Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

12 March 2025*

(Community design – Invalidity proceedings – Registered Community design representing a LED light bulb – Disclosure of the earlier design not taken into account – Article 7(2) of Regulation (EC) No 6/2002 – Requirements – Burden of proof)

In Case T-66/24,

Lidl Vertriebs GmbH & Co. KG, established in Anzing (Germany), represented by T. Dolde, C. Zimmer and M. Hawkins, lawyers,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by D. Gája, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Liquidleds Lighting Corp., established in Taipei (Taiwan), represented by S. Beckmann, lawyer,

THE GENERAL COURT (Second Chamber),

composed of A. Marcoulli (Rapporteur), President, W. Valasidis and L. Spangsberg Grønfeldt, Judges,

Registrar: P. Núñez Ruiz, Administrator,

having regard to the written part of the procedure,

further to the hearing on 21 November 2024,

gives the following

* Language of the case: English.

Judgment

1 By its action under Article 263 TFEU, the applicant, Lidl Vertriebs GmbH & Co. KG, seeks the annulment of the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 27 November 2023 (Case R 2336/2022-3) ('the contested decision').

Background to the dispute

2 On 25 March 2021, the applicant filed with EUIPO an application for a declaration of invalidity of the Community design registered following an application filed on 12 January 2017 by the intervener, Liquidleds Lighting Corp., and represented in the following view:



3 The product to which the design referred to in paragraph 2 above, in respect of which a declaration of invalidity was sought, is intended to be applied was in Class 26.04 of the Locarno Agreement of 8 October 1968 Establishing an International Classification for Industrial Designs, as amended, and corresponded to the following description: 'LED light bulbs'.

4 The ground relied on in support of the application for a declaration of invalidity was that set out in Article 25(1)(b) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1), read in conjunction with Article 4(1) and Articles 5 and 6 of that regulation.

5 The application for a declaration of invalidity was based on the earlier design D1 and on the earlier design D2.

6 On 23 September 2022, the Invalidity Division dismissed the application for a declaration of invalidity.

7 On 28 November 2022, the applicant filed a notice of appeal with EUIPO against the decision of the Invalidity Division.

8 By the contested decision, the Board of Appeal dismissed the appeal. It found, first, that disclosure of the earlier design D1 was covered by the scope of the exception provided for in Article 7(2) of Regulation No 6/2002, and, second, that the applicant had not demonstrated disclosure of the earlier design D2.

Forms of order sought

9 The applicant claims that the Court should:

– annul the contested decision;

– order EUIPO and the intervener to pay the costs.

10 EUIPO contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs in the event that a hearing is convened.

11 The intervener contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

12 The applicant relies on a single plea in law, alleging infringement of Article 6(1)(b), read in conjunction with Article 7(2), of Regulation No 6/2002. That plea is divided, in essence, into three parts, alleging, first, an incorrect allocation of the burden of proof, second, an incorrect examination of the evidence and, third, an incorrect application of Article 7(2) of that regulation.

13 As a preliminary point, it must be noted that, as follows from the scope of the single plea and from the wording of the action in its entirety and, as the applicant confirmed at the hearing, it disputes the contested decision only as regards the assessments of the Board of Appeal concerning the earlier design D1, the disclosure of which was not taken into account in accordance with Article 7(2) of Regulation No 6/2002, in connection with Article 6 of that regulation. However, the applicant does not dispute the Board of Appeal's assessments relating to the lack of disclosure of the earlier design D2. Consequently, the subject matter of the present action is limited to the annulment of the contested decision in so far as it dismissed the applicant's action concerning its application for a declaration of invalidity based on the earlier design D1.

Preliminary observations concerning the relevant legal framework

14 Pursuant to Article 25(1)(b) of Regulation No 6/2002, a Community design may be declared invalid if it does not fulfil the requirements of Articles 4 to 9 of that regulation, and, in particular, that of novelty and individual character, provided for, respectively, in Article 5 and Article 6 of that regulation.

