

Alicante, 17/06/2019
R1002/2018-3

MERKENBUREAU KNIJFF & PARTNERS B.V.
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PAÍSES BAJOS

Subject: Appeal No R1002/2018-3 Fluid distribution equipment

Your ref.:

Notification of a decision of the Boards of Appeal

Please find enclosed the decision of the Third Board of Appeal dated 12/06/2019 concerning the appeal R1002/2018-3.

Article 61 CDR provides that an action may be brought before the General Court against decisions of the Boards of Appeal. The action shall be brought within two months from the date of notification of the decision of the Board of Appeal.

Should you intend to challenge the legality of the Decision of the Board of Appeal, your attention is drawn to the Rules of Procedure of the General Court published on 25 September 2018 (OJ 2018 L 240, p. 68), and to the Decision of the General Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia (<http://curia.europa.eu/jcms/jcms/Jo27040/>).

By virtue of those texts, with effect from 1 December 2018, the e-Curia application will become the sole means of correspondence between the parties' representatives and the General Court Registry. It follows that procedural documents must be lodged with the General Court Registry via the e-Curia application and that service will be made by the General Court Registry using that application.

In light of the above information, parties' representatives who do not yet have an account for access to the e-Curia application should ask to have such an account opened.

Information about the e-Curia application is to be found on the website of the Court of Justice of the European Union (https://curia.europa.eu/jcms/jcms/P_78957).

To the extent that you are adversely affected by the attached decision and you nonetheless decide not to challenge it, please inform us accordingly as soon as possible.

Ingrid ROMERO CONRAD

Registry

Enc.: 1 (27 pages)

DECISION
of the Third Board of Appeal
of 12 June 2019

In case R 1002/2018-3

Tinnus Enterprises, LLC

3429 18th Street

Plano Texas

United States of America

Design Holder / Appellant

represented by Gill Jennings & Every LLP, The Broadgate Tower 20 Primrose Street,
London EC2A 2ES, United Kingdom

v

Mystic Products Import & Export, SL

Carrer Guifre N° 689

08918 Badalona

Spain

Invalidity Applicant / Respondent

represented by Isern Patentes y Marcas, S.L., Avenida Diagonal, 463 bis, 2° piso,
08036 Barcelona, Spain

Koopman International B.V.

Distelweg 88

1031 HH Amsterdam

The Netherlands

Invalidity Applicant / Respondent

represented by Merkenbureau Knijff & Partners B.V., Leeuwendeldseweg 12, 1382LX
Weesp, The Netherlands

APPEAL relating to Invalidation Proceedings No ICD 10 292 (registered Community
design No 1 431 829-0001)

THE THIRD BOARD OF APPEAL

composed of Th. M. Margellos (Chairperson), H. Salmi (Rapporteur) and
C. Rusconi (Member)

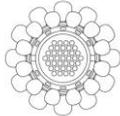
Registrar: H. Dijkema

gives the following

Decision

Summary of the facts

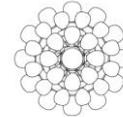
- 1 Tinnus Enterprises, LLC ('the design holder') is the holder of registered Community design No 1 431 829-0001, with a filing date 10 March 2015. The design is represented in the following views:



1.1



1.2



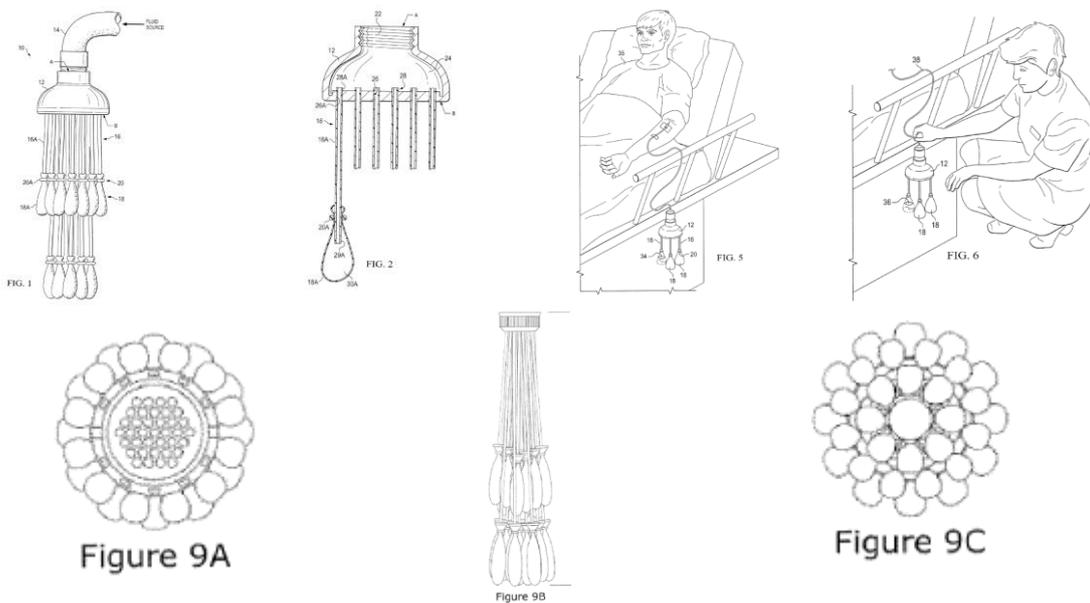
1.3

- 2 The indication of the products reads 'fluid distribution equipment'.
- 3 On 7 June 2016, Mystic Products Import & Export, SL (hereinafter 'invalidity applicant I') filed an application for a declaration of invalidity of the contested RCD based on Article 25(1)(b) CDR in conjunction with Article 4(1) CDR and Article 8 CDR, with, inter alia, the following arguments:
 - All the features of the design had been chosen only with technical considerations in mind and that therefore the design was excluded from protection by virtue of Article 8(1) CDR. An indication of the technical character of the design was that anyone, with the aid only of a verbal description of the product as presented in the evidence, could draw a depiction of the product that would contain all the elements of and be substantially identical to the contested design, because no creative endeavour had gone into the design. If the product was innovative, it was because it provided a technical solution, however solely by aggregating elements known from the state of the art. Such a product should be protected by patenting it – as the design holder had attempted to do – and not by a design registration. The contested design would prevent others from using that purely technical solution, which was contrary to the purpose of design law.
 - The following features of the contested design were, according to the invalidity applicant I, solely dictated by their technical function:
 - the housing with an opening and a number of holes;
 - a number of hollow tubes attached to the housing;
 - a number of inflatable balloons connected to the ends of the tubes;
 - a number of fasteners fixing the balloons to the tubes.

