduction of data, speech, text, signals, sound and video; sound carriers, sound video carriers (except unexposed films), data carriers; coded phone cards; sound recording devices, phototelegraphic devices, sound and video reception devices, TV sets, telephones, remote controls, transmitting and receiving sets, radio telegraphy sets, magnetic tape recorders for data processing, electric measuring instruments, monitors for computer hardware, computer peripherals, photocopying apparatus and machines (incl. electronic and thermal devices and machines), CD players, projecting apparatus, video recorders, transmitters for electronic signals, video games as attachments for TV sets, make contacts, ammeters, circuit breakers, electric loss indicators, current transformers, commutators, fax machines, telecopiers, electric temperature indicators, audio amplifiers, sound reproduction units, telephone transmission apparatus, surveying apparatus and instruments, distribution cabinets for electricity, distribution panels for electricity, thermal control apparatus, electric counters, electric totalizers, time recording devices, time switches (not for clockworks); other electric counting devices; installations for energy generation, mainly comprising electric fuel cells; gasometers; electrochemical fuel cells for power generation; photovoltaic installations for power generation; gas checking devices (included in this class).

Class 11: Devices for lighting, heating, steam generation, cooking, refrigeration, drying, ventilation and water conduits as well as sanitary installations; electrochemical fuel cells for heat generation; photovoltaic installations for heat generation; fittings for gas and natural gas, namely gas meters, gas pressure controllers as well as gas mask canisters, natural gas preheaters, safety shut-off valves and blow-off valves for gas pressure controllers; gas burners, gas producers, gas lighters, gas lamps, gas boilers, gas condensers (except machine parts), wet gas scrubbers (parts of gas installations), control and safety accessories for gas units as well as for gas conduits and water devices, freezing cupboards and chest freezers; electric lamps; air conditioning systems, air conditioning apparatus; light distributors, tubular lamps for lighting purposes; fittings, devices and installation material for liquefied gas plants, refrigerating sets and refrigerators; installations for energy generation, namely gas generators.

Class 12: Vehicles; apparatus for locomotion by land, air or water.

Class 16: Paper, cardboard and goods made out of such materials (included in this class); printer's products; bookbinding articles; photographs; stationery; adhesives for stationery or for household purposes; artists' supplies, paint brushes; typewriters and office supplies (except furniture); instructional and teaching material (except apparatus); packaging material out of plastic material (included in this class); printers' type; printing blocks; maps; atlases; hotel guides; printed products with information on installation work, repair services, handcraft services, plant engineering services, lock and key services, caretaker services, home help services, gardening services, services in the field of house and real estate administration,

building and real estate business, technical and commercial building management; adhesive labels; labelled or print foils (decalcomanias) to stick on, label or decorate walls, windows, vehicles and other surfaces and objects; office supplies, namely notepads (card blocks), card boxes, ball-pens, displays made of cardboard, recipe collections, printing blocks and artwork, refreshing tissues (out of paper), packing bags (out of plastic); phone cards (uncoded).

Class 17: Foils for the production of labelled or decorated surfaces.

