



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

DESIGNS DEPARTMENT- INVALIDITY DIVISION

**DECISION OF
THE INVALIDITY DIVISION
OF 03/04/2007**

**IN THE PROCEEDINGS FOR A DECLARATION OF INVALIDITY
OF A REGISTERED COMMUNITY DESIGN**

FILE NUMBER ICD 000003150
COMMUNITY DESIGN 000253778-0001
LANGUAGE OF PROCEEDINGS English

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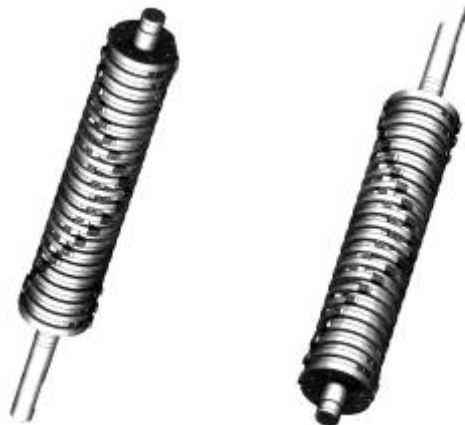
The Invalidity Division,

composed of Martin Schlötelburg (rapporteur), Eva Udovc (member) and Eva Vyoralova (member) took the following decision on 03/04/07:

1. **The Application for a declaration of invalidity of the registered Community design No. 000253778-0001 is rejected.**
2. **The Applicant shall bear the costs of the Holder.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design No. 000253778-0001 (in the following: “the RCD”) has been registered in the name of the Holder with the date of filing of 15/11/04. In the RCD, the indication of products reads “Chaff cutters” and the design is represented in the following views (published at http://oami.europa.eu/bulletin/rcd/2005/2005_028/000253778_0001.htm):

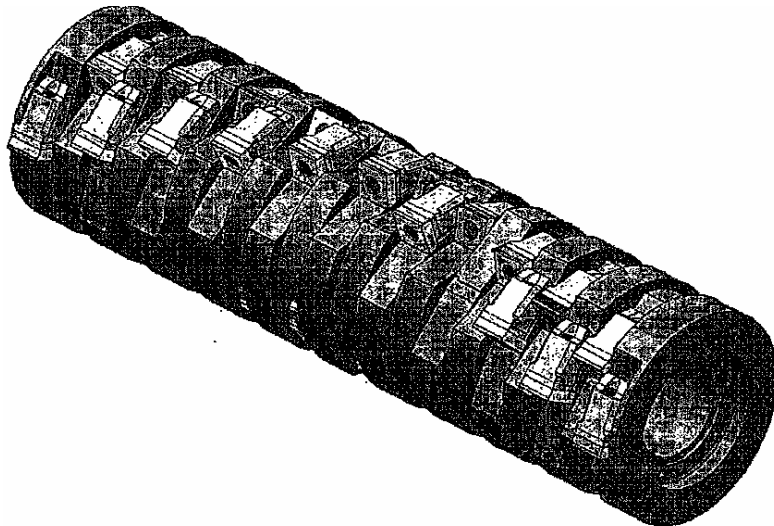


- (2) On 17/08/06, the Applicant filed an application for a declaration of invalidity (in the following: “the Application”) contesting the validity of the RCD. The fee for the Application was paid by current account with effect 17/08/06.
- (3) The Applicant requests the invalidation of the RCD on the basis of Article 25(1)(b) CDR¹ insofar as it does not fulfill the requirements of novelty and individual character according to Articles 4, 5 and 6 CDR. Further, the Applicant claims that the RCD is solely dictated by its

¹ Council Regulation (EC) No 6/2002 on Community designs

technical function. As facts he submits that cutters with a form of the knives similar to the RCD have been made available to the public since 2000 *inter alia* by commercial material of the Holder. He claims to have developed and sold own shredders containing a similar cutter. Furthermore, the RCD is allegedly solely dictated by the technical function and not visible during the normal use.

- (4) The Applicant provides the following documents as evidences:
- several copies of excerpts of the Holder's website "www.franssons.se" showing *inter alia* shredders (in the following: D1)
 - copy of commercial material by the Holder (in the following: D2)
 - affidavit of Mr. Vladimir Kovacevic dated 02/08/06 with attached drawings (in the following: D3)
 - photos of a "section of a step-rotor" (in the following: D6)
 - copy of a "timetable" (in the following: D7) including the following view of a cutter (in the following: prior design):



- (5) In reply the Holder argues that the RCD differs significantly from all prior designs because only the RDC has knives in a V-shaped form. This form is due to the "esthetical harmonization" as well as to the aim of a more efficient cutting process. Furthermore, the Holder claims that the cutter is visible during the normal use of the shredder and one could optically control the working process.
- (6) As evidence the Holder provides the following documents:
- Photos of a cutter and a shredder (in the following: D4)
 - Copy of a Swedish document of Bjerkéns Patentbyrå KB dated 17/02/06 addressed to Advokatfirman Olof Öhlén AB (in the following: D5)

- (7) The Applicant replied that the V-shape arrangement of the knives on the cutter is due to the aim of improving the efficiently cutting procedure. Further, it would not be allowed to open a shredder for control reasons according to the Machinery Directive 98/37/EC.
- (8) On 27/02/07 the Office informed both parties that the written proceedings were closed and that a decision concerning the invalidity would be taken.
- (9) For further details to the facts, evidence and arguments submitted by the Applicant and the Holder reference is made to the documents on file.

II. GROUNDS OF THE DECISION

A. Admissibility

- (10) The indication of the grounds for invalidity on the form of the Office is a statement of the grounds on which the Application is based in the meaning of Art. 28(1)(b)(i) CDR². Furthermore, the Application complies with Art. 28(1)(b)(vi) CDR, since the attachment contains an indication of the facts, evidence and arguments submitted in support of those grounds. The other requirements of Art. 28(1) CDR are fulfilled as well. The Application is admissible.

B. Substantiation

B.1 Evidence

- (11) The documents D1, D2, D4, and D6 are not evidence for the disclosure of a prior design within the meaning of Article 7(1) CDR, because none of them bears any indication of a date.
- (12) D5 cannot be taken into account since it is written in Swedish which is not the language of proceedings.
- (13) D3 is a valid mean of evidence according to Article 65(1)(f) CDR. In the affidavit Mr. Vladimir Kovacevic claims that a device including a cutter according to the prior design has been shown to an Italian client on 20/01/04. The affidavit contains various views showing sections of the prior design. D7 confirms the shipment of the device on the date of 15/03/04.

² Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs

B.2 Visibility

- (14) According to Article 4(2)(a) CDR, a design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character if the component part, once it has been incorporated into the complex product, remains visible during the normal use of the later.
- (15) Chaff cutters are component parts of shredding machines which are complex products. The normal use of a shredding machine is the shredding of material such as waste. For introducing this material, the machine has to have an opening with direct access to the cutter. During the shredding, the cutter is visible, not necessarily by the person introducing the material, but by any other looking into the opening for reason such as controlling the amount of material not yet processed. Therefore, the provision of Article 4(2) CDR does not affect the novelty and individual character of the RCD.

B.3 Novelty

- (16) The RCD and the prior design are different at least to the extent that the knives on the cutter of the RCD are arranged in a V-shaped configuration whereas the knives in the prior design in a bow-shaped irregular line. This feature is not an immaterial detail. Therefore, the RCD and the prior design are not identical within the meaning of Art. 5 CDR.

B.4 Individual character

- (17) The informed user is familiar with chaff cutters for shredding machines as shown in the RCD. In particular, he is aware that these cutters have to be round-shaped and there are several knives arranged on the cutter for functionality reasons.
- (18) When assessing the individual character of the RCD it has to be taken into account that the degree of freedom of the designer is limited in so far as the cutter has to fulfill its function.
- (19) In the present case, the overall impression produced on the informed user by the RCD differs from the overall impression produced by the prior design due to different arrangement of the knives along the cutter. The V-shape arrangement of the RCD is more esthetical. Therefore, the prior design does not form an obstacle to the individual character of the RCD.

B.5 Technical Function

- (20) The feature of the V-shape arrangement of the cutting knives of RCD is not solely dictated by the technical function of the cutter. The technical function of the cutter is to cut material fed into it. This function may be achieved by alternative designs with a different arrangement of the knives, for instance along a straight line across the cutter or W-shape alignment. Therefore, Article 8(1) CDR does not apply to the specific feature of the V-shape arrangement of the RCD.

C. Conclusion

- (21) None of the facts and evidence provided by the Applicant supports the invoked ground for invalidity of Article 25(1)(b) CDR. Therefore, the Application has to be rejected.

III. COSTS

- (22) Pursuant to Article 70(1) CDR and Art. 79(1) CDIR, the Applicant shall bear the fees and the costs of the Holder.

IV. RIGHT TO APPEAL

- (23) An appeal shall lie from the present decision. Notice of appeal must be filed at the Office within two months after the date of notification of this decision. The notice is deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed (Art. 57 CDR).

THE INVALIDITY DIVISION

Martin Schlötelburg

Eva Udovc

Eva Vyoralova