- All those features were necessary for the technical solution to the question of how to fill a number of inflatable balloons at the same time (for children’s water fights). The design holder presented the product on the internet as ‘Bunch O Balloons’: ‘a hose attachment with 37 pre-connected balloons that automatically tie themselves once filled with water ... The way it works is that the uninflated balloons have been pulled over 37 straws. Around the neck of each balloon, there is a tiny, tight rubber band securing the balloon onto the straw. The straws feed into a single head that can be attached to a hose for filling. This allows for all of the balloons to simultaneously fill with water. You can then stop the hose and shake the balloons gently to release them into your arsenal.’ The same description was used in the design holder’s European patent application for the same product.
- In support of its observations, invalidity applicant I submitted:
 - A printout from the website www.arstechnica.com, showing an article entitled ‘Bunch O Balloons will revolutionize water fights’ and subtitled ‘The product fills multiple balloons with water simultaneously’, published on 27/07/2014 with the following image:



- European patent application EP 3 005 948 A2, filed in the name of the RCD design holder on 03/10/2015, and published on 13/04/2016. The application contains, inter alia, the following depictions of the technical solution:



- 4 On 19 April 2017, Koopman International B.V. (hereinafter ‘invalidity applicant II’) filed an application for a declaration of invalidity of the contested RCD based on Article 25(1)(b) CDR in conjunction with Article 4(1) CDR and Article 8 CDR, with, inter alia, the following arguments:
- All or at least several important features of the contested design were solely dictated by their technical function, and that therefore the RCD should be declared invalid or at least its protection limited. Invalidity applicant II cited from the design holder’s patent application and concluded that ‘it is beyond doubt that the only consideration that can possibly have gone through mind of the designer of the product was the need to design a product that would perform a technical function, namely, to fill as many water balloons at a time to gain time’. As regards the features of the design, the invalidity applicant argued that:
 - the housing is annular because it is designed to be screwed onto a water tap;
 - the tubes have an elongated shape and are flexible to allow the balloons to occupy more space as they are filled with water;
 - the elastic bands connect the tubes to the balloons and also close the balloons when they are filled with water and become detached from the tubes;
 - the balloons are standard-shaped water balloons.
 - It also argued that at least the following features should be excluded from protection:
 - the outside of the annular housing being marked with small ridges, because they are present to enable the user to get a better grip;
 - the fact that the outer tubes flex more than the inner tubes, because this allows more balloons to be attached;
 - the different lengths of the tubes, because this allows more balloons to be filled by providing more space for them.
 - Invalidity applicant II submitted the same European patent application as invalidity applicant I.
 - After filing the invalidity application, invalidity applicant II declared that it had been accused of infringing the contested design before the district Court of The Hague and, pursuant to Article 54 CDR, it requested to join the invalidity proceedings initiated by invalidity applicant I.
- 5 On 30 August 2017, both invalidity applicants were informed that application No ICD 10 689 filed by invalidity applicant II met all the requirements stipulated in Article 54 CDR to be joined as a party in the earlier invalidity proceedings file

No ICD 10 292. Therefore, the Office will deal with both applications in one set of proceedings under file No ICD 10 292.

- 6 By decision of 30 April 2018 ('the contested decision'), the Invalidity Division declared the contested RCD invalid. The design holder was ordered to bear the costs. The Invalidity Division gave, in particular, the following grounds for its decision:

Features solely dictated by their technical function pursuant to Article 8(1) CDR

- The present invalidity proceedings concern solely the validity of registration No 1 431 829-0001. However; bearing in mind all circumstances and the arguments of the parties, it is not irrelevant to show the whole multiple registration that the design holder applied for, to better understand the designs of the *fluid distribution equipment*, for which the protection is sought:



1 431 829-0001



1 431 829-0002



1 431 829-0003



1 431 829-0004



1 431 829-0005



1 431 829-0006



1 431 829-0007



1 431 829-0008



1 431 829-0009



1 431 829-0010

- The design holder argued in its submissions that this multiple registration proves that no monopoly over a technical solution had been granted, as the multiple registration suggests many other alternatives.

- The practice of the Office has been driven by the case-law of the second instance, which rejected the test based on the multiplicity of forms theory. The Court of Justice, supporting the opinion of the Advocate General in this regard, rejected the multiplicity of forms theory as the sole factor for the application of Article 8(1) CDR stating that ‘if the existence of alternative designs fulfilling the same function as that of the product concerned was sufficient in itself to exclude the application of Article 8(1) of Regulation No 6/2002, a single economic operator would be able to obtain several registrations as a Community design of different possible forms of a product incorporating features of appearance of that product which are exclusively dictated by its technical function. That would enable such an operator to benefit, with regard to such a product, from exclusive protection which is, in practice, equivalent to that offered by a patent, but without being subject to the conditions applicable for obtaining the latter, which would prevent competitors offering a product incorporating certain functional features or limit the possible technical solutions, thereby depriving Article 8(1) of its full effectiveness’ (29/04/2010, R 211/2008 3, Fluid distribution equipment, § 28; 14/04/2014, R 1772/2012 3, Game cartridges, § 19; opinion of the Advocate General of 19/10/2017, C-395/16 DOCERAM, EU:C:2017:779, § 40 and 41 and 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 30).
- It looks like this is precisely what is at issue in the present case. At least four designs of the design holder’s multiple registrations above show possible alternatives to achieve a single technical solution (not leaving many other alternatives free). The straw and balloon configurations which appear in them are different ways of enabling a large number of balloons to be filled with water at once. By obtaining registration for these forms, the design holder does not leave its competitors many options to achieve the same effect.
- As stated in the judgment, the existence of alternative forms as a sole factor should not result in the rejection of the application of the provisions of Article 8(1) CDR but other objective circumstances relevant to the case should be taken into consideration (08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 38).
- The Invalidity Division believes that such a relevant circumstance might be the fact that all the alternative forms presented in the present case enjoy protection by virtue of registration as Community designs, like the contested design, and therefore should be disregarded as alternatives left free for competitors.
- Furthermore, it seems that the right approach requires the purely technical features of the product to be distinguished from those driven by the design process, since, according to the Advocate General, the exclusion laid down in Article 8(1) CDR is motivated mainly by the absence of creative influence on the part of the designer over the appearance of the product, since only added value stemming from intellectual effort independent of that function justifies design protection. It is therefore necessary to look at the contested design objectively and, based on the available evidence, conclude if, apart from the

technical solution embodied in the product, a design effort or visual enhancement is apparent from the registration. In view of the Invalidity Division, the contested design does not show it and the design holder failed to prove such a design effort.