Class 19: Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

Class 32: Beers; mineral waters and waters containing carbon dioxide and other soft drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Class 35: Advertising; business management; company administration; office work; marketing of products and services of public energy and water utilities by business consultation, market research, public relations, organisation of exhibitions and trade fairs for advertising purposes, distribution of samples and presentation of goods for advertising purposes and by advertising; marketing of telecommunication networks including the services which are based upon telecommunication networks for the transmission of speech, data and images as well as of multimedia value-added services by business consultation, market research, public relations, organisation of exhibitions and trade fairs for advertising purposes, distribution of samples and presentation of goods for advertising purposes and by advertising; business consultation, market research, public relations, planning and execution of events in the field of public relations for the advertising of products for the cathodic corrosion protection; organisation of exhibitions and trade fairs for advertising purposes, distribution of samples and presentation of goods for advertising purposes and by advertising; realisation of multimedia advertising presentations; management of installations for energy generation and distribution; procurement of personnel for building management services; bookkeeping with respect to building management measures; compilation, preparation and systematisation of data in computer data bases; file management by means of computers; service of a price agency, namely determination of prices for goods and/or services; services of a multimedia agency, namely planning and organisation of advertising measures, presentation of companies on the Internet and in other media; execution of auctions, also in the Internet; supply order service, invoice settlement for electronic ordering systems, goods and services presentation; brokerage and renting of advertising surfaces, also on the Internet; providing of trade and offer contacts via the Internet; providing of trade contacts on the Internet; advertising on the Internet for third parties; organisational and business consultation services in the fields of energy, fuel cells, wind power installations and photovoltaic installations; energy consultation for households, trade and industry (included in this class); marketing services, namely marketing of new technologies, especially in the environmental and energy field; arrangement of commercial transactions and contracts for third parties, especially arrangement of contracts for third parties on transportation capacities and transportation services by means of power grids, also within the scope of e-commerce; organisational and business consultation in the energy field; preparation of cost-price-analyses in the field of building management; consumer consultation, also online, with respect to goods of daily use, luxury and utility articles, as well as with respect to goods and services for commercial and industrial use; craftsmen search and providing services, also online; expertise preparation on organisational and business questions with respect to energy, water, waste water and lighting equipment; business consultation in trade promotion; human resources, namely providing, recruitment, selection, management consulting of personnel, providing of temporary staff; organisational

and business consultation in connection with energy-saving measures and in connection with the optimisation of heating systems; providing of personnel for the operation of power stations, especially hydropower stations, nuclear power stations, coal-fired power station, gas and steam turbine power stations, cogeneration systems, combined heating and power stations, heating stations, refuse incineration plants, energy-from-waste plants, hydropower and wind power stations, photovoltaic installations and transformer stations; providing of personnel for the energy management, namely management of energy generation and distribution plants; providing of personnel for the operation of distribution and transportation networks; providing of personnel for the operation of workshops; providing of personnel for the operation of sewage treatment plants; providing of personnel for the operation and maintenance of telecommunication networks; providing of personnel for the operation of electric street lighting systems; providing of personnel for the waste treatment plants; personnel leasing, namely providing of personnel for the installation, repair and maintenance of heating facilities, air conditioning systems, ventilation systems, sanitary facilities, management and control systems; temporary transfer of personnel; procurement of spare parts for third parties as well as procurement of technical and other consumables such as for example cleansing agents and toilet paper in connection with the maintenance and servicing of buildings; reading of electrical counters and meters for current, gas and water for third parties; heat consumption reading and accounting for the supply of heat for heating purposes from other companies; data management by means of computers; gas consumption reading and accounting for the supply of gas from other companies; brokerage of advertisements; updating of Internet contents.

Class 36: Insurance, effecting insurance (especially standard automobile public liability insurance, automobile personal liability and property-damage insurance and comprehensive coverage excluding collision), settlement of claims (insurance); finance, monetary transactions, real estate business; electronic capital transfer; home banking; telebanking, namely online settlement of banking transactions; financial consultation regarding investment of risk capital; leasing of transport networks for energy transmission; building management, namely renting of buildings; financial consulting services in the fields of energy, fuel cells, wind power plants and photovoltaic installations; financial energy consultation; development of integral energy concepts with respect to finance; financial consultation with respect to energy-saving measures and with respect to the optimisation of heating systems; financial services; house and real estate administration; building administration; caretaker services (included in this class); financing of measures in connection with land development; financing consultation and financial planning in the field of building management; automobile leasing, financing of the acquisition of automobiles; real estate transactions of any type; granting of monetary loans and negotiation of loans; financial promotion of the development as well as of the testing of electrically driven off-track vehicles; financial participation in innovative and technology-oriented enterprises; financial consultation in the field of production of electric and thermal energy.

