



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

OPERATIONS DEPARTMENT – DESIGNS SERVICE

**DECISION OF
THE INVALIDITY DIVISION
OF 15/12/2011**

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

FILE NUMBER	ICD 8325
COMMUNITY DESIGN	001618703-0001
LANGUAGE OF PROCEEDINGS	English
APPLICANT	A.C.V. Manufacturing NV Zoning Industriel – Zone C – Rue Henry Becquerel 7180 Seneffe Belgium
REPRESENTATIVE OF THE APPLICANT	Marx – Van Ranst – Vermeersch and Partners 270 Tervurenlaan 1150 Brussels Belgium
HOLDER	AIC S.A. Ul. Rdestowa 41 81-577 Gdynia Poland
REPRESENTATIVE OF THE HOLDER	Optimas Kancelaria Prawna Ul. Krakowska 259A 32-080 Zabierzów Poland

The Invalidity Division

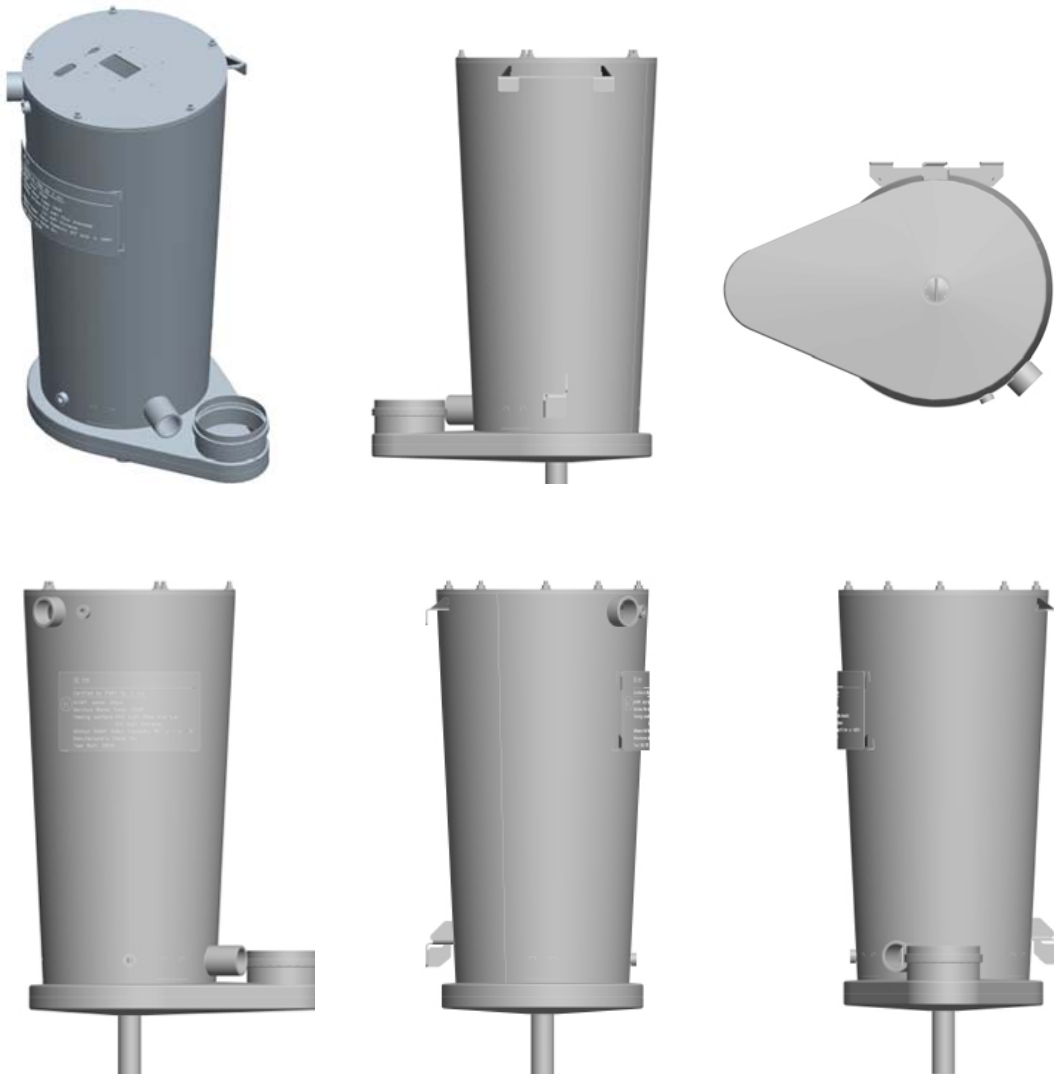
composed of Martin Schlötelburg (rapporteur), Jakub Pinkowski (member) and Dimitrios Andrianopoulos (member) took the following decision on 15/12/2011:

1. **The registered Community design n° 001618703-0001 is declared invalid.**
2. **The Holder shall bear the costs of the Applicant.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design n° 001618703-0001 (“the RCD”) has been registered in the name of the Holder with the date of filing of 02/10/2009. The indication of products of the RCD reads “heat exchangers” and the design was published on 20/10/2009 in the Community Designs Bulletin in the following views:

http://oami.europa.eu/bulletin/rcd/2009/2009_210/001618703_0001.htm



- (2) On 07/02/2011, the Applicant filed an application for a declaration of invalidity (“the Application”). The fee for the Application was paid by current account.
- (3) The Applicant requests a declaration of invalidity of the RCD on the grounds of Articles 4 to 8 of the Council Regulation (EC) n° 6/2002 on Community Designs (“CDR”).
- (4) As evidence, the Applicant provided several e-mails, drawings and project reports, depicting designs of heat exchangers, boilers and pipe bundles. Among them, photos of the following boiling installation were found:



- (5) In its reasoned statement the Applicant argues *inter alia* that “a heat exchanger is always a component part of a boiler and it only functions when it is integrated into a boiler. It is therefore a component part of a complex product. The heat exchanger in its entirety is hidden behind plates, even after opening the front panel of a boiler installation. Even if such front panel would be opened, the heat exchanger is therefore not visible. The heat exchanger is hidden behind the plates of the boiler as, when operating, the outer shell of a heat exchanger can reach temperatures of 90 °C. One would, only during standstill, have to unscrew the front panel of the boiler and disassemble all the components connected to the heat exchanger in order to detach the heat exchanger from the jacket and look at it”. The Applicant arguments as well on the invalidity of the RCD based on the grounds of the technical function exclusion, the absence of protection of the RCD due to its interconnection and incorporation in another product, the absence of novelty and lack of individual character.
- (6) In response to the Application, the Holder provided numerous documents and printouts from websites, depicting examples of heat exchangers used in individual installations: The Holder states in regard to the invisibility that, “a

heat exchanger may be a part of a boiler, but also it may be part on an installation which is not hidden into a boiler... There is no information about the fact that a heat exchanger needs – for functioning – to be placed inside a boiler”. In relation with invisibility and normal use, the Holder elaborates on the argument of the Applicant according to which “normal user will not handle a boiler by himself but he will contact a specialist in case of any problems suggests that normal user of such a product like heat exchanger is not a common person whose aim is to keep warm in the place of living, but a specialist. Such a specialist is very well educated in the subject of heating equipment. He is a person whose job is installation and maintenance of such equipment. Such a specialist is aware of even small differences between competition products”. Moreover, the Holder explicates that the appearance of the RCD is not solely dictated by its technical function, it is not necessarily interconnected while it presents elements of novelty and individual character.

- (7) For further details to the facts, evidence and arguments submitted by the parties reference is made to the documents on file.

II. GROUNDS OF THE DECISION

A. Admissibility

- (8) The Application complies with the formal requirements prescribed in the CDR and the Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (“CDIR”), in particular as laid down in Article 28 CDIR. The Application is therefore admissible.

B. Substance

B.1 Component part of a complex product

- (9) According to Articles 4(2) and 4(3) 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 (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character. Normal use within the meaning of the paragraph (2)(a) shall mean use by the end user, excluding maintenance, servicing or repair work”.
- (10) Moreover, according to Article 3 CDR “for the purposes of this Regulation ... (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”.
- (11) The contested RCD concerns heat exchangers. The heat exchangers are used in various applications such as industrial installations, chemical or

pharmaceutical industries, oil temperature cooling, liquid and gas cooling or domestic installations, floor heating and, even, waste water heat recovery.

- (12) Taking into account the aforesaid definition, it is estimated that the RCD is a necessary part of a boiler. Even though heat exchangers can be met in individual installations or be sold as separate elements, this particular product depicted in the RCD is a component part embedded in boilers and met only as an internal part of a boiler box during use. In the present case, it is evident from the documents provided by the parties that the RCD is applied to a component part of a complex product, where the heat exchanger is the component part and the boiler is the complex product. As it is proven, in normal use the heat exchanger is not visible since it is placed into the boiler box and the boiler box is closed. The documents provided by the Applicant may be considered evidence for a theoretical possibility to use the heat exchanger outside of a boiler box¹. However, the only evidence for a real use of the heat exchanger was provided by the Applicant and is constituted by catalogues of the boiler line named "Prestige", including - in a non visible mode - said heat exchanger. Thereof, it must be considered that the contested RCD constitutes a component part of the complex product.
- (13) In order for the heat exchanger to undergo the protection of the CDR, it needs to remain visible during normal use by the end user.
- (14) Considering the documents provided, depicting heat exchangers, it is demonstrated that the objects registered under the RCD are not visible during normal use. These heat exchangers in particular are integrated in a boiler and the end user is not in position to have view of any of the elements of the RCD while the heat exchanger and the boiler are in motion. The end user, defined as a person using the boiler into which the heat exchanger is incorporated, has to open a cover door, screw up the boiler or disassemble it in order to make the heat exchanger visible.
- (15) In conclusion, it is estimated that the contested RCD, incorporated into a complex product, lacks novelty and individual character within the meaning of Article 4 CDR. The RCD is not visible during normal use, and therefore does not meet the conditions of protection within the meaning of Article 4(2) CDR.

C. Conclusion

- (16) The RCD is to be declared invalid on the ground of Article 25(1)(b) CDR in conjunction with Article 4(2) CDR, being, due to lack of novelty and individual character as invisible component part of a complex product.
- (17) The RCD having been found to lack in novelty and individual character, the further examination of other grounds of invalidity, shall be omitted.

¹ See also OHIM Invalidity Division ICD 000005502, *Vectair Systems Limited vs. Pestco Inc.*

III. COSTS

- (18) Pursuant to Article 70(1) CDR and Article 79(1) CDIR, the Holder bears the fees and costs of the Applicant.
- (19) The costs to be reimbursed by the Holder to the Applicant are fixed to the amount of 750€, €, composed of 400€ for the costs of representation and 350 € for the reimbursement of the invalidity fee.

IV. RIGHT TO APPEAL

- (20) 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 that 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 (Article 57 CDR).

THE INVALIDITY DIVISION

Martin Schlötelburg

Jakub Pinkowski

Dimitrios Andrianopoulos

