Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

20 December 2017*

(References for a preliminary ruling — Regulation (EC) No 6/2002 — Community designs — Article 110(1) — No protection — 'Repair' clause — Concept of 'component part of a complex product' — Repair of the complex product so as to restore its original appearance — Measures to be adopted by the user for the purposes of relying on the 'repair' clause — Replica car wheel rim identical to the original wheel rim design)

In Joined Cases C-397/16 and C-435/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte d'appello di Milano (Court of Appeal, Milan, Italy) and from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decisions of 15 and 2 June 2016, received at the Court, respectively, on 18 July and 4 August 2016, in the proceedings

Acacia Srl

v

Pneusgarda Srl, in insolvency,

Audi AG (C-397/16),

and

Acacia Srl,

Rolando D'Amato

v

Dr. Ing. h.c. F. Porsche AG (C-435/16),

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 14 June 2017,

* Languages of the case: German and Italian.

after considering the observations submitted on behalf of

– Acacia Srl and Mr D'Amato, by F. Munari, M. Esposito and A. Macchi, avvocati, and by B. Schneiders, D. Treue and D. Thoma, Rechtsanwälte,

– Audi AG, by G. Hasselblatt, Rechtsanwalt, and by M. Cartella and M. Locatelli, avvocati,

– Dr. Ing. h.c. F. Porsche AG, by B. Ackermann and C. Klawitter, Rechtsanwälte,

– the Italian Government, by G. Palmieri, acting as Agent, and by M. Santoro, S. Fiorentino and L. Cordi, avvocati dello Stato,

– the German Government, by T. Henze, M. Hellmann and J. Techert, acting as Agents,

– the French Government, by D. Segoin, acting as Agent,

– the Netherlands Government, by M. Bulterman and H. Stergiou, acting as Agents,

– the European Commission, by J. Samnadda, V. Di Bucci and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 September 2017,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 110(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

2 The requests have been made in the context of two disputes between (i) Acacia Srl, on the one hand, and Pneusgarda Srl, in insolvency, and Audi AG, on the other, and (ii) Acacia and its managing director, Mr Rolando D'Amato, on the one hand, and Dr. Ing. h.c. F. Porsche AG ('Porsche'), on the other, concerning the alleged infringement, by Acacia, of Community designs of which Audi and Porsche are the holders.

Legal context

The Agreement on Trade-Related Aspects of Intellectual Property Rights

3 The Agreement on Trade-Related Aspects of Intellectual Property Rights was approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1). Article 26(2) thereof states:

'Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.'

EU law

Directive 98/71/EC

4 Recital 19 of Directive 98/71/EC of the European Parliament and the Council of 13 October 1998 on the legal protection of designs (OJ 1998 L 289, p. 28) provides:

'Whereas the rapid adoption of this Directive has become a matter of urgency for a number of industrial sectors; whereas full-scale approximation of the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the product incorporating the design or to which the design is applied constitutes a component part of a complex product upon whose appearance the protected design is dependent, cannot be introduced at the present stage; whereas the lack of full-scale approximation of the laws of the Member States on the use of protected designs for such repair of a complex product should not constitute an obstacle to the approximation of those other national provisions of design law which most directly affect the functioning of the internal market; whereas for this reason Member States should in the meantime maintain in force any provisions in conformity with the Treaty relating to the use of the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance, or, if they introduce any new provisions relating to such use, the purpose of these provisions should be only to liberalise the market in such parts; …'

5 Article 14 of that directive, entitled 'Transitional provision', provides:

'Until such time as amendments to this directive are adopted on a proposal from the Commission in accordance with the provisions of Article 18, Member States shall maintain in force their existing legal provisions relating to the use of the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance and shall introduce changes to those provisions only if the purpose is to liberalise the market for such parts.'

Regulation No 6/2002

6 Recitals 1, 9 and 13 of Regulation No 6/2002 read as follows:

'(1) A unified system for obtaining a Community design to which uniform protection is given with uniform effect throughout the entire territory of the Community would further the objectives of the Community as laid down in the Treaty.

…

(9) The substantive provisions of this Regulation on design law should be aligned with the respective provisions in Directive 98/71/EC.