Class 37: Building trade, namely construction of waste treatment plants, construction of power stations, especially hydroelectric power stations, nuclear power stations, coal-fired power stations, gas and steam turbine power stations, combined heating and power stations, heating stations; construction of landfill gas-fired power stations and natural gas/solar heat plants; construction of solar power stations, wind power stations, hydropower stations, biogas power stations; construction of power stations, especially hydropower stations, nuclear power stations, coal-fired power stations, gas and steam turbine power stations, cogeneration systems, combined heating and power stations, heating stations, refuse incineration plants, energy-from-waste plants, hydropower and wind power stations, photovoltaic installations

and transformer stations; installation work; repair business, namely repair of network systems, energy networks, waste treatment plants, power stations, irrigation plants, alarm systems, electrical appliances, heating, air conditioning systems, refrigerators, telephones, stoves, office machines, machines, pumps, locks and automobiles; repair of data systems technology plants; network management, namely installation and maintenance of network systems (hardware); realisation (construction) and installation of distribution and transport networks as well as of transformer stations; construction of pipeline networks; construction and maintenance of energy generation and distribution plants, fuel cells, wind power stations and photovoltaic installations; maintenance of energy, fresh water and waste water plants and networks; realisation (construction) of cathodic corrosion protection plants; construction and maintenance of waste water and fresh water plants; technical building management, namely maintenance of buildings; cleaning of facades; installation of electric counters and meters for current, gas and water; plant engineering services, namely assembly, installation, maintenance, servicing, renovation, modernisation, expansion, conversion, rehabilitation and repair work of waste water and fresh water plants, conduits and other installations for their feeding and discharge, sanitary installations, heating, ventilation and air-conditioning plants, industrial plants, mechanical equipment and their parts, technical devices, installations and apparatus for the safeguarding of buildings, plants, transportation means, domestic appliances, consumer electronics and information technology equipment as well as photovoltaic plants, utility service lines (e.g. gas and electricity), buildings and their parts; installation, maintenance and servicing of heat production, heat transport and heat distribution plants including meters for third parties; construction of gas plants, especially liquefied gas plants; construction of gas storage plants; construction and servicing of gas transport lines plus related installations, especially mixing, measuring and control stations as well as stations for transfer of gas, storage plants and telecommunication plants; services in the field of the repair business, namely repair of data systems technology plants, network systems, distribution and transportation networks, waste treatment plants, power stations, energy generation and distribution plants, waste water and fresh water plants and networks, buildings, sanitary facilities, heating, ventilation and air conditioning systems, industrial plants, mechanical equipment and their parts, technical equipment and electric street lighting systems; maintenance and repair of filling stations for gaseous fuels; maintenance and repair of gas operated motor vehicles; cellular phone repairs; network management, namely installation and maintenance of network systems; maintenance of data systems technology plants; realisation (construction) of web stations; realisation (construction) and maintenance of electric street lighting; realisation (construction) of the supply and disposal infrastructure (lines and pipes for current, gas, water as well as for data, drains and sewerage system) in the development of building sites; road construction; cleaning of building (inside and outside); repair, maintenance and servicing of automobiles including performance of the required inspections and checks; repair of motor vehicle fleets; cleaning of vehicles; installation of fixed network connections; construction, realisation (construction) and maintenance of cable infrastructures, wide area networks (WAN), local area networks (LAN), telecommunication systems, building installations and special networks, fire detection systems, detection systems and other media technology equipment; construction and maintenance of telecommunication networks with the integrated transmission method and switching including attributed network management; construction and installation of distribution and transportation networks; construction of sewage treatment plants; construction of telecommunication systems, electroacoustic plants, transmitting and receiving sets, common antenna installations; installation and repair of transmitting and receiving sets, mainly comprising transmitter-receivers, antenna masts and radio receivers; installation and repair of common antenna installations, mainly comprising receiver antennae for radio and TV signals, antenna wire and wiring; realisation (construction)