15 According to Article 5(1)(b) of Regulation No 6/2002, a registered Community design is to be considered to be new if no identical design has been made available to the public before the date of filing of the application for registration of the design for which protection is claimed, or, if a priority is claimed, the date of priority.

16 Under Article 6(1)(b) of Regulation No 6/2002, a registered Community design is to be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of filing of the application for registration or, if a priority is claimed, the date of priority.

17 Article 7(1) of Regulation No 6/2002 provides that a design is to be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date of filing the application for registration or, if a priority is claimed, before the date of priority, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the industrial sector concerned, operating within the European Union. The design is not, however, to be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

18 Nonetheless, recital 20 of Regulation No 6/2002 states that it is also necessary to allow the designer or his or her successor in title to test the products embodying the design in the market place before deciding whether the protection resulting from a registered EU design is desirable. To this end it is necessary to provide that disclosures of the design by the designer or his or her successor in title should not be prejudicial in assessing the novelty or the individual character of the design in question.

19 Accordingly, Article 7(2) of Regulation No 6/2002 provides the following:

‘A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:

(a) by the designer, his [or her] successor in title, or a third person as a result of information provided or action taken by the designer or his [or her] successor in title; and

(b) during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.’

20 It is in the light of that reminder of the relevant legal framework that it is appropriate to examine the three parts of the single plea raised by the applicant, beginning with the third part.

The third part of the single plea, alleging an incorrect application of Article 7(2) of Regulation No 6/2002

21 The applicant claims that the Board of Appeal misinterpreted Article 7(2) of Regulation No 6/2002 in taking the view that no identity between the contested design and the disclosed design was required. Although the Board of Appeal correctly stated that the provision at issue also applied to the examination of individual character, that provision cannot, however, be

extended to cases in which the originally disclosed design differs from the design subsequently registered. According to the applicant, that provision requires the identity between the originally disclosed design and that subsequently registered, failing which the exception provided for therein may not apply. Since, in the present case, the originally disclosed design differs from the contested design but produces the same overall impression as the contested design, that provision cannot apply.

22 EUIPO and the intervener dispute the applicant's arguments.

23 It is appropriate to begin by noting that, as follows from paragraph 19 above, Article 7(2) of Regulation No 6/2002 indicates, first, that 'a disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 [of that regulation]' if the requirements laid down therein are met. Next, it states that the situation concerned is one in which 'a design for which protection is claimed under a registered Community design has been made available to the public'. Lastly, it indicates that that disclosure must be made 'by the designer, his [or her] successor in title' (Article 7(2)(a) of Regulation No 6/2002) and 'during the 12-month period preceding the date of filing of the application' (Article 7(2)(b) of that regulation) ('the grace period').

24 It thus follows from Article 7(2) of Regulation No 6/2002 that the exception it provides for concerning disclosure applies both in relation to the requirement for protection laid down in Article 5 of that regulation relating to the 'novelty' of a design and in relation to the requirement for protection laid down in Article 6 of that regulation relating to the 'individual character' of a design.

25 As regards those requirements for protection, it must be recalled that, within the meaning of Articles 5 and 6 of Regulation No 6/2002, first, the novelty of a design implies that no identical design has been made available to the public and, second, the individual character of a design implies that the overall impression it produces on the informed user differs from the overall impression produced by any design made available to the public.

26 Accordingly, if the lack of novelty for the purposes of Article 5 of Regulation No 6/2002 means that an identical design has been disclosed, the lack of individual character for the purposes of Article 6 of that regulation means that a design producing the same overall impression on the informed user has been disclosed.

27 It thus follows from Articles 5 and 6 of Regulation No 6/2002, read in conjunction with Article 7(2) of that regulation, that, if the requirements laid down in that latter provision are met, disclosure of an identical design (for the purpose of applying Article 5 of that regulation) or of a design producing the same overall impression (for the purpose of applying Article 6 of that regulation) is not taken into account.