- The contested RCD relates to *fluid distribution equipment*, as specified in the product indication. It is not necessary to describe the design much here, as it has been introduced by the parties sufficiently: the product consists of a housing that can be attached to a standard water distribution facility such as a water tap or a garden water hose. The water is distributed via multiple straws (tubes) attached to the housing via holes and the final destination of the water is in the inflatable balloons attached to the far ends of the straws (tubes) with an elastic band. It is further understood from the evidence that once sufficient water is in the balloons, the weight of the water allows the balloons to be detached from the straws and the elastic band closes the opening of the balloons so that the water is kept inside the balloons, which can be subsequently used in a water fight.
- As is apparent from the promotional article submitted by invalidity applicant I and not contested by the design holder, from the design holder's submissions, from its patent application and also from the nature of the product itself, the product related to the RCD is intended to serve the purpose of entertaining children by facilitating a water balloon fight. It is therefore a product, as correctly pointed out by the design holder that is intended for public use – first by parents or older children, distributing water using the equipment to the inflatable balloons, and later by the participants in the water fight, using the filled balloons. However, neither the evidence submitted nor the registration suggests features of the product other than utilitarian ones. It can be understood that the appearance of the product is of little marketing interest. With regard to the intended use of the product, the Community design registration and the promotional article focus solely on its performance. Given that it is intended for children, one would expect something other than the austere utilitarian look of the design.
- Furthermore, as regards the nature of the product, it is intended as a single-use, disposable product. It is not durable and therefore it has limited aesthetic value. The product is purchased with the aim of using it to distribute water via the housing and the straws to the balloons. The balloons themselves will be disposed of once thrown in the water fight. As the author of the promotional article submitted by invalidity applicant I emphasises, the balloons are made of biodegradable material, which allows them to be broken down quickly. Once the balloons are used, they become waste. The rest of the equipment, the straws and the housing, unless a new batch of balloons is purchased for use with it, will be disposed of as well. In any case the article does not mention that the equipment can be reused and its low price (USD 15) rather suggests that it is intended as a single-use product. Even the design holder emphasises the utilitarian appearance of the product, intended to appeal to potential customers. It seems logical that, with regard to a product that is intended to be used once and then disposed of, the users' main

interest would be not aesthetic – as it might be if they were investing in something durable – but rather utilitarian. Even though one could imagine that some aesthetic aspects, such as different balloon colours, the decoration of the balloons, or the use of decorative bands could add to the aesthetic value to the product, these are outside the scope of this assessment, as the contested design seeks protection solely for the product’s form or shape.

- As reasoned above, the arguments that the design was driven also by the considerations to enhance its appearance, whereas the product is intended to be used once and then disposed of, and whereas it seeks protection solely for its form, are not convincing. The design holder did not submit any supporting evidence for its statements on the designer’s involvement, for instance, relating to the design process.
- In addition, both invalidity applicants referred to the design holder’s parallel application for a patent for a technical solution, one of the embodiments of which (figures 9A to 9C of the patent document cited above) corresponds visually to the contested Community design. They claim that all the essential features of the design were intended to achieve the purpose of the product and that no aesthetic considerations were taken into account. The design holder countered that the general language of the patent application intentionally excluded any mention of aesthetic features, which are not patentable, and that the sole purpose of the patent application is to describe and protect a technical solution. Therefore, the wording of the patent application cannot be taken as proof of a lack of aesthetic considerations in the creation of the contested design.
- The Invalidity Division agrees with the design holder on the point that each instrument of protection, namely the European patent and the registered Community design, targets different aspects of the product; however, this does not mean that the specifications in the patent application and the examples of the embodiments of the solution cannot be taken into account when the technical nature of a product related to a contested design is assessed.
- The design holder claims that the arrangement of the holes for placing the straws in the housing was chosen intentionally to give the housing a tidy, organised look. According to the patent application, the openings or holes are configured in an array allowing the tubes to be arranged in concentric circles. This description suggests the neat arrangement with the advantage that it allows a greater number of straws (tubes) to be attached. The form of the housing is that of a simple, common hose connector or threaded tap connector. The size of the housing, which in reality corresponds to the size of a common tap or hose, will not allow the user to ‘appreciate’ the arrangement of the holes as it will be rather negligible due to its size. It should be noted that, for the end user, the arrangement of the straws and balloons will be perceived merely as a bunch of straws and balloons with no particular pattern, as is apparent from RCD No 1 431 829-0007 in the same multiple registration, showing the actual product:



1 431 829-0007.1



1 431 829-0007.2



1 431 829-0007.3

- In the view of the Invalidity Division, therefore, the effort of the designer in arranging the holes for the straws was driven more by the need to place a certain number of holes in the housing rather than by aesthetic considerations, which do not have a substantial impact on the overall appearance of the product.
 - The design holder's argument that the balloons were intentionally chosen to be of the same size to give the product a neat look can also be argued *a contrario* to say that different sizes and shapes of balloon would create an unusual, special look that would be more appealing to the targeted users (children) than the austere and uniform look of the contested design. The same could be said in relation to the elastic bands, which could have created an unusual look departing from a norm. Therefore, the arguments of the design holder in this part are not convincing either.
 - The Invalidity Division does not see any enhancement of the appearance of the product protected by virtue of the Community design compared with the austere embodiment presented in the patent application (where any aesthetic references that could be an obstacle to the patentability of the invention are omitted). The embodiment in the patent document is almost identical to the design registration. If the effect of protection by virtue of the patent and the design registration differ, the difference should be apparent also in the claims in both. The design comprises standard features available on the market: the housing, which is a standard tap or hose extension; the straws, which, according to the design holder, lack any features other than being fairly long; and the simple bands around the commonly commercialised inflatable balloons.
 - Under these conditions and in the light of the evidence submitted by the parties, the Invalidity Division concludes that all of the RCD's essential features have been chosen with the aim of designing a product that performs a function. None of those features has been chosen for the purpose of enhancing the product's appearance.
- 7 On 31 May 2018, the design holder filed an appeal against the contested decision, requesting that the decision be set aside. The statement of grounds of the appeal was received on 5 September 2018.
- 8 In its observations in reply received on 6 November 2018, invalidity applicant I requested that the appeal be dismissed.

- 9 In its observations in reply received on 7 November 2018, invalidity applicant II, requested that the appeal be dismissed.
- 10 After an extension of the time limit, the design holder replied to the observations of the invalidity applicants on 14 February 2019.
- 11 Invalidity applicant I filed a rejoinder on 25 March 2019.
- 12 Invalidity applicant II filed a rejoinder on 17 April 2019.
- 13 Expedited proceedings were requested on 14 May 2019 by Invalidity applicant II.

Submissions and arguments of the parties

- 14 The design holder requested the Board to rule on the costs. Its arguments raised in the statement of grounds may be summarised as follows:
 - When the Invalidity Division was assessing whether any of the grounds of invalidity had been established, it was assuming that the burden of proof fell on the design holder to prove that the contested RCD was valid when it should have been assessing whether the facts, arguments and evidence filed by the applicant(s) for invalidity established a ground of invalidity. For this reason alone, the contested decision should be annulled.
 - The witness statement submitted together with the grounds of appeal summarises the designer of the contested RCD's experience in the field of product development and provides detail of the designer's considerations when the contested RCD was being developed. In particular the witness statement seeks to explain the aesthetic considerations which formed the design of the contested RCD.
 - This witness statement should be accepted by the Board of Appeal because it explains directly the approach taken by the designer when developing the product, which is specifically mentioned in judgment of 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, as one factor which may be taken into account when assessing whether a design is solely dictated by technical function. This means that it is highly likely to be relevant to the outcome of the case since it addresses one of the fundamental aspects of whether aesthetics were considered when deciding the form of the design. Furthermore, the witness statement directly addresses the criticism made in the contested decision that the design holder did not submit any supporting evidence about the designer's involvement in the design process.
 - The witness statement meets the criteria set by Article 27(4)(b) of the EU Trade Marks Delegated Regulation for accepting facts and evidence for the first time. Thus, each of the conditions for accepting facts and evidence are met.
 - Additionally, the witness statement is filed in order to directly address and contest the Invalidity Division's findings. As such, excluding the witness

statement from the appeal would unfairly prevent the design holder from defending themselves to the full extent possible, which could damage both the design holder's rights and the wider EUIPO appeal process.

Articles 25(1)(b) and 8(1) CDR – solely dictated by technical function

- Evidence from the designer clearly shows that aesthetic considerations were taken into account when the design of the contested RCD was developed. Despite correctly identifying and summarising the test for how to determine whether features are 'solely dictated by technical function' under Article 8(1) CDR, the Invalidity Division miss-applied the test to the contested RCD in that it:
 - Incorrectly broke down the contested design into component parts and proceeded to assess the technical function of each of those component parts, rather than the technical function of the contested design as a whole. The overall appearance of the product was influenced by aesthetic functions;
 - Applied a different test to that set out in the DOCERAM judgment, in that it required the design to have an enhanced appearance or added value to justify protection. Whether or not the appearance of a feature departs 'from a norm', or enhances the appearance of a product is not the correct test for assessing whether the exclusion under Article 8(1) CDR applies. Therefore, the Invalidity Division appear to have imposed an incorrect requirement on the aesthetic considerations which were taken into account by the designer. This is contrary to both Recital 10 CDR and the test established in DOCERAM and sets a higher bar when considering exclusion under Article 8(1) CDR broadening the exclusion beyond its narrow intent. For this reason alone, the contested decision should be annulled;
 - Incorrectly took into account the design holder's other RCDs. If the Invalidity Division wished to take into account alternative designs which would achieve the same technical function, it should have taken into account all such possible designs, not just those embodied in the RCDs filed by the design holder. Importantly, the approach adopted by the Invalidity Division also offends against the principle of equal treatment, which is a general principle of EU law that must be respected by the EUIPO. This is because if the design holder's RCDs had each been held by a different proprietor, the consideration in relation to multiple RCDs for products with similar appearances would not have been taken into account by the Invalidity Division when forming their decision in relation to Article 8(1) CDR. Thus, the design holder is put in a worse position compared to third parties by the decision of the Invalidity Division.
 - Incorrectly took into account arguments not presented by the parties. The contested decision mentioned that since the product in which the design

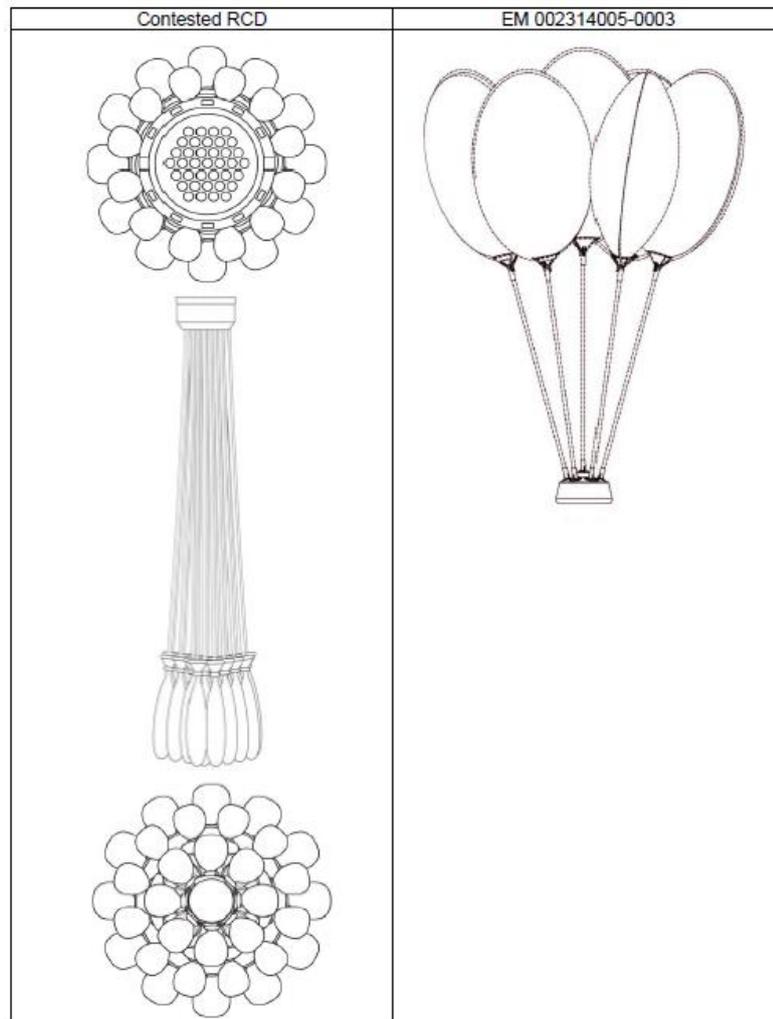
would be embodied would be ‘single use’, it must have limited aesthetic value and that users' interests would be in its function rather than its aesthetics. Not only did the Invalidity Division take this argument into account when it was not entitled to do so, the argument is clearly incorrect. The product in which the design would be embodied is a children's toy and therefore it is a consumer product. Whether or not consumer products are disposable or durable, they are designed to be appealing to consumers. There are numerous examples of single use and/or disposable items which have clearly been designed with their aesthetic appearance in mind, such as the shapes of soft drinks bottles, the shape of various foodstuffs, dishwasher and washing machine tablets, postage stamps and fireworks. . The argument that single use products necessarily are designed with fewer aesthetic considerations in mind when compared to durable products should therefore be dismissed.

Articles 25(1)(b) and 8(2) CDR – Must fit

- Invalidity applicant I alleged that the shape of an outer ring of the ‘housing’ had been chosen specifically so that it fits into a hose or fluid source (such as a tap) and that ‘the form chosen is necessary for this purpose’. However, the outer ring indicated by invalidity applicant I is not in fact part of the housing. As such, the form of the feature of the contested RCD indicated as the outer ring cannot have been chosen to fit with a hose or fluid source since this feature of the contested RCD does not fit with a hose or fluid source in use.
- Therefore, neither the housing of the contested RCD nor any part of the housing contravenes Article 8(2) CRD.

Articles 25(1)(b) and 6 CDR – Lack of individual character

- In its invalidity application, invalidity applicant I relied on EM 2 314 005-0003 to allege the contested RCD lacked individual character under Article 6 CDR. It has to be noted that all elements of EM 2 314 005-0003 other than the base are depicted in dashed lines. It means that only the base form the earlier design. Thus, the contested RCD does not lack individual character over the earlier design. This is because the contested RCD forms an overall impression that is clearly different from the base of EM 2 314 005-0003 since it additionally has straws, balloons and a band around the neck of each balloon in addition to a housing.
- Alternatively, should the Board of Appeal consider that the disclosure of EM 2 314 005-0003 includes the parts shown in dashed lines, an assessment of the individual character of the contested RCD in a direct, global comparison, between the contested RCD and the earlier design appear as follows:



- The overall impression of the contested RCD, as derived from its components and features is of: a long, thin, simple product with a top from which extends a significant number of straws with un-inflated balloons attached on their ends, the top having a generally cylindrical form with a diameter that is larger than its length, the straws being of approximately the same length, tightly packed and straight and the balloons being of uniform shape and size, with a thick ring around the neck of each balloon, that arrangement of the balloons and straws giving the product the appearance of a densely packed bouquet of small headed flowers.
- The overall impression of the earlier design is of a relatively short stand relative to its width with a small number of bulbous balloons, each with a rim around their edges, and which are held up by sticks forced into a splayed arrangement by the balloons at an upper end and connected to a small holder, the sticks being attached at a lower end to the holder by connectors with a prong-like appearance, the balloons being attached to the straws by large cone-shaped connectors, and the holder having a waist below and above which tapers inwardly. To use a similar analogy to that used for the contested RCD, the earlier design has the appearance of a loosely packed bouquet of large headed flowers.

- The key differences between the contested RCD and the earlier design are: the shape of the housing in the contested RCD compared to the shape of the holder in the earlier design; the significant number of straws and balloons in the contested RCD compared to the relatively small number of balloons and sticks in the earlier design; the tightly packed nature of the straws and balloons in the contested RCD compared to the splayed arrangement in the earlier design; the single band around the neck of each balloon in the contested RCD compared to the cone-shaped connectors in the earlier design; and the long, thin appearance of the contested RCD compared to the short, bulbous look of the earlier design.
 - Accordingly, the differences between the overall impression of the contested RCD and that of the earlier design are such that the overall impression of the former (clearly) differs (although ‘clearly’ differing is not a requirement under the CDR) from the overall impression of the earlier design. Accordingly, the contested RCD does not lack individual character over the earlier design.
- 15 The arguments raised in reply by invalidity applicant I to the appeal are summarised as follows:

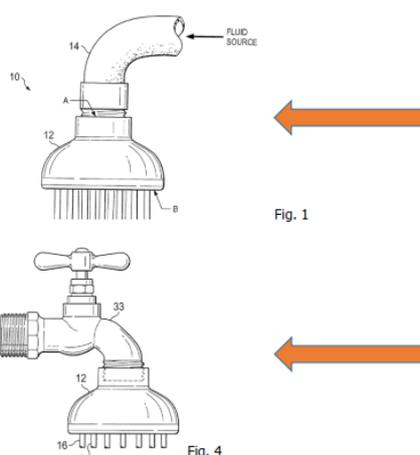
Appearance solely dictated by the technical function of the product

- The features of the appearance of the contested RCD are solely dictated by the technical function of the product.
- An examination based on the paragraphs 0004-0091 of the European patent application 3 005 948 A2 shows that any single element that is part of the contested RCD’s visual appearance performs a technical solution, allowing all of them together to fill water balloon’s faster rather than filling them one by one, because the intended use of the product is by children in a water balloon fight.
- Even though the same result can be achieved by excluding or modifying the distribution over the device of some of the common elements mentioned, the visual aspect of any device would still be the result of its technical function. As mentioned in the paragraph 0018 of the European patent application.
- Furthermore, the plurality of hollow tubes attached to the housing at one end and to the balloons to the other, are absolutely necessary to convey the fluid from the housing to the balloons. There are no aesthetic considerations involved in choosing this shape. Therefore, this feature was solely dictated by the product’s technical function.
- As to the plurality of containers (water balloon’s) attached to one end of each of the hollow tubes, it is obvious that the designer chose the balloon shape since the intended goods to be attached are balloon’s. Therefore, this feature was solely dictated by the products technical function.

- Finally, in connection with the feature of a plurality of elastic fasteners, the design holder affirms in its observations that the single thick band has been chosen over other alternatives because the single thick band is tidy and simple and any other configuration of this feature would make the product look more rudimentary, sloppy and less professional. Such statement is totally disagreed with as this feature is barely visible within the product and therefore aesthetics were not an issue for the designer when considering choosing this form.
- Therefore, even if the multiplicity-of-forms theory was valid, and it is not the case, the previous explanations prove why the features of appearance of the product are solely dictated by its technical function and it is not ascribable to aesthetic considerations.
- The reasonable observer does not care whether the product s/he is evaluating looks good, bad or ugly; all that matters is that the device will allow her/him to fill water balloons faster. Producing this fast water filling facility of numerous water balloons at the same time is, undoubtedly a technical function.

Feature of the appearance contravening Article 8(2) CDR.

- As regards the first common element feature, that is the housing comprising an opening at one end and a plurality of holes at the other end, it must be noted that one of the ends must fit in a hose or round faucet in order to make the product serviceable.
- In order to substantiate the above argument, the invalidity applicant I refers to the Figs. 1 and 4 of the previously quoted European patent application EP 3 005948 A2:



- As can be seen from the above, one end of the housing component has been chosen specifically so that it fits into a hose or fluid source and therefore the round form chosen is necessary for this purpose. Therefore, the contested RCD is to be declared invalid on the grounds of Article 8(2) CDR.

- It is beyond doubt that the Invalidity Division has been acting neutrally from the start of the invalidity proceeding up to the contested decision being granted. The contested decision analyzes all relevant circumstances regarding not only the contested design, but also all multiple alternative registrations that the design holder applied. The Invalidity Division has carried out the aforementioned analysis in the contested decision bearing in mind and applying the guidelines provided by case-law.

Individual character

- Invalidity applicant I agrees with the arguments given by contested decision to declare invalidity of the contested design according to Article 25(1)(b) CDR in connection to Article 8 CDR. Nevertheless, it has to be pointed that the contested RCD may also be declared as invalid according to Article 25(1)(b) CDR in connection to Article 6 CDR, because the contested design does not have individual character.
- 16 The arguments raised in reply by invalidity applicant II to the appeal may be summarised as follows:
- The design holder asserts, incorrectly, that the EUIPO misapplied the test stated in judgment 08/03/2018, C-395/16, DOCERAM, EU:C:2018:17 ‘due to a mischaracterisation of the design by breaking it down to its individual components without also considering the design as a whole’. Article 8(1) CDR specifically refers to features of the design (rather than the design as a whole) to be excluded from protection when they are solely dictated by its technical function. The Invalidity Division therefore correctly applied the test of Article 8(1) CDR to each of the essential features of the design separately, but taking into account the technical function of the product as a whole. Its conclusion that all of these essential features were solely driven by the technical function of the product, consequently led to the invalidation of the design in its entirety. That being said, the EUIPO did indeed also consider the design as a whole, when considering the design holder’s arguments that visual aspects played a role in the design process, and by consequently, and rightfully, dismissing these arguments.
 - The design holder also incorrectly argues that the designer’s witness statement makes it clear that aesthetic considerations were taken into account, given a) that it concerns a product intended for sale to a consumer, b) that ‘the choice was made as to the length of the straws in relation to the length of the balloon giving the RCD a simple and clear appearance’ and ‘the appearance of a flower and stem’, and c) ‘the proportions of the design as a whole namely the length being about 18 times the width, giving the design a sleek and elegant appearance appealing to the user.’
 - Obviously, none of these additional arguments are convincing. The mere fact that it concerns a product intended for sale to consumers does not necessarily lead to the conclusion that aesthetic considerations were taken into account. If so, all consumer products would have to be excluded from the scope

Article 8(1) CDR, whereas many examples of consumer products can be named that have been designed with only technical considerations in mind, such as, for example, light bulbs, ear plugs, paper clips, tape rolls, etcetera. Moreover, consumer products can be made appealing to consumers in many ways, such as the choice of colours, packaging, decoration and advertising material.

- As regards the design holder’s argument that the design has a ‘simple and clear appearance’ similar to a ‘flower and stem’ due to the choice as to the length of the straws in relation to the length of the balloon: exactly the same could be said in case the length of the straws was substantially shorter or longer as compared to the length of the balloon. These qualifications of the design therefore are entirely random and without any relevance or meaning. For the same reason, the design holder’s statement that the ‘proportions of the design as a whole namely the length being about 18 times the width, giving the design a sleek and elegant appearance appealing to the user’ should be disregarded.
- Neither the successful sales of the ‘Bunch O Balloons’ product, nor the fact that it allegedly won several toy awards, can provide evidence of aesthetic choices in the conception of the design.

Enhanced appearance

- The design holder states that the Invalidity Division misapplied the DOCERAM test in view of the Recital 10 CDR by requiring that features were chosen by the designer for the purpose of enhancing the product’s appearance. According to the design holder, this is irrelevant, because it would follow from Recital 10 CDR that aesthetic quality of the design is not required in order to be outside the scope of Article 8(1) CDR.
- This argument is unfounded, given that it is based on the incorrect assumption that an ‘enhancement of the appearance’ would be the same as an ‘aesthetic quality’ as referred to in Recital 10 CDR. According to the *Oxford Dictionary*, ‘enhancement’ means ‘an increase or improvement in quality, value, or extent’, which encompasses much more than a (visual) enhancement giving a design an ‘aesthetic quality’. In this context, it should also be taken into account that, whether or not a feature of a design has an ‘aesthetic quality’ is subjective and therefore not a suitable criterion to determine whether a feature of a product is solely determined by the technical function of the product. For the same reason, even a product design that is conceived with the sole aim of achieving a technical result could (in the eyes of some) have an ‘aesthetic quality’.
- Moreover, the decision of the Invalidity Division is fully in line with the DOCERAM judgment taking into account point 31 of the judgment.

The design holder's other RCD's

- According to the design holder, the Invalidity Division incorrectly took into account the design holder's multiple registrations when applying the DOCERAM test. In this context, the design holder also argues that the reasoning from DOCERAM does not apply to the present case, given that, contrary to the facts of that case, the design holder does not monopolise a technical solution, because many alternatives would exist that are not registered by the design holder in its multiple registration.
- Firstly, the Invalidity Division was fully allowed to also take into account the design holder's other RCD's in the application of the DOCERAM, test, given that DOCERAM requires that, for the purpose of determining whether Article 8(1) CDR applies, all of the relevant (objective) circumstances of the case apply. One of these circumstances, in the present case, is the information about the design that can be derived of the design holder's other registrations for the same product.
- Moreover, DOCERAM clearly does not require that, in order for Article 8(1) CDR to apply to a product feature, that all available alternatives for the same technical solution have actually been registered as designs by the design holder. In the DOCERAM judgment the Court interpreted Article 8(1) CDR and thereby rejected the multiplicity of forms theory against the background of the theoretical situation, in which a design registrant could simply exclude the application of Article 8(1) CDR by obtaining several registrations of different possible forms of product consisting only of features determined by their technical function. The Court does not state, nor can it be derived of the DOCERAM judgment in any way, that Article 8(1) CDR could only apply in case the design holder obtained registrations for all possible technical alternatives.
- To the extent the Board would attach relevance to the alternative designs suggested in the witness statement of Joshua Malone and on page 8 and 9 of the statement of grounds for appeal, invalidity applicant II calls to mind that according to DOCERAM the existence of an alternative cannot be a decisive factor in the determination whether Article 8(1) CDR applies to a product feature, and that, aside from the Joshua Malone statement, the design holder has not presented any other evidence or that other than purely technical considerations have played a role in the product design. For that reason alone, the alternatives mentioned by the design holder cannot lead to annulment of the contested decision.
- To the extent these alternatives are taken into account, none of these alternatives are relevant, either because they would not lead to a different overall design of the product, or because they have obvious disadvantages compared to the technical solution of the RCD and would therefore not be applied by competitors.
- As regards the alternative forms and solutions mentioned in the Joshua Malone statement, these are already discussed by the invalidity applicant II in

its submissions. As regards the variations listed on page 9 of the statement of grounds of appeal, these can be dismissed for similar reasons:

- Splayed straws attached around a housing: This solution takes up more space, which will lead to higher logistics costs.
 - Straws longer on one side than the other: This ensures that a part of the tubes/straws has a non-optimal (too short or too long) length.
 - Three, four, five or more layers of balloons with straws providing the balloons for each layer being the same length as the other straws in the layer: This also ensures that a part of the tubes/straws has a non-optimal (too short or too long) length; see previous comment.
 - Three, four, five or more layers of balloons with the straws providing the balloons for each layer being a range of lengths: This also ensures that a part of the tubes/straws has a non-optimal (too short or too long) length; see previous comment.
 - The straws on the edge being longer than the straws in a middle section: This is technically inferior: the balloons on the shorter tubes in the middle are then sandwiched between the longer tubes and have no room to expand.
 - The straws in a middle section being longer than the straws around the edge: This is the version shown in the design holder's RCD 1431829-0002 and RCD 001431829-0008 which are also being contested because the design features are solely dictated by the technical function of the product.
- All of the above variations suggested by the design holder are inferior solutions that cause the product not to function optimally, leading to a different result. Therefore, each example set out above would not fulfil the same technical function as the contested RCD and should be disregarded in the assessment of the product features under Article 8(1) CDR. The last-mentioned alternative forms part of simultaneous invalidity proceedings and should therefore not be taken into account here.
- Finally, the argument of the design holder that the Invalidity Division's approach would offend the principle of equal treatment is entirely incomprehensible, insufficiently motivated and based on an incorrect understanding of this principle. Obviously, this could not lead to another outcome of the case. Moreover, if the Invalidity Division offended the principle of equal treatment by taking into consideration the design holder's multiple RCD's for products with similar appearances, the same would apply to the Court in the DOCERAM case.

Arguments not presented by the parties

- According to the design holder, the Invalidity Division took arguments into account in its decision that were not brought forward by the parties. According to the design holder, this would be in conflict with Article 63 (1) CDR which provides that: ‘*the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought*’. However, the Invalidity Division has remained within its discretion where it rules that the product in which the design is embodied is considered a ‘single use product’, which as a consequence has limited aesthetic value and that users' interests would be in its function rather than its aesthetics. After all, this argument follows from the facts, evidence and arguments which have been provided: As, by definition, water balloons are disposable products. More importantly, the adoption of this argument alone would not lead to a different outcome of the invalidity proceedings taking into account all other abovementioned arguments of invalidity applicant II leading to invalidation of the RCD. As a result this argument of the design holder cannot lead to annulment of the decision and should also be rejected.
- The design holder mentions a few ‘single use products’ that would have been designed with their aesthetic appearance in mind. However, these examples are an exception to the rule. For disposable products the essential concern of the user will be their function rather than their appearance. The water balloons, for example, are the textbook example of a disposable product in which aesthetic appearance has played no role. As such, the general observations made by the Invalidity Division about the design purposes of disposable consumer products should still be considered a relevant circumstance for the assessment in this case.
- As follows from the above, that none of the design holder’ arguments presented in the statement of grounds of appeal can lead to the annulment of the decision or to a different outcome on appeal. Invalidity applicant II therefore maintains its position that the RCD is invalid in its entirety pursuant to Article 25(1)(b) and Article 8(1) CDR because all of the (essential) features are solely dictated by the technical function of the concerned product.

17 In its reply, the design holder stated, in essence, the following:

- The design holder reiterates its previous arguments regarding the erroneous approach in the DOCERAM test.
- In order to comply with the new, multifactorial, assessment, 08/03/2018, C-395/16, DOCERAM, EU:C:2018:17 makes it clear that all relevant factors must be considered. One such factor is consideration of the designer’s involvement in the design process. Furthermore, the decision specifically calls for evidence of the designer’s involvement in the design process, which indicates that the Invalidity Division believed this was an important factor that should be considered in light of the judgment in DOCERAM.

- The grounds of appeal were submitted, together with additional evidence from the designer in order to address this; meaning the evidence was submitted at the earliest possible stage after it was indicated it would be of value to the proceedings and it became clear from DOCERAM that it was necessary for a full and fair Article 8(1) CDR assessment to be completed.
- The Invalidity Division wrongly shifted the burden of proof from the invalidity applicants to the design holder, as confirmed by invalidity applicant II itself.
- A further factor which the Article 8(1) CDR assessment should include pursuant to DOCERAM, is consideration of design alternatives, to identify whether a holder is trying to establish a monopoly over designs that provide the same technical function. Contrary to the arguments of the invalidity applicants, consideration of this factor does not imply that the design holder is relying on the ‘multiplicity of forms’ theory.
- Additionally, as the design holder has not tried to establish a monopoly, the facts in these proceedings differ from the facts in DOCERAM, which should be reflected when applying the reasoning from that case to these proceedings. If this is not taken into account, the design holder will have been treated differently under EU law than third parties would have been.
- DOCERAM re-confirmed that the Article 8(1) CDR assessment is not to be carried out by reference to a ‘reasonable observer’, contrary to the assertions of invalidity applicant I.
- Aesthetic quality is not a consideration which should be included in the Article 8(1) CDR assessment. The Invalidity Division was therefore wrong to consider whether the RCD has an ‘enhanced appearance’. Invalidity applicant II’s observations on this point distract from the correct, objective, assessment.
- When assessing the RCD, the Invalidity Division and the invalidity applicants failed to consider how the RCD features interrelate and thereby how the RCD appears as a whole. This failure means the Article 8(1) CDR assessment was not carried out correctly.
- The RCD is directed at a toy, and the toy industry is heavily reliant on aesthetics for sales. This factor was not recognised in the contested decision and should be considered as part of the Article 8(1) CDR assessment.
- The invalidity applicants continue to rely heavily on the design holder’s patent application and the examination of that application in their observations. This approach causes technical aspects to be given too significant a weight. It is particularly important not to allow the examination of a patent application to influence the Article 8(1) CDR assessment since the examination procedure unsurprisingly only addresses technical aspects of the product because that is what patents protect.

- In considering an argument, relating to the product depicted in the RCD being a ‘single use’ product, which was not raised by the parties, the Invalidity Division breached Article 63(1) CDR. For this reason alone, the decision should be annulled.

18 In their rejoinders, the invalidity applicants reiterated their previous arguments.

Reasons

Admissibility of the appeal

19 The appeal complies with Articles 56 and 57 CDR and Article 34 CDIR. It is, therefore, admissible.

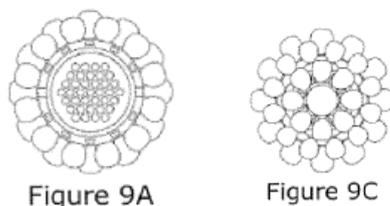
Article 8(1) CDR

- 20 The contested decision found that the contested RCD subsisted in features have been chosen with the aim of designing a product that performs a function. Therefore, the contested RCD was declared invalid according to Article 25(1)(b) CDR in conjunction with Article 8(1) CDR.
- 21 Under Article 25(1)(b) CDR a Community design may be declared invalid if it does not fulfil the requirements of Articles 4 to 9 CDR.
- 22 Article 8(1) CDR denies protection to features of a product’s appearance that are ‘solely dictated by its technical function’. The Court stated in its preliminary ruling that in order to determine whether the features of appearance of a product are exclusively dictated by its technical function, it must be established that the technical function is the only factor which determined those features, the existence of alternative designs not being decisive in that regard (08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 32).
- 23 In order to determine whether all the features of the appearance of the product into which the contested RCD will be incorporated were solely dictated by the technical function of the product, it is first necessary to determine what the technical function of that product is. In the application that led to the registration of the contested RCD, the design holder described the products as ‘fluid distribution equipment’.
- 24 The technical functionality of the characteristics of a shape may be assessed, in particular, having regard to the design at issue, the objective circumstances indicative of the reasons which dictated the choice of features of appearance of the product concerned, or information on its use or the existence of alternative designs which fulfil the same technical function, provided that those circumstances, data, or information as to the existence of alternative designs are supported by reliable evidence (08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 37).

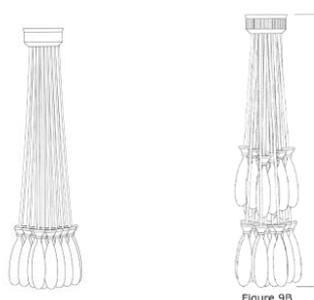
- 25 In the case at hand more precise information and evidence about the nature of the product and the functional characteristics of the design can be found in the European patent application EP 3 005 948 A2, filed in the name of the design holder on 3 October 2015, published on 13 April 2016 and supplied by both invalidity applicants with their applications for a declaration of invalidity.
- 26 The Board notes, first of all, that the design holder has supplied further evidence for the first time before the Board in the form of a witness statement provided by the designer Joshua Malone, press releases and some images of single use products. The Board finds it appropriate to admit the new evidence at this stage, since it supplements the evidence already provided by the design holder during the invalidity proceedings and seems, *prima facie*, likely to be relevant to the outcome of the invalidity case that has been filed. The Board stresses, however, that the *prima facie* relevance of the evidence does not imply that it is conclusive for the outcome of the present case.
- 27 On a further procedural matter the Board notes that the design holder claims that when the Invalidity Division was assessing whether any of the grounds of invalidity had been established, it was assuming that the burden of proof fell on the design holder to prove that the contested RCD was valid when it should have been assessing whether the facts, arguments and evidence filed by the invalidity applicant(s) established a ground of invalidity. The Board does not agree with this claim. The declaration of invalidity applications both include valid and convincing arguments as to why the contested design should be held invalid. This being the situation, it is then for the design holder to give convincing counter-arguments to these claims. The final conclusion then depends on an evaluation of all the facts, arguments and evidence provided by all parties, which is what the Invalidity Division has done.
- 28 The design holder also claims that the Invalidity Division incorrectly broke down the contested design into component parts and proceeded to assess the technical function of each of those component parts, rather than the technical function of the contested design as a whole. The Board also disagrees with this claim. As correctly noted by invalidity applicant II, Article 8(1) CDR specifically refers to features of the design (rather than the design as a whole) to be excluded from protection when they are solely dictated by its technical function. The contested decision therefore correctly applied the test of Article 8(1) CDR to each of the essential features of the design separately, but taking into account the technical function of the product as a whole. Its conclusion that all of these essential features were solely driven by the technical function of the product, consequently led to the invalidation of the design in its entirety. In addition, the contested decision also did in fact consider the design as a whole, when considering the design holder's arguments that visual aspects played a role in the design process, and by consequently, and rightfully, dismissing these arguments.
- 29 As to the design holder's claim that the contested decision incorrectly took into account the design holder's other RCDs, the Board notes that the Invalidity Division was fully entitled to also take these into account given that, for the purpose of determining whether Article 8(1) CDR applies, all of the relevant (objective) circumstances of the case must be taken into account (08/03/2018,

C-395/16, DOCERAM, EU:C:2018:172, § 37-38). One of these circumstances, in the present case, is the information about the design that can be derived from the design holder's other registrations for the same product.

- 30 The Board notes that Fig. 9A and 9C of the patent application are identical to the views 1.1 and 1.3 of the contested RCD as shown below:



- 31 The contested RCD also contains view 1.2., which corresponds to the upper part of the view 9B of the patent application as shown below:



- 32 The patent application contains eight further views which are not included in the contested RCD, concerning specific details of the product. There is no doubt, nor has it been disputed, that the patent application concerns exactly the same product as the contested RCD.
- 33 It is undisputed that the fluid distribution equipment product consists of a housing that can be attached to a standard water distribution facility such as a water tap or a garden hose pipe. The water is distributed via multiple straws (tubes) attached to the housing via holes and the final destination of the water is in the inflatable balloons attached to the far ends of the straws (tubes) with an elastic band. It is further understood from the evidence that once sufficient water is in the balloons, the weight of the water allows the balloons to be detached from the straws and the elastic band closes the opening of the balloons so that the water is kept inside the balloons, which can be subsequently used in a water fight. As is apparent from the promotional article submitted, from the design holder's submissions, from its patent application and also from the nature of the product itself, the product related to the RCD is intended to serve the purpose of entertaining children by facilitating a water balloon fight.
- 34 The Board agrees with invalidity applicant I that all the following features of the contested design are solely dictated by their technical function: a) the housing with an opening and a number of holes; b) a number of hollow tubes attached to the housing; c) a number of inflatable balloons connected to the ends of the tubes and d) a number of fasteners fixing the balloons to the tubes. All those features

are necessary for the technical solution to the question of how to fill a number of inflatable balloons at the same time. The functions of the features can also be seen on the design holder's presentation of the product on the internet as 'Bunch O Balloons': 'a hose attachment with 37 pre-connected balloons that automatically tie themselves once filled with water ... The way it works is that the uninflated balloons have been pulled over 37 straws. Around the neck of each balloon, there is a tiny, tight rubber band securing the balloon onto the straw. The straws feed into a single head that can be attached to a hose for filling. This allows for all of the balloons to simultaneously fill with water. You can then stop the hose and shake the balloons gently to release them into your arsenal.' The same features are more specifically described in the design holder's EU patent application for the same product. The contested RCD complies with these technical functions; it does not deviate from the previously submitted patent.

- 35 The Board agrees with the contested decision that an examination based on the earlier patent shows that all the single elements that are part of the contested RCD's visual appearance perform a technical function. As to the design holder's claims based on the designer's witness statement, as correctly noted by invalidity applicant II, the mere fact that the design concerns a product intended for sale to consumers does not necessarily lead to the conclusion that aesthetic considerations were taken into account. The fact that the design has a 'simple and clear appearance' similar to a 'flower and stem' due to the choice as to the length of the straws in relation to the length of the balloon and that the 'proportions of the design as a whole namely the length being about 18 times the width, giving the design a sleek and elegant appearance appealing to the user' does not change the fact that the visual aspect of the device is still the result of its technical function. The mere fact that a design alternative exists does not mean that a product's appearance has been dictated by anything other than technical considerations (08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 32).
- 36 Practically all of the design holder's arguments concerning the features of the product are simply based on the argument that various options exist for the designer to choose from and various shapes and arrangements can be used. It is of course true that, in principle, design alternatives do exist as concern the size, shape and position of these features. However, in the case at hand it must also be taken into account that the features and the way that they are designed also secure technical effects for the product's faultless performance. The main concerns during their development were technical, not visual.
- 37 Taking all of the above into account, in the opinion of the Board it is difficult to see anything in the contested RCD that could have been influenced by anything other than designing a product that performs its function in the best possible manner. All the essential features of the contested RCD have been chosen with a view to designing a product that performs its function. None of those features has been chosen simply for the purpose of enhancing the product's visual appearance.
- 38 Further, as noted earlier, Article 8(1) CDR denies protection to those features of a product's appearance that were chosen exclusively for the purpose of designing a product that performs its function, as opposed to features that were chosen, at

least to some degree, for the purpose of enhancing the product's visual appearance. All the features of the contested design only serve that function.

Conclusion

- 39 Therefore, the contested decision correctly found that the contested RCD subsists in features of a fluid distribution equipment which are solely dictated by its technical function and that the contested RCD is to be declared invalid according to Article 25(1)(b) CDR in conjunction with Article 8(1) CDR.
- 40 In view of the finding reached above, it is not necessary to examine the invalidity applicants' remaining submissions.
- 41 Accordingly, the appeal is dismissed.

Costs

- 42 Since the appeal has been unsuccessful, the design holder must be ordered to bear the costs incurred by the invalidity applicants, in accordance with Article 70(1) CDR.

Fixing of costs

- 43 In accordance with Articles 79(1), 79(6) and 79(7)(f)(iv) CDIR, the Board fixes the amount of representation costs to be paid by the design holder to each of the invalidity applicants for the appeal proceedings at EUR 500, for the proceedings relating to the application fee for the invalidity of the registered Community design at EUR 350 each and EUR 400 each for the representation costs. The total amount is EUR 2 500.

Order

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal;**
- 2. Orders the design holder to bear the costs incurred by the invalidity applicants.**
- 3. Fixes the amount of fees and costs to be paid by the design holder to the two invalidity applicants with respect to the invalidity proceedings and appeal proceedings at EUR 1 250 each.**

Signed

Th. M. Margellos

Signed

H. Salmi

Signed

C. Rusconi

Registrar:

Signed

p.o. I. Romero Conrad