of consumer installations (for gas/natural gas, local heating, cold); construction of air conditioning systems; services of a painter; installation and maintenance work within the scope of services of an electrical fitter, sanitary fitter, joiner, concrete worker, well digger, tiler, building constructor, road engineer, heat insulation worker, low temperature insulation worker, sound insulation worker, carpenter, electromechanic, heating and ventilation fitter, refrigerating plants' fitter, car mechanic, shopwindow constructor, fitter, plumber, all above mentioned services (included in this class); cleaning of apartments and buildings; ironing of laundry; furniture assembly and disassembly service; domestic automation, namely installation, repair and maintenance of heating systems, air conditioning systems, ventilation systems, sanitary facilities, management and control systems, each also by remote control; installation of apparatus and devices for remote operation and remote control of apparatus and devices in the domestic field and in the garden; repair business, namely detection of functional defects (also by remote diagnosis) and removal of such functional defects on domestic appliances and installations as well as in the garden.

Class 38: Operation of telecommunication networks with the integrated transmission method and switching including attributed network management; providing access to a world-wide computer network; providing of Internet access (software) and hence to texts, images, audio-visual offers, multimedia offers, databases and computer programmes on the Internet; providing of Internet accesses (software); e-mail data services; data transfer on the Internet; connecting of Internet domains and e-mail addresses in computer networks; online services, namely transfer of messages, images and information of any type whatsoever; web messaging, namely forwarding of messages of any type to Internet addresses; consultation for telecommunications technology; providing telecommunication connections with a world-wide computer network; interactive videotex; telex services; broadcasting of television programmes and sound broadcast transmissions; telephone service; broadcasting of cable television programmes; communication by fibroptic networks; line, routing and connection services for telecommunications; mobile radiocommunications service; collection and delivery of messages; transmission of messages; transmission of messages and images by means of computers; electronic message transfer; renting of devices for message transmission; paging by radio broadcasting, telephone or by any other means of electronic communication; services of a press agency, especially collecting and delivery of press reports; broadcasting of sound broadcast transmissions; satellite transmission; telephone service; telegraph service; telegraphing; telegram service; telegram transmission; information on telecommunications; telephone conference services; telecopying service; renting of telecommunication devices, especially of facsimile machines, modems, telephones; providing access to information in data networks; cellular phone lending and providing of stand-by cellular phones; Internet by call, namely providing of access to the Internet by separate dial-up into a network and separate invoicing without the necessity of a permanent contractual obligation with the network provider; operation of chatlines, chatrooms and discussion forums on the Internet; data transmission via power grids (powerline); renting of fixed network connections; preselection telephony; call-by-call telephony; providing access to an e-commerce platform on the Internet; providing access to Internet portals for third parties; providing of access to portals and platforms on the Internet; providing access to electronic information, communication and transaction platforms on the Internet; providing and renting of access times to databases with search and polling possibilities.

Class 39: Transportation; packing, storage and delivery of goods of any type whatsoever; organisation of travels; distribution of fresh water; providing of transport networks for transmission of energy for third parties for a consideration (included in this class); distribution of gas, heat for heating purposes and energy, especially current, water, heat (local and district

heat), cold, especially to industrial customers, as well as supply to third parties by delivery of current, gas, water, heat (local and district heat) and cold; renting of cars; collection, storage, dumping and transport of refuse; waste water disposal; logistics services on the transport sector; moving services, especially renting of vehicles for moving services; logistics services with respect to moving; transportation of goods and individuals with ships and automobiles; towing away of automobiles within the scope of the automobile roadway repair service; performance of moving services; transportation of goods by truck; providing of parking and store space for third parties by parking space services and renting of parking space; operation of parking garages; administration of motor vehicle fleets; storage of spare parts for third parties as well as of technical and other consumables such as for example cleansing agents and toilet paper in connection with the maintenance and servicing of buildings; transportation of cellular phone for repair purposes (cellular phone repair pick-up service); distribution of fuels, especially distribution of gaseous fuels by means of pipelines, storage of fuels, especially in underground pore and cavern reservoirs; supply and distribution of gas; delivery of gas to consumers; transfer of gas, transport and distribution of heat generated by natural gas; heat transport and heat distribution plants; storage of liquefied natural gas; transport, storage and supply of energy by means of power grids; distribution of current and other energy volumes in power grids according to demand; transport of gases and liquids, especially of natural gas by means of power grids, also by subcontractors as well as services in connection with the transport of gases and liquids, procurement of transport capacities in third party power grids; storage of gas, especially liquefied gas for third parties; filling of gas into containers for third parties; operation of filling stations for gaseous fuels, namely fuelling of vehicles; hiring out of vending machines for gas.