…

(13) Full-scale approximation of the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the design is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the protected design is dependent, could not be achieved through Directive 98/71/EC. Within the framework of the conciliation procedure on the said Directive, the Commission undertook to review the consequences of the provisions of that Directive three years after the deadline for transposition of the Directive in particular for the industrial sectors which are most affected. Under these circumstances, it is appropriate not to confer any protection as a Community design for a design which is applied to or

incorporated in a product which constitutes a component part of a complex product upon whose appearance the design is dependent and which is used for the purpose of the repair of a complex product so as to restore its original appearance, until the Council has decided its policy on this issue on the basis of a Commission proposal.'

7 Article 3 of that regulation provides as follows:

'For the purposes of this Regulation:

(a) "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;

(b) "product" means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;

(c) "complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.'

8 Article 4 of that regulation, entitled 'Requirements for protection', provides:

'1. A design shall be protected by a Community design to the extent that it is new and has individual character.

2. 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:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

3. "Normal use" within the meaning of paragraph (2)(a) shall mean use by the end user, excluding maintenance, servicing or repair work.'

9 Article 19(1) of that regulation reads as follows:

'A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.'

10 Article 110 of Regulation No 6/2002, entitled 'Transitional provision' provides:

'1. Until such time as amendments to this Regulation enter into force on a proposal from the Commission on this subject, protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance.

2. The proposal from the Commission referred to in paragraph 1 shall be submitted together with, and take into consideration, any changes which the Commission shall propose on the same subject pursuant to Article 18 of Directive 98/71/EC.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-397/16

11 Audi is the holder of a number of Community designs of alloy car wheel rims.

12 Acacia manufactures, under the brand WSP Italy, alloy car wheel rims that are sold on its own website, which is available in several languages. According to the referring court, some of those wheel rims are identical to Audi's alloy wheel rims. The wheel rims manufactured by Acacia are stamped with the indication 'NOT OEM', which means not made by the original equipment manufacturer. The commercial and technical documents accompanying those products, the sales invoices and Acacia's internet site indicate that the wheel rims at issue are sold exclusively as replacement parts for the purpose of making repairs.

13 Audi brought an action before the Tribunale di Milano (District Court, Milan, Italy) seeking, in essence, a declaration that Acacia's manufacture and sale of the wheel rims at issue constitutes an infringement of its Community designs. That court upheld that action.

14 Acacia brought an appeal against that court's judgment before the Corte d'appello di Milano (Court of Appeal, Milan, Italy). That court, after noting inter alia the existence of conflicting rulings from Italian courts and courts of other Member States concerning the application of the 'repair' clause, held that there were serious doubts as to the interpretation of Article 110(1) of Regulation No 6/2002.

15 In those circumstances, the Corte d'appello di Milano (Court of Appeal, Milan) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do [i] the principles of the free movement of goods and of the freedom to provide services within the internal market, [ii] the principle of the effectiveness of EU competition law and of the liberalisation of the internal market, [iii] the principles of *effet utile* and of the uniform application within the European Union of EU law and [iv] the provisions of secondary EU law, such as Directive 98/71, and in particular Article 14 thereof, Article 1 of [Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ 2010 L 129, p. 52)] and Regulation [No 124 of the Economic Commission for Europe of the United Nations (UN/ECE) — uniform provisions concerning the approval of wheels for passenger cars and their trailers (OJ 2006 L 375, p. 604, and corrigendum OJ 2007 L 70, p. 413)], preclude an interpretation of Article 110 of Regulation No 6/2002, which contains the repair clause, that excludes replica wheels aesthetically identical to original equipment wheels and approved on the basis of UNECE Regulation No 124 from the definition of a 'component part of a complex product' (that complex product being a motor vehicle) for the purpose of the repair of that complex product and the restoration of its original appearance?

(2) In the event that the first question is answered in the negative, do the rules on exclusive industrial rights in respect of registered designs, regard being had to the balancing of the interests referred to in the first question, preclude the application of the repair clause to replica complementary products that may be selected freely by the customer, on the basis that the repair clause is to be interpreted restrictively and may be relied upon only with respect to spare parts that come in one particular form only, that is to say, component parts the form of which has been determined in practically immutable fashion with respect to the external appearance of the complex product, to the exclusion of component parts that may be regarded as interchangeable and that may be applied freely, in accordance with the customer wishes?

(3) In the event that the second question is answered in the negative, what steps must a manufacturer of replica wheels take in order to ensure the free movement of products the intended use of which is the repair of a complex product and the restoration of its original appearance?'

Case C-435/16

16 Porsche is the holder of a number of Community designs of alloy car wheel rims.

17 The wheel rims manufactured by Acacia, referred to in paragraph 12 of the present judgment, are sold, in Germany, on its internet site, which is directed at end consumers and is accessible in German. According to the referring court, some of those wheel rims are identical to Porsche's alloy wheel rims. That court observes that, according to Acacia, the rims it manufactures and which are intended for Porsche vehicles can be used only with Porsche vehicles. Porsche submits to that court that the rims in question are also offered in colours and sizes which do not correspond to the original products.

18 Porsche brought an action before the Landgericht Stuttgart (Regional Court, Stuttgart, Germany) seeking, in essence, a declaration that Acacia's manufacture and sale of the wheel rims at issue constitutes an infringement of its Community designs. That court upheld that action.

19 As the appeal brought by Acacia and Mr D'Amato was dismissed, they brought an appeal on a point of law (*Revision*) before the referring court. That court notes that the outcome of the appeal on a point of law depends on whether Acacia may rely on the 'repair' clause in Article 110(1) of Regulation No 6/2002. However, the interpretation of that provision raises several difficulties.

20 In those circumstances, the Bundesgerichtshof (Federal Court of Justice, Germany) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the application of the bar to protection as provided for in Article 110(1) of Regulation (EC) No 6/2002 limited to fixed shape parts, namely those parts whose shape is in principle immutably determined by the appearance of the product as a whole and cannot therefore be freely selected by the customer, such as rims for motor vehicles?

(2) If Question 1 is answered in the negative: Is the application of the bar to protection as provided for in Article 110(1) of Regulation (EC) No 6/2002 limited only to the supply of products of an identical design, which thus correspond also in colour and size to the original products?

(3) If Question 1 is answered in the negative: Does the bar to protection as provided for in Article 110(1) of Regulation (EC) No 6/2002 apply in favour of the supplier of a product that fundamentally infringes the design at issue only if this supplier objectively ensures that his product can be purchased exclusively for repair purposes and not for other purposes as well, such as the upgrading or customisation of the product as a whole?

(4) If Question 3 is answered in the affirmative: Which measures must the supplier of a product that fundamentally infringes the design at issue take in order to objectively ensure that his product can be purchased exclusively for repair purposes and not for other purposes as well, such as the upgrading or customisation of the product as a whole? Is it enough:
   (a) that the supplier includes a note in the sales brochure to the effect that any sale takes place exclusively for repair purposes so as to restore the original appearance of the product as a whole; or
   (b) is it necessary that the supplier make delivery conditional on the customer (traders and consumers) declaring in writing that the product supplied is to be used for repair purposes only?'

21 By decision of the President of the Court of 25 April 2017, Cases C-397/16 and C-435/16 were joined for the purposes of the oral part of the procedure and the judgment.

The requests to reopen the oral part of the procedure

22 By documents respectively lodged at the Court Registry on 24 November and 1 December 2017, Porsche and Audi requested the Court to order the reopening of the oral part of the procedure pursuant to Article 83 of the Rules of Procedure of the Court.

23 In support of their requests, Porsche and Audi contend, in essence, that the Opinion of the Advocate General is based on unsubstantiated claims which have not been the subject of debate between the parties, relating inter alia to the origin of the 'repair' clause in Article 110(1) of Regulation No 6/2002.

24 Pursuant to Article 83 of its Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

25 That is not the situation in the present case. A new fact has not been claimed to exist. Moreover, the origin of the 'repair' clause was addressed inter alia by the Commission in its written observations and debated by all the parties at the hearing. Therefore, the Court considers, after hearing the Advocate General, that it has all the necessary information to give judgment.

26 Furthermore, as regards the criticisms made by Porsche and Audi of the Advocate General's Opinion, it must be borne in mind, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for interested parties to submit observations in response to the Advocate General's Opinion (judgment of 25 October 2017, *Polbud — Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 23 and the case-law cited).

27 Secondly, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In this regard, the Court is not bound either by the Opinion delivered by the Advocate General or by the reasoning which led to that Opinion. As a consequence, the fact that a party disagrees with the Advocate General's Opinion, irrespective of the questions examined in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 25 October 2017, *Polbud — Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 23 and the case-law cited).

28 In the light of the foregoing, the Court considers that there is no need to reopen the oral part of the procedure.

Consideration of the questions referred

The second question in Case C-397/16 and the first question in Case C-435/16

29 By the second question in Case C-397/16 and by the first question in Case C-435/16, which it is appropriate to examine first and together, the referring courts ask, in essence, whether Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that the 'repair' clause in it makes the

exclusion of protection as a Community design for a design which constitutes a component part of a complex product which is used for the purpose of the repair of that complex product so as to restore its original appearance subject to the condition that the protected design is dependent upon the appearance of the complex product.

30 Audi, Porsche and the German Government contend, in essence, that the 'repair' clause in Article 110(1) of Regulation No 6/2002 applies solely to component parts of a complex product upon whose appearance the protected design is dependent, namely parts whose shape is fixed, with the result that alloy car wheel rims cannot be covered by that provision. Acacia, the Italian and Netherlands Governments and the Commission maintain, on the other hand, that the application of the 'repair' clause is not limited to fixed-shape parts, namely those parts whose shape is in principle immutably determined by the appearance of the complex product and cannot therefore be freely selected by the customer, so that light alloy wheel rims may be covered by that provision.

31 It is settled case-law that in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part. The origins of a provision of EU law may also provide information relevant to its interpretation (see, to that effect, judgments of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50; of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 30; and of 18 May 2017, *Hummel Holding*, C-617/15, EU:C:2017:390, paragraph 22).

32 According to Article 110(1) of Regulation No 6/2002, 'protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance'.

33 In contrast to recital 13 of Regulation No 6/2002, which states that protection as a Community design cannot be provided for a design which is applied to or incorporated in a product which constitutes a component part of a complex product 'upon whose appearance the design is dependent' and which is used for the purpose of the repair of a complex product so as to restore its original appearance, Article 110(1) of that regulation merely provides that it must be a 'component part of a complex product' that must be 'used … for the purpose of the repair of that complex product so as to restore its original appearance'.

34 It therefore follows from the wording of Article 110(1) of Regulation No 6/2002 that the protected design's dependence upon the appearance of the complex product is not one of the conditions listed in that provision.

35 This literal interpretation is, in the first place, supported by the origin of the 'repair' clause.

36 It should be noted, as regards the legislative work preceding the adoption of that clause, that both the proposal for a Regulation of the European Parliament and of the Council on the Community design (OJ 1994 C 29, p. 20) and the amended proposal for a Council Regulation on the Community design (OJ 2001 C 62 E, p. 173) contained a provision that, while not drafted in rigorously identical terms, specifically provided that a design applied to or incorporated in a product which constitutes a component part of a complex product 'upon whose appearance the design is dependent' could not enjoy protection as a Community design.

37 However, as the Advocate General stated, in essence, in points 60 to 62 of his Opinion, it is apparent from the Report from the Presidency to the Permanent Representatives Committee (Coreper) No 12420/00 of 19 October 2000 (interinstitutional file 1993/0463 (CNS)) that, 'with a view to political agreement on the proposed Regulation', two main questions were put before Coreper, one of which specifically concerned spare parts. That report thus stated that the majority of delegations

within that committee called for, first, the wording of the provision at issue to be more closely aligned to that of Article 14 of Directive 98/71 and, secondly, spare parts to be excluded from the protection offered by the future regulation 'only where they were used to repair a complex product so as to restore its original appearance'.

38 Against that background, the requirement laid down in the wording of the provision at issue, as it appeared in the proposal and the Commission's amended proposal, cited in paragraph 36 of the present judgment, relating to the fact that the product in which the design is incorporated or to which it is applied must be a component part of a complex product 'upon whose appearance the design is dependent', was omitted from the final provision adopted by the Council.

39 It is therefore apparent from the origin of Article 110(1) of Regulation No 6/2002 that the absence of a limitation on the scope of that provision to parts whose shape is fixed by the shape of the complex product stems from a choice made during the legislative process.

40 Admittedly, as Audi, Porsche and the German Government point out, a reference to the requirement that 'the design is dependent' on the appearance of the complex product was maintained in the wording of recital 13 of Regulation No 6/2002. However, in the light of the foregoing, that fact does not appear decisive. Moreover, as follows from the case-law of the Court, while the preamble to an EU measure may explain the latter's content, it cannot be relied upon as a ground for derogating from the actual provisions of the measure in question (judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 76 and the case-law cited).

41 In that context, having regard to the intention of the EU legislature, as recalled in paragraphs 36 to 38 of the present judgment, there is no need for a strict interpretation of Article 110(1) of Regulation No 6/2002, such as that referred to in paragraph 30 of the present judgment, put forward by Audi, Porsche and the German Government, which would be based on the derogatory or transitional nature of that provision.

42 In that regard, first, the 'repair' clause does limit the rights of a Community design holder, since that holder is denied, when the conditions laid down by Article 110(1) of Regulation No 6/2002 are met, the exclusive right set out in Article 19(1) of that regulation to prevent any third party not having his consent from using such a design, and that could indeed justify a strict interpretation of Article 110(1). However, that fact cannot justify making the application of that provision subject to a condition which it does not lay down.

43 Secondly, although Article 110(1) of Regulation No 6/2002 is entitled 'Transitional provision' and provides, moreover, in paragraph 1, that the 'repair' clause applies only 'until such time as amendments to this Regulation enter into force', it is clear that that provision is, by its very nature, intended to apply until its amendment or repeal following a proposal by the Commission.

44 In the second place, the interpretation of Article 110(1) of Regulation No 6/2002 in paragraph 34 of the present judgment is borne out by an analysis of the context in which the 'repair' clause occurs, that context militating in favour of a consistent interpretation of the provisions of Regulation No 6/2002, on the one hand, and those of Directive 98/71 on the other.

45 In that regard, first of all, as the Advocate General noted in point 55 of his Opinion, both the proposal for a Directive of the European Parliament and of the Council on the legal protection of designs (OJ 1993 C 345, p. 14) and the proposal for a regulation referred to in paragraph 36 of the present judgment, which were submitted simultaneously by the Commission, contain a 'repair' clause whose scope was limited to component parts forming part of a complex product 'upon whose appearance the protected design is dependent'. In contrast to the provision of that directive, the 'repair' clause, as set out in Directive 98/71, does not contain such a restriction. However, as noted in paragraph 37 of

the present judgment, the amendment, during the legislative work that led to the adoption of Regulation No 6/2002, of the wording of the 'repair' clause contained in Article 110(1) of that regulation aimed to align that wording more closely with that of Article 14 of Directive 98/71.

46 Next, recital 9 of Regulation No 6/2002 states that the substantive provisions of that regulation should be aligned with the respective provisions in Directive 98/71.

47 Finally, it is apparent from Article 110(2) of Regulation No 6/2002 that any proposal from the Commission seeking to amend the 'repair' clause contained in paragraph 1 of that article must be submitted together with any changes proposed for the 'repair' clause referred to in Article 14 of Directive 98/71 pursuant to Article 18 of the directive, and, in accordance with that Article 110(2), the Commission also has to take those changes into consideration.

48 However, Article 14 of Directive 98/71 does not contain a requirement that the protected design must be dependent upon the appearance of the complex product, which militates in favour of an interpretation of the 'repair' clause as meaning that it is not subject to the condition that the protected design be dependent upon the appearance of the complex product.

49 In the third place, the interpretation of Article 110(1) of Regulation No 6/2002 in paragraph 34 of the present judgment is not invalidated by the objective pursued by the 'repair' clause, as set out in the explanatory memorandum to the proposal for a regulation referred to in paragraph 36 of the present judgment.

50 As is apparent from that explanatory memorandum, the protection granted by Community designs may cause adverse effects by removing or restricting competition on markets, as regards, inter alia, long lasting and expensive complex products such as cars, in respect of which the protection of designs that are applied to the particular component parts which make up the complex product may create a veritable captive market for those spare parts. In that context, the purpose of the 'repair' clause is to avoid the creation of captive markets in certain spare parts and, in particular, to prevent a consumer who has bought a long lasting and perhaps expensive product from being indefinitely tied, for the purchase of external parts, to the manufacturer of the complex product.

51 As the Advocate General notes, in essence, in points 44 and 45 of his Opinion, it is precisely in order to limit the creation of captive markets in spare parts that the 'repair' clause referred to in Article 110(1) of Regulation No 6/2002 provides that there is no protection as a Community design for a Community design which constitutes a component part of a complex product that is used for the purpose of the repair of a complex product so as to restore its original appearance.

52 The aim of the 'repair' clause to liberalise, to a certain extent, the market in replacement parts is, moreover, corroborated by recital 19 and by Article 14 of Directive 98/71, according to which changes to national legal provisions relating to the use of the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance are permitted only if the purpose of those changes is to liberalise the market for the component parts at issue.

53 It follows from all the foregoing that the scope of Article 110(1) of Regulation No 6/2002 is not limited to component parts forming part of a complex product upon whose appearance the protected design is dependent.

54 In the light of the foregoing considerations, the answer to the second question in Case C-397/16 and the first question in Case C-435/16 is that Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that the 'repair' clause in it does not make the exclusion of protection as a Community design for a design which constitutes a component part of a complex product which is used for the purpose of the repair of that complex product so as to restore its original appearance subject to the condition that the protected design is dependent upon the appearance of the complex product.

The first question in Case C-397/16 and the second question in Case C-435/16

55 By the first question in Case C-397/16 and by the second question in Case C-435/16, which it is appropriate to examine secondly and together, the referring courts ask, in essence, to which conditions the 'repair' clause in Article 110(1) of Regulation No 6/2002 subjects the exclusion of protection as a Community design for a design which constitutes a component part of a complex product which is used for the purpose of the repair of a complex product so as to restore its original appearance.

56 As regards the first question in Case C-397/16, Audi and the German Government contend, in essence, that a replacement wheel rim aesthetically identical to an original equipment wheel rim does not fall within the concept of a component part of a complex product intended for the purpose of the repair of that complex product and the restoration of its original appearance, with the result that such a wheel rim is not covered by the 'repair' clause. Acacia, the Italian and Netherlands Governments and the Commission maintain, on the other hand, that a replica wheel rim aesthetically identical to an original equipment wheel rim is covered by the concept of a component part of a complex product intended for the purpose of the repair of that complex product and the restoration of its original appearance.

57 As regards the second question in Case C-435/16, Porsche, the Italian and Netherlands Governments and the Commission contend, in essence, that, for a replica car wheel rim to be covered by the 'repair' clause, such a wheel rim must be identical in appearance to the original wheel rim. Acacia claims, in contrast, that the 'repair' clause applies to all 'standard variants' of original wheel rims.

58 According to Article 110(1) of Regulation No 6/2002, protection as a Community design does not exist 'for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance'.

59 It is therefore apparent from the wording of that provision that the application of the 'repair' clause is subject to several conditions relating, first of all, to the existence of a Community design, next, to the presence of a 'component part of a complex product' and, finally, to the need for '[use] within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance'.

60 In the first place, it should be noted that under Article 110(1) of Regulation No 6/2002, all protection for a 'Community design' is excluded, if the conditions laid down by that provision are met. It follows, as the Advocate General noted, in essence, in points 90 and 91 of his Opinion, that Article 110(1) is applicable only to component parts which are protected as a Community design and which, as follows from Article 1(1) of that regulation, satisfy the conditions for protection laid down in that regulation, in particular in Article 4(2) thereof.

61 In that regard, according to Article 4(2) of Regulation No 6/2002, a design applied to or incorporated in a product which constitutes a component part of a complex product is to be protected only to the extent that, first, the component part, once it has been incorporated into a complex product, remains visible during normal use of that product and, secondly, the visible features of the component part fulfil in themselves the requirements as to novelty and individual character set out in paragraph 1 of that article.

62 In the present case, it is common ground that this applies to the Community designs of car wheel rims of which Audi and Porsche are holders.

63 In the second place, Article 110(1) of Regulation No 6/2002 applies only to 'component parts of a complex product'.

64 It must be noted that Regulation No 6/2002 does not define the concept of 'component part of a complex product'. It is, however, apparent from Article 3(b) and (c) of that regulation that, first, 'product' means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product and, secondly, 'complex product' means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product. Furthermore, in the absence of any definition of the term 'component part' in that regulation, it must be understood in accordance with its usual meaning in everyday language (see, to that effect, judgment of 4 May 2006, *Massachusetts Institute of Technology*, C-431/04, EU:C:2006:291, paragraph 17 and the case-law cited).

65 In those circumstances, it must be held that, through the words 'component parts of a complex product', Article 110(1) of Regulation No 6/2002 covers multiple components, intended to be assembled into a complex industrial or handicraft item, which can be replaced permitting disassembly and re-assembly of such an item, without which the complex product could not be subject to normal use.

66 In the present case, a car wheel rim must be classified as a 'component part of a complex product' within the meaning of that provision, such a wheel rim being a component of a complex product which a car constitutes, without which that product could not be subject to normal use.

67 In the third place, Article 110(1) of Regulation No 6/2002 requires, for the purposes of applying the 'repair' clause, that the component part of the complex product be 'used within the meaning of Article 19(1) for the purpose of the repair of that complex product'.

68 In that regard, first, it is apparent from Article 19(1) of Regulation No 6/2002 that the 'use' of the component part within the meaning of that provision covers the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes. As is apparent from the wording of that article, that concept is construed broadly and encompasses any use of a component part for the purposes of repair.

69 Secondly, the use of the component part must have the aim of 'permitting the repair' of the complex product. In this respect, as the Advocate General noted, in essence, in points 89 and 100 of his Opinion, the requirement that the use of the component part must permit the 'repair' of the complex product implies that the component part must be necessary for the normal use of the complex product or, in other words, that if that part were faulty or missing, this would prevent such normal use. Thus, the possibility of relying on the 'repair' clause requires that the use of the component part be necessary for the repair of a complex product that has become defective, inter alia due to the lack of the original part or damage caused to it.

70 Any use of a component part for reasons of preference or purely of convenience, such as, inter alia, the replacement of a part for aesthetic purposes or customisation of the complex product is therefore excluded from the 'repair' clause.

71 In the fourth place, Article 110(1) of Regulation No 6/2002 requires, for the purposes of applying the 'repair' clause, that the repair of the complex product be done 'so as to restore its original appearance'.

72 Having regard to Article 3(a) of Regulation No 6/2002, it should be noted that the appearance of a product or part of a product results from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

73 In that regard, as the Advocate General noted in points 103 and 104 of his Opinion, the component parts covered by Article 110(1) of Regulation No 6/2002 contribute to the appearance of the complex product. As recalled in paragraph 60 of the present judgment, only component parts which benefit from protection as a Community design and which, in accordance with Article 4(2)(a) of that regulation, therefore remain visible during normal use of the complex product once it has been incorporated into it are covered by Article 110(1). A visible component part necessarily contributes to the appearance of the complex product.

74 It is further necessary that the repair be done so as to restore the complex product to its 'original' appearance. It follows that, in order for the 'repair' clause to be applied, the component part must be used so as to restore the complex product to the appearance it had when it was placed on the market.

75 It must be concluded that the 'repair' clause applies only to component parts of a complex product that are visually identical to original parts.

76 Such an interpretation is, moreover, consistent with Article 26(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which provides that any exception to the protection of industrial designs must be limited and must not unreasonably conflict with the normal exploitation of such designs or unreasonably prejudice the legitimate interests of the owner, taking account of the legitimate interests of third parties. That is the situation in the present case, since the application of the 'repair' clause is limited to the use of a design that constitutes a component part of a complex product used for the sole purpose of permitting the actual repair of that complex product so as to restore its original appearance.

77 Any use of a component part which is not for the purpose of restoring a complex product to the appearance it had when it was placed on the market is, accordingly, excluded. That is the case if, inter alia, the replacement part does not correspond, in terms of its colour or its dimensions, to the original part, or if the appearance of a complex product was changed since it was placed on the market.

78 In the light of the foregoing considerations, the answer to the first question in Case C-397/16 and the second question in Case C-435/16 is that Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that the 'repair' clause in it makes the exclusion of protection as a Community design for a design which constitutes a component part of a complex product which is used for the purpose of the repair of that complex product so as to restore its original appearance subject to the condition that the replacement part must have an identical visual appearance to that of the part which was originally incorporated into the complex product when it was placed on the market.

The third question in Case C-397/16 and the third and fourth questions in Case C-435/16

79 By the third question in Case C-397/16 and by the third and fourth questions in Case C-435/16, which it is appropriate to examine thirdly and together, the referring courts ask, in essence, whether Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that, in order to rely on the 'repair' clause in that provision, the manufacturer or seller of a component part of a complex product must ensure and, in that case, how it must ensure, that the component part can be purchased exclusively for repair purposes.

80 Audi submits, in that regard, that the application of the 'repair' clause is irreconcilable with the direct sale of replica parts to end consumers, so that manufacturers of replica parts must limit the distribution of their products to repair shops. Porsche contends that the manufacturer of replica parts must objectively ensure that his product can be purchased exclusively for repair purposes and not for other purposes as well, such as the customisation of the complex product. The Italian Government and the Commission maintain, in essence, that the manufacturer of replica parts is required to adopt general control measures intended to ensure the legal use of those parts. Acacia submits, for its part,

that informing clients in advance and in writing regarding the fact that the component part is intended to permit the repair of a complex product so as to restore its original appearance is a measure compatible with the need to strike a fair balance of the interests at stake.

81 As is apparent from its wording, Article 110(1) of Regulation No 6/2002 excludes protection as a Community design for a design which constitutes a component part of a complex product used for the purpose of the repair of that complex product so as to restore its original appearance. The 'use' at issue covers, in that regard, in particular, as recalled in paragraph 68 of the present judgment, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

82 Thus, it must be ascertained whether, when such use consists, as in the cases in the main proceedings, in the manufacture and sale of such a product, Article 110(1) of Regulation No 6/2002 imposes upon the manufacturer and the seller of that product who intend to make and sell it for the purposes of its actual use in accordance with the conditions laid down by that provision, certain obligations as regards compliance by downstream users with those conditions.

83 In that regard, it should be noted that the 'repair' clause exception to the principle of protection as a design requires the end user of the component part in question to use it in accordance with the conditions set out in Article 110(1) of Regulation No 6/2002, namely that he uses that component part in order to repair a complex product so as to restore its original appearance.

84 It is also important to note that that provision establishes, for the specific purposes recalled in paragraph 51 of the present judgment, a derogation from the regime of design protection and that the need to preserve the effectiveness of that regime of protection requires that persons relying on that derogation contribute, so far as possible, to ensuring strict compliance, particularly by the end user, with the conditions laid down in Article 110(1) of Regulation No 6/2002.

85 In that context, while the manufacturer or seller of a component part of a complex product cannot be expected to guarantee, objectively and in all circumstances, that the parts they make or sell for use in accordance with the conditions prescribed by Article 110(1) of Regulation No 6/2002 are, ultimately, actually used by end users in compliance with those conditions, the fact remains that, in order to benefit from the derogatory regime thus put into place by that provision, such a manufacturer or seller is, as the Advocate General noted in points 131, 132 and 135 of his Opinion, under a duty of diligence as regards compliance by downstream users with those conditions.

86 In particular, they must, first of all, inform the downstream user, through a clear and visible indication on the product, on its packaging, in the catalogues or in the sales documents, on the one hand, that the component part concerned incorporates a design of which they are not the holder and, on the other, that the part is intended exclusively to be used for the purpose of the repair of the complex product so as to restore its original appearance.

87 Next, they must, through appropriate means, in particular contractual means, ensure that downstream users do not intend to use the component parts at issue in a way that does not comply with the conditions prescribed by Article 110(1) of Regulation No 6/2002.

88 Finally, the manufacturer or seller must refrain from selling such a component part where they know or, in the light of all the relevant circumstances, ought reasonably to know that the part in question will not be used in accordance with the conditions laid down in Article 110(1) of Regulation No 6/2002.

89 In the light of all the foregoing considerations, the answer to the third question in Case C-397/16 and the third and fourth questions in Case C-435/16 is that Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that, in order to rely on the 'repair' clause contained in that provision, the manufacturer or seller of a component part of a complex product are under a duty of diligence as regards compliance by downstream users with the conditions laid down in that provision.

Costs

90 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 110(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted as meaning that the 'repair' clause in it does not make the exclusion of protection as a Community design for a design which constitutes a component part of a complex product which is used for the purpose of the repair of that complex product so as to restore its original appearance subject to the condition that the protected design is dependent upon the appearance of the complex product.**

2. **Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that the 'repair' clause in it makes the exclusion of protection as a Community design for a design which constitutes a component part of a complex product which is used for the purpose of the repair of that complex product so as to restore its original appearance subject to the condition that the replacement part must have an identical visual appearance to that of the part which was originally incorporated into the complex product when it was placed on the market.**

3. **Article 110(1) of Regulation No 6/2002 must be interpreted as meaning that, in order to rely on the 'repair' clause contained in that provision, the manufacturer or seller of a component part of a complex product are under a duty of diligence as regards compliance by downstream users with the conditions laid down in that provision.**

[Signatures]