

## FOCUS IP

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### DESIGNS—THE EXCEPTION OF DISCLOSURE APPLIES WHEN THE EARLIER DESIGN PRODUCES THE SAME OVERALL IMPRESSION AS THE REGISTERED DESIGN