Class 40: Material processing; technical treatment of water and waste water; waste water disposal by waste water treatment; fresh water treatment; refuse recycling; recycling and disposal of refuse by compost preparation, chemical transformation, treatment, destruction and combustion; thermal disposal; destruction of refuse; generation of energy and heat (local and district heat); generation of energy by the operation of fuel cells, wind power plants and photovoltaic plants; exhaust air purification; refuse incineration; key copying services; preparation of gas, especially natural gas and petroleum gas; gas treatment, especially liquefied gas treatment, for third parties; chemical processing for the production of liquefied gas; production of heat from natural gas; hiring out of heat production.

Class 41: Education, training; execution of training courses; sporting and cultural activities; entertainment, also on the Internet; hiring out of entertainment companies; performance of games, also online; issuing of publishing and printer's products in electronic form, also in intranets and on the Internet; personnel training; planning and execution of educational events; operation of public swimming pools for entertainment and sporting purposes; digital imaging.

Class 42: Scientific and technological services and research work and designer services in this respect; services of an engineer for gas, water and district heat networks; industrial analysis and research services; design and development of computer hardware and software; legal advice and representation; weather forecast, also online; scientific and industrial research and development; environmental services, namely environmentally related consultation, technical development of concepts for the environmental risk management; technical planning, technical management of refuse treatment plants and gas storage plants; technical consultation and technical activity of an expert; building and construction planning and consultation; energy management, namely technical management of energy generation and distribution plants by providing technical know-how; technical management of power stations, especially

hydroelectric power stations, nuclear power stations, coal-fired power stations, gas and steam turbine power stations, combined heating and power stations, heating stations, refuse incineration plants, energy-from-waste plants, hydropower and wind power stations, photovoltaic installations and transformer stations, solar power stations, wind power stations and biogas power stations; providing the technical know-how for the technical operation of distribution and transportation networks, workshops, refuse treatment plants as well as of transformer stations by providing technical know-how; technical planning and technical operation of electric street lighting systems, of sewage treatment plants and of air conditioning systems; technical operation of telecommunication networks; services of an engineer, especially providing of services of an engineer for installations of transformation and application of energy and gas; technical building management (included in this class); technical planning of waste water and fresh water systems; technical planning of energy systems; technical and ecological consulting services in the energy field, especially technical energy consulting for households, trade and industry; technical consulting in connection with energy-saving measures and in connection with the optimisation of heating systems; energy management, namely technical consultation and planning of energy generation and distribution plants, fuel cells, wind power plants and photovoltaic installations; technical planning and technical operation of gas transport lines plus related installations, especially mixing, measuring and control stations as well as stations for transfer of gas, storage plants and telecommunication plants; technical consultation, planning and technical management of energy generation and distribution systems, fuel cells, wind power plants and photovoltaic plants; technical management of waste water and fresh water plants as well as of lighting systems and plants for gas supply; expertise preparation on technical questions with respect to energy, water, waste water and lighting equipment; development of integral energy concepts on a technical and ecological level (consultation on environmental protection and technical energy consultation); acceptance and granting of licenses; acceptance, execution and granting of research and development orders; research and development, especially in the field of environmental technology; services in all fields of energy and water management and supply, namely preparation of energy management analyses and technical concepts taking into consideration ecology and infrastructure; technical development of infrastructure plans; technical measurements of current and natural gas; provision and renting of gas, current and water meters; technical water laboratory services; development of software architectures, modules and interfaces for electronic and electrotechnical equipment, component parts and systems; services in the field of forestry and agriculture, namely forestation research, biological research concerning integrated plant cultivation, research concerning manuring and harvest; technical promotion of the development as well as testing of electrically driven off-track vehicles; technical consultation on, technical planning and operation (by providing of technical know-how) of cathodic corrosion protection of pipelines; technical planning and technical consultation with respect to cathodic corrosion protection of pipeline networks; technical operation of cathodic corrosion protection plants; technical planning, inspection and design planning of pipeline networks; technical operation of street lighting equipment (included in this class); providing of services of an engineer for plants of transformation and application of energy and gas; preparation of technical concepts for house building planning; services of a surveying office; preparation of construction drawings; technical participation in innovative and technology oriented enterprises as well as licensing of know-how and industrial property rights; technical planning and technical operation of refuse treatment plants, landfill gas-fired power stations and natural gas/solar heat plants; technical planning of telecommunication networks with integrated transmission method and switching including attributed network management; services of a communication technician, especially with respect to audio-visual media such as video pages and video boards (included in this class);

technical operation of geographical information systems; technical inspection of equipment, machines and plants of any type; network management, namely installation and maintenance of network systems (software); technical operation of cable infrastructures, wide area networks (WAN), local area networks (LAN), telecommunication systems, building installations and special networks, fire detection systems, detection systems and other media technology equipment; maintenance of Internet portals (software) for third parties; providing consulting services on the use of search engines to Internet users through a hotline service; technical consulting through hotline services; technical preparation of multimedia presentations by software programmes; consultation concerning the design of homepages and Internet pages; services of a data base, namely operation of search engines for the Internet; preparation and design of websites and parts of websites on the Internet by means of computer-generated images and sounds (computer animations); server administration; consultation for telecommunication technology; providing of computer programmes in data networks; electronic data storage for third parties; design of homepages and web sites; services of an Internet agency, namely planning and maintenance of Internet contents, hardware and software consultation, implementation of EDP programmes in network structures as well as digital storage of software, data, images, audio and/or video information; renting of data carriers with software, data, images, audio and/or video information stored on such data carriers (included in this class); services of a certification authority (trust center), namely issuance and administration of digital codes and/or digital signatures; renting of web servers; providing of memory space on the Internet; licensing of software; technical consultation concerning the Internet; verification of digital signatures; introduction of websites on the Internet for third parties (webhosting); development of software for Internet and Intranet applications; providing of programmes for the creation of Internet pages and computer programmes; award, registration and administration of domain names and e-mail addresses; scientific and technological consultation for refuse disposal; consultation in communications technology, technical consultation in the field of geographical information systems; technical management of energy, water and waste water plants and networks; technical operation of distribution networks; preparation of technical concept and project studies in the field of gas technology, especially in the field of gas transport and gas application; preparation of programmes for data processing, especially programmes in the field of gas transport and gas application as well as in the field of providing of energy supply contracts; technical consultation in the field of production of electric and thermal energy; planning of gas plants, especially liquefied gas plants; services in the field of forestry and agriculture, namely forestation research, biological research as well as research concerning manuring and harvest; plant engineering services, namely design, of waste water and fresh water plants, conduits and other installations for their feeding and discharge, sanitary installations, heating, ventilation and air-conditioning plants, industrial plants, mechanical equipment and their parts, technical devices, installations and apparatus for the safeguarding of buildings, plants, transportation means, domestic appliances, consumer electronics and information technology equipment as well as photovoltaic plants, utility service lines (e.g. gas and electricity), buildings and their parts; hiring out of measuring apparatus and instruments (included in class 42), in particular gas meters, air pressure meters, electricity meters, voltage meters and meters for heat consumption.

Class 43: Services for providing food and drink; temporary accommodation; operation of kitchens, canteens and restaurants; providing food and drink for employees and guests in canteens and casinos within the scope of enterprises, authorities and other public institutions.

Class 44: Gardening services; services in the field of forestry and agriculture, namely forestation consultation, biological consultation on integrated plant cultivation, consultation on manuring and harvest, consultation on livestock husbandry.

Class 45: Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals; services for the private household, namely cooking, shopping and child care; services in the field of domestic safeguarding; services of a security company; guarding of real estate.

## **Fylgiskjal II.**

Vörur og þjónusta sem samþykkt var að skrá merkið í.

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, controlling, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, storing, regulating and controlling electricity; electric measuring devices and instruments; magnetic recording carriers, disk records; automatic vending machines and mechanisms for coin operated machines; cash registers; calculating machines; software, data processing equipment and computers; web pads; electric devices and products of information and communication technology (included in this class); electric devices, hardware and software for remote operation and remote control of devices and installations in the domestic field and in the garden; electronic computer networks (included in this class); electronic hotel guides; electric devices, hardware and software for the purpose of detecting functional defects (also by remote diagnosis) as well as of data transmission regarding such functional defects and the repair of such functional defects on domestic appliances and installations as well as in the garden (included in this class); fire-extinguishing apparatus; alarm systems; domestic safeguarding devices (alarm systems); burglar alarm systems; safety cameras; devices for reception, recording, transmission, processing, output and reproduction of data, text, signals, sound carriers, sound video carriers (except unexposed films), data carriers; coded phone cards; telephones, remote controls, transmitting and receiving sets, radio telegraphy sets, magnetic tape recorders for data processing, electric measuring instruments, monitors for computer hardware, computer peripherals, photocopying apparatus and machines (incl. electronic and thermal devices and machines), projecting apparatus, transmitters for electronic signals, video games as attachments for TV sets, make contacts, ammeters, circuit breakers, electric loss indicators, current transformers, commutators, fax machines, telecopiers, electric temperature indicators, telephone transmission apparatus, surveying apparatus and instruments, distribution cabinets for electricity, distribution panels for electricity, thermal control apparatus, electric counters, electric totalizers, time recording devices, time switches (not for clockworks); other electric counting devices;

Class 37: Installation work; repair business, namely repair of network systems, alarm systems, electrical appliances with the exception of apparatus for the reception, recording, transmission, output and reproduction of languages, sound or images, phonographs, facsimile radios, sound receiver terminals, image receiver terminals, televisions, CD-players, video recorders, sound amplifiers, sound reproduction apparatus, heating, air conditioning systems, refrigerators, telephones, stoves, office machines, machines, pumps, locks and automobiles with the exception of car radios, car-tape desks, car CD-players and/or car amplifiers; repair of data systems technology plants; network management, namely installation and maintenance of network systems (hardware); realisation (construction) and installation of distribution and

transport networks as well as of transformer stations; construction of pipeline networks; technical building management, namely maintenance of buildings; cleaning of facades; plant engineering services, namely assembly, installation, maintenance, servicing, renovation, modernisation, expansion, conversion, rehabilitation and repair work of waste water and fresh water plants, conduits and other installations for their feeding and discharge, sanitary installations, heating, ventilation and air-conditioning plants, industrial plants, mechanical equipment and their parts, technical devices with the exception of apparatus for the reception, recording, transmission, output and reproduction of languages, sound or images, phonographs, facsimile radios, sound receiver terminals, image receiver terminals, televisions, CD-players, video recorders, sound amplifiers, sound reproduction apparatus, installations and apparatus for the safeguarding of buildings, plants, transportation means, domestic appliances; installation, maintenance and servicing of heat production, heat transport and heat distribution plants including meters for third parties; services in the field of the repair business, namely repair of data systems technology plants, network systems, distribution and transportation networks, buildings, sanitary facilities, heating, ventilation and air conditioning systems, industrial plants, mechanical equipment and their parts, technical equipment with the exception of apparatus for the reception, recording, transmission, output and reproduction of languages, sound or images, phonographs, facsimile radios, sound receiver terminals, image receiver terminals, televisions, CD-players, video recorders, sound amplifiers, sound reproduction apparatus and electric street lighting systems; maintenance and repair of filling stations for gaseous fuels; maintenance and repair of gas operated motor vehicles with the exception of car radios, car-tape desks, car CD-players and/or car amplifiers; cellular phone repairs; network management, namely installation and maintenance of network systems; maintenance of data systems technology plants; realisation (construction) of web stations; realisation (construction) and maintenance of electric street lighting; realisation (construction) of the supply and disposal infrastructure (lines and pipes for current, gas, water as well as for data, drains and sewerage system) in the development of building sites; road construction; cleaning of building (inside and outside); repair, maintenance and servicing of automobiles including performance of the required inspections and checks with the exception of car radios, car-tape desks, car CD-players and/or car amplifiers; repair of motor vehicle fleets; repair of motor vehicle fleets; cleaning of vehicles; installation of fixed network connections; construction, realisation (construction) and maintenance of cable infrastructures, wide area networks (WAN), local area networks (LAN), telecommunication systems, building installations and special networks, fire detection systems, detection systems and other media technology equipment; construction and maintenance of telecommunication networks with the integrated transmission method and switching including attributed network management; construction and installation of distribution and transportation networks; construction of sewage treatment plants; construction of telecommunication systems, electroacoustic plants, transmitting and receiving sets, common antenna installations; installation and repair of transmitting and receiving sets, mainly comprising transmitter-receivers, antenna masts and radio receivers; installation and repair of common antenna installations, mainly comprising receiver antennae for radio and TV signals, antenna wire and wiring; construction of air conditioning systems; services of a painter; installation and maintenance work within the scope of services of an electrical fitter, sanitary fitter, joiner, concrete worker, well digger, tiler, building constructor, road engineer, heat insulation worker, low temperature insulation worker, sound insulation worker, carpenter, electromechanic, heating and ventilation fitter, refrigerating plants' fitter, car mechanic, shopwindow constructor, fitter, plumber, all above mentioned services (included in this class); cleaning of apartments and buildings; ironing of laundry; furniture assembly and disassembly service; domestic automation, namely installation, repair and maintenance of heating systems, air conditioning systems, ventilation

systems, sanitary facilities, management and control systems, each also by remote control; installation of apparatus and devices for remote operation and remote control of apparatus and devices in the domestic field and in the garden; repair business, namely detection of functional defects (also by remote diagnosis) and removal of such functional defects on domestic appliances and installations as well as in the garden.

### **Fylgiskjal III.**

Vörur og þjónusta sem hafnað var að skrá merkið í.

Class 9: installations for energy generation, mainly comprising electric fuel cells; gasometers; electrochemical fuel cells for power generation; photovoltaic installations for power generation; gas checking devices (included in this class).

Class 37: building trade, namely construction of waste treatment plants, construction of power stations, especially hydroelectric power stations, nuclear power stations, coal-fired power stations, gas and steam turbine power stations, combined heating and power stations, heating stations; construction of landfill gas-fired power stations and natural gas/solar heat plants; construction of solar power stations, wind power stations, hydropower stations, biogas power stations; construction of power stations, especially hydropower stations, nuclear power stations, coal-fired power stations, gas and steam turbine power stations, cogeneration systems, combined heating and power stations, heating stations, refuse incineration plants, energy-from-waste plants, hydropower and wind power stations, photovoltaic installations and transformer stations; repair business, namely repair of energy networks, waste treatment plants, irrigation plants; construction and maintenance of energy generation and distribution plants, fuel cells, wind power stations and photovoltaic installations; maintenance of energy, fresh water and waste water plants and networks; realisation (construction) of cathodic corrosion protection plants; construction and maintenance of waste water and fresh water plants; installation of electric counters and meters for current, gas and water; information technology equipment as well as photovoltaic plants, utility service lines (e.g. gas and electricity), buildings and their parts; construction of gas plants, especially liquefied gas plants; construction of gas storage plants; construction and servicing of gas transport lines plus related installations, especially mixing, measuring and control stations as well as stations for transfer of gas, storage plants and telecommunication plants; services in the field of the repair business, namely repair of waste treatment plants, power stations, energy generation and distribution plants, waste water and fresh water plants and networks; realisation (construction) of consumer installations (for gas/natural gas, local heating, cold).