28 Consequently, it is inherent in the application of Article 7(2) of Regulation No 6/2002, in connection with Article 6 of that regulation, that disclosure which is likely not to be taken into account in the examination of individual character concerns an earlier design producing the same overall impression as the contested design. It is only where the exception at issue is applied in connection with Article 5 of that regulation in the examination of novelty that disclosure which is likely not to be taken into account concerns an earlier design identical to the contested design.

29 In addition, lack of individual character may also follow, specifically, from disclosure of an identical earlier design, because such a design cannot produce a different overall impression. Meeting the requirement of individual character requires a far greater differentiation of the contested design in relation to any earlier design than meeting the requirement of novelty, with the result that a design which is not new cannot, a fortiori, have individual character (see judgment of 27 April 2022, *Group Nivelles* v *EUIPO – Easy Sanitary Solutions (Shower drainage channel)*, T-327/20, EU:T:2022:263, paragraph 170 and the case-law cited). Accordingly, even though lack of novelty is decisive in support of the conclusion that a design lacks individual character (judgment of 27 April 2022, *Shower drainage channel*, T-327/20, EU:T:2022:263, paragraph 171), the fact remains that, as such, the requirement relating to individual character does not require the lack of disclosure of an identical earlier design but that of an earlier design producing the same overall impression.

30 Consequently, Article 7(2) of Regulation No 6/2002, in connection with Article 6 of that regulation, refers to not taking into account the disclosure of an earlier design producing the same overall impression as the contested design.

31 Moreover, contrary to what the applicant claims, the provision at issue, where it refers to the situation in which 'a design for which protection is claimed under a registered Community design has been made available to the public' cannot be interpreted as meaning that the design made available to the public (disclosure of which is likely not to be taken into account if the two requirements laid down in that provision are met) should be 'identical' to the contested design or should be the 'same' design as that which is contested, by disregarding its more general wording, its context and its aim.

32 It should be borne in mind that, for the purposes of interpreting a concept of EU law, account should be taken not only of the wording of the provision in which it appears but also of the context in which it is used and of the aims of the legislation of which it is part (judgment of 24 November 2011, *Circul Globus București*, C-283/10, EU:C:2011:772, paragraph 32).

33 Accordingly, it should be observed that the wording of Article 7(2) of Regulation No 6/2002 does not use the word 'identical', nor does it refer to the concept of 'identity', and the expression 'same design' is not included in that provision either. If the EU legislature had intended to limit the application of the exception at issue to disclosure of an 'identical' design or of the 'same' design, it would have stated so expressly, as it did, in another context, in Article 41(1) of that regulation, by referring to the 'same design'.

34 Conversely, by referring more generally to disclosure of a registered design, the EU legislature appears to have confined itself to establishing an admittedly close link between a registered design and an earlier design disclosed by the persons referred to in Article 7(2)(a) of that regulation, during the grace period referred to in Article 7(2)(b) of that regulation. However, as such, the wording of Article 7(2) of Regulation No 6/2002 does not make it possible to rule out that such a link may validly exist both in the case where those designs are identical and in the case where they produce the same overall impression, also taking into account the context of which the provision at issue forms part and, more generally, that provision's aim.

35 Concerning, first, the context of which the provision at issue forms part, it is sufficient to recall that, as has been stated in paragraphs 24 to 28 above, Article 7(2) of Regulation No 6/2002, as well as Article 7(1) of that regulation, refers both to Article 5 and to Article 6 of that regulation and, accordingly, to the examination both of the novelty and of the individual character of the

contested design. The same applies to recital 20 of Regulation No 6/2002, the scope of which has been set out in paragraph 18 above. For the purpose of examining the individual character of the contested design, a disclosure which is likely not to be taken into account, pursuant to Article 7(2) of that regulation, concerns a design which produces the same overall impression as the contested design.

36 As regards, second, its aim, the exception provided for in Article 7(2) of Regulation No 6/2002 seeks to protect the interests of the designer and his or her successor in title (judgment of 26 April 2023, *Activa – Grillküche* v *EUIPO – Targa (Apparatus for grilling)*, T-757/21, EU:T:2023:216, paragraph 28). The purpose of Article 7(2) of Regulation No 6/2002 is to offer a designer or his or her successor in title the opportunity to market a design, for a period of 12 months, before having to proceed with the formalities of filing. Thus, during that period, the designer or his or her successor in title may ascertain that the design concerned is a commercial success before incurring the costs relating to registration, without fear that the disclosure that took place at that time may be successfully raised during any invalidity proceedings brought after the possible registration of the design concerned (judgment of 14 June 2011, *Sphere Time* v *OHIM – Punch (Watch attached to a lanyard)*, T-68/10, EU:T:2011:269, paragraphs 24 and 25).

37 In addition, it should be borne in mind that, in accordance with recital 7 of Regulation No 6/2002, the protection system of Community designs seeks to encourage innovation and development of new products and investment in their production.

38 The pursuit of the aims referred to in paragraphs 18, 36 and 37 above would be undermined if, after having tested a design in the market place, the designer or his or her successor in title, who wishes to rely on the grace period, was, in any event, required to apply for registration of the design as it was initially tested in the market place, without being able to take into account the specific results of that test, in order to make any necessary adjustments to the design to ensure its commercial success, and without therefore being able to apply for registration of a design which, although not identical, would produce the same overall impression as the one initially tested in the market place.

39 The interpretation put forward by the applicant would mean that, by registering a design which is not identical to the design tested in the market place, the designer or his or her successor in title would run the risk of having his or her own disclosure of that earlier design, during the grace period, relied upon against him or her in invalidity proceedings.

40 Consequently, such an interpretation would be contrary to the aim of Article 7(2) of Regulation No 6/2002 and, more generally, of the protection system of Community designs, intended to enable the designer to test a design in the market place and to encourage innovation and development of products.

41 It follows from all the foregoing that, contrary to the applicant's submissions, the application of Article 7(2) of Regulation No 6/2002, in connection with Article 6 of that regulation, does not require that the earlier design, disclosure of which is likely not to be taken into account, be identical to the contested design.

42 The third part of the single plea must therefore be rejected.

The first part of the single plea, alleging an incorrect allocation of the burden of proof

43 The applicant submits that it is for the party relying on the exception provided for in Article 7(2) of Regulation No 6/2002 to prove that the exception applies and that the relevant requirements are met. Nevertheless, in the present case, the Board of Appeal transferred all of the burden of proof to the applicant. As the intervener failed to discharge its burden of proof, the applicant was not required to rebut the application of that provision.

44 EUIPO and the intervener dispute the applicant's arguments.

45 As a preliminary point, it must be noted that, when an applicant for a declaration of invalidity refers to the ground of invalidity set out in Article 25(1)(b) of Regulation No 6/2002, it is for him or her to provide evidence to demonstrate that the contested design does not fulfil the requirements of Articles 4 to 9 of that regulation (judgment of 21 September 2017, *Easy Sanitary Solutions and EUIPO* v *Group Nivelles*, C-361/15 P and C-405/15 P, EU:C:2017:720, paragraph 60).

46 In particular, the evidence relied on must be capable of establishing to the requisite legal standard that the earlier design was actually disclosed to the public before the date of filing of the application for registration of the contested design (judgment of 21 June 2018, *Haverkamp IP* v *EUIPO – Sissel (Pebble beach surface pattern)*, T-228/16, not published, EU:T:2018:369, paragraph 27).

47 On the other hand, for Article 7(2) of Regulation No 6/2002 to be applicable in the context of invalidity proceedings, the owner of the design that is the subject of the application for invalidity must establish that it is either the designer of the design upon which that application is based or the successor in title to that designer (judgment of 14 June 2011, *Watch attached to a lanyard*, T-68/10, EU:T:2011:269, paragraph 26), that that design has been disclosed by itself or by a third person as a result of information provided or action taken by it and that that disclosure took place during the grace period.

48 In the contested decision, first, in paragraphs 32 and 33 thereof, the Board of Appeal stated that the evidence submitted by the applicant in support of its application for a declaration of invalidity demonstrated disclosure of the earlier design D1, a disclosure which, moreover, was not disputed by the intervener.

49 Next, in paragraph 34 of the contested decision, the Board of Appeal explained that the intervener had, however, contended that the exception provided for in Article 7(2) of Regulation No 6/2002 should apply. In that regard, in paragraph 36 of the contested decision, the Board of Appeal indicated that it was for the party which relied on the application of that exception to provide the relevant evidence. In paragraph 37 of the contested decision, the Board of Appeal added that, if the applicant for a declaration of invalidity intended to rebut the application of that provision, it had to submit supporting evidence.

50 Lastly, on the basis of those premisses, in paragraphs 38 to 42 and 44 to 49 of the contested decision, the Board of Appeal examined both the evidence submitted by the intervener in support of the application of the exception provided for in Article 7(2) of Regulation No 6/2002 and the observations submitted by the applicant in order to rebut the application of that exception. The Board of Appeal thus found, in paragraphs 43 and 50 of the contested decision,

first, that the exception relied on by the intervener was applicable in the present case and, second, that the applicant had not adduced any evidence capable of calling that finding into question.

51 In the first place, it must be noted that, in accordance with the case-law referred to in paragraphs 45 to 47 above, first, it was for the applicant to demonstrate that the contested design did not meet the requirements for protection and, in particular, at the outset, that the earlier design had been made available to the public. Next, in relation to disclosure of the earlier design, it was, as the case may be, for the intervener to rely on the exception provided for in Article 7(2) of Regulation No 6/2002 and to demonstrate that the requirements for the application of that exception have been met.

52 As follows from paragraphs 48 to 50 above, in accordance with those principles, after finding that the earlier design D1 had been made available to the public, which was not disputed by the intervener, the Board of Appeal examined the applicability of the exception provided for in Article 7(2) of Regulation No 6/2002 relied on by the intervener in the light of the evidence submitted by it.

53 In the second place, as follows from the contested decision and from paragraphs 49 and 50 above, the Board of Appeal also examined the observations submitted by the applicant for the purpose of rebutting the application of that exception.

54 By examining the observations submitted to that effect by the applicant and any evidence adduced by it in support of its observations, the Board of Appeal has not transferred the burden of proof to the applicant, but applied the general principle of protection of the rights of the defence and, more specifically, Article 62 of Regulation No 6/2002, which constitutes a specific application of that principle. The second sentence of that provision provides that decisions of EUIPO are to be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments (see, by analogy, judgment of 21 April 2021, *Hasbro* v *EUIPO – Kreativni Dogadaji (MONOPOLY)*, T-663/19, EU:T:2021:211, paragraph 119). Moreover, it must be stated that, before the Court, the applicant did not allege an infringement of that principle or of that provision.

55 Furthermore, contrary to what the applicant suggests, the possibility for it of properly submitting observations is not subject to the condition that the explanations and evidence adduced by the intervener to justify the application of Article 7(2) of Regulation No 6/2002 satisfy a particular level of credibility and consistency. On the contrary, it is by its observations that the applicant has the possibility of bringing to the attention of the bodies of EUIPO the reasons why, according to the applicant, those explanations and that evidence of the intervener are not credible or consistent. Consequently, the alleged fact that, according to the applicant, the explanations and evidence of the intervener were barely credible and inconsistent did not preclude it from properly submitting its observations, nor did it give rise to a reversal of the burden of proof to its detriment.

56 It is true that, in paragraph 37 of the contested decision, the Board of Appeal appeared to suggest that the party which sought to rebut the application of the exception provided for in Article 7(2) of Regulation No 6/2002 should submit supporting evidence. However, that indication, albeit regrettably unclear, cannot be understood as requiring that such a party, as, in this case, the applicant, necessarily submits evidence in support of its observations, since the applicant may confine itself, as the case may be, to making observations on the explanations and evidence produced by the party which relies on the application of that exception.

57 In any event, it must be borne in mind that, in the present case, the Board of Appeal examined both the explanations and the evidence submitted by the intervener to justify the application of Article 7(2) of Regulation No 6/2002 and the observations submitted by the applicant in order to rebut the application of that provision.

58 It follows from all the foregoing that, contrary to what is claimed by the applicant, the Board of Appeal did not make an error of law in its allocation of the burden of proof, nor did it unduly transfer that burden to the applicant.

59 The first part of the single plea must therefore be rejected.

The second part of the single plea, alleging an incorrect examination of the evidence

60 The applicant claims that the Board of Appeal erred in relying on evidence submitted by the intervener which is inconsistent. First, the design allegedly disclosed at the March 2016 Fair (included in Annex R8 in the proceedings before EUIPO) and the contested design are not identical, because they display a number of differences concerning the top of the filament, the number of coils, the height of the glass mount and the end position of the filament. Second, the witness statement (produced in Annex R10 of the proceedings before EUIPO) contains incorrect information, because the image of the bulb included in Annex 1 thereto is not identical to the contested design, as it displays clear differences concerning the plateau of the coil, the filament path, the end position of the filament and the overall height of the coils. Third, the earlier design D1 and the contested design are not identical. The glass mounts are different in length and the position as well as the path of the coil's upper part are different. Moreover, the differences in the filament's shape cannot be explained by the fact that the bulbs are switched on and that the light causes reflections on the glass. Lastly, according to the applicant, since it is clear from the evidence that there are four different bulbs with a spiral filament (those depicted in the contested design, in the earlier design D1, in Annex R8 and in Annex R10), the Board of Appeal should have found that the evidence was inconsistent and inconclusive.

61 EUIPO and the intervener dispute the applicant's arguments.

62 As a preliminary point, it must be observed that the applicant therefore claims, in essence, first, that the earlier design D1 and the contested design are not identical and, second, that the bulbs included in Annexes R8 and R10 are different from the bulb depicted in the contested design.

63 In the first place, it must be noted that the applicant's argument relating to the lack of identity between the contested design and the earlier design D1 manifestly contradicts the content of the application for a declaration of invalidity, which the applicant itself submitted before EUIPO and in which it had argued that those designs were identical. When questioned in that respect at the hearing, the applicant explained that, in its view, those designs were identical only within the meaning of Article 5 of Regulation No 6/2002. It is sufficient to state that the assessment of identity between those two designs cannot alter depending on the provisions of that regulation which are taken into consideration, namely, on the one hand, Article 5 of that regulation and, on the other, Article 7(2) of that regulation, in connection with Article 6 of that regulation.

64 Moreover, it must be observed that the applicant's arguments are based on an incorrect premiss.

65 As is clear from the examination of the third part of the single plea, carried out in paragraphs 23 to 41 above, the application of Article 7(2) of Regulation No 6/2002, in connection with Article 6 of that regulation, does not require the earlier design (disclosure of which is likely not to be taken into account) to be identical to the contested design. On the contrary, it follows from those provisions that they also refer to disclosure of an earlier design producing the same overall impression as the contested design.

66 Furthermore, in any event, in so far as the applicant's arguments are intended to claim that the designs at issue, while producing the same overall impression, display differences which do not permit the inference that they are identical, they must be disregarded as being ineffective as regards the application of Article 7(2) of Regulation No 6/2002.

67 It follows from the case-law that the question relating to the disclosure of an earlier design is not only a key issue but is also a preliminary question the resolution of which is necessary for the correct application of Articles 5 and 6 of Regulation No 6/2002 (judgment of 23 October 2018, *Mamas and Papas* v *EUIPO – Wall-Budden (Cot bumper)*, T-672/17, not published, EU:T:2018:707, paragraph 30). Accordingly, under Articles 5 and 6 of Regulation No 6/2002, it is not necessary to compare one design with another to establish both the novelty and the individual character of the first design, unless the second has been made available to the public (judgment of 21 September 2017, *Easy Sanitary Solutions and EUIPO* v *Group Nivelles*, C-361/15 P and C-405/15 P, EU:C:2017:720, paragraph 127) and unless taking account of that disclosure is not excluded pursuant to Article 7(2) of that regulation.

68 Therefore, the applicant's arguments relating to the comparison of the contested design with the earlier design D1 are in no way capable of calling into question the Board of Appeal's assessments following which disclosure of the earlier design D1 had been made by a third person as a result of information provided or action taken by the designer during the grace period, in accordance with Article 7(2)(a) and (b) of Regulation No 6/2002. Those assessments on the part of the Board of Appeal, relating to the requirements for the application of that provision, concern the context of disclosure of the earlier design D1 and do not address the question of whether the designs at issue are identical or produce the same overall impression within the meaning of Articles 5 and 6 of that regulation.

69 In the second place, the applicant's arguments maintaining that the evidence submitted by the intervener before EUIPO in Annexes R8 and R10 is inconsistent, because it represents different bulbs from that depicted in the contested design, must also be disregarded as being ineffective as regards the application of Article 7(2) of Regulation No 6/2002. The examination carried out by the Board of Appeal in that respect was not intended to determine whether the evidence submitted by the intervener before EUIPO depicted identical designs or designs producing the same overall impression as the contested design, but rather whether that evidence demonstrated that the earlier design had been disclosed in compliance with the requirements laid down in that provision.

70 Thus, in the present case, on the basis of the examination of the evidence submitted by the intervener, the Board of Appeal, in paragraphs 42 and 43 of the contested decision, found that that evidence showed that disclosure of the earlier design D1 had been made by a third-party undertaking, as a result of information provided by the intervener and that, consequently, since the exception provided for in Article 7(2) of Regulation No 6/2002 was applicable, disclosure of the earlier design D1 had not to be taken into account.

71 It is true that, in paragraph 47 of the contested decision, in response to an argument put forward by the applicant, the Board of Appeal indicated that it followed from Annex R8 that 'the design presented at the Fair in Germany, present[ed] the same overall impression as the contested [design]'. However, it must be stated that the Board of Appeal was not in any way required to carry out such an assessment, which, moreover, had no effect on the examination of whether the requirements laid down in Article 7(2)(a) and (b) of Regulation No 6/2002 have been met. The evidence produced by the intervener before EUIPO to justify the application of that provision did not relate to the contested design but to the context of disclosure of the earlier design D1.

72 Therefore, contrary to the applicant's vague or unsubstantiated claims, the comparison of the bulbs included in Annexes R8 and R10 with the contested design cannot in any way demonstrate the allegedly incorrect or false nature of the information provided by the intervener as regards the context of disclosure of the earlier design D1.

73 It follows from the foregoing that the applicant's arguments are not capable of calling into question the examination of the evidence carried out by the Board of Appeal or, more generally, its assessments as to whether, in the present case, the requirements laid down in Article 7(2)(a) and (b) of Regulation No 6/2002 have been met.

74 The second part of the single plea must therefore be rejected.

75 In the light of all of the foregoing, since the applicant's single plea is unfounded, the action must be dismissed in its entirety.

Costs

76 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

77 Since a hearing has taken place and the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the forms of order sought by EUIPO and the intervener.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders Lidl Vertriebs GmbH & Co. KG to pay the costs.

Marcoulli Valasidis Spangsberg Grønfeldt

Delivered in open court in Luxembourg on 12 March 2025.

V. Di Bucci
Registrar

S. Papasavvas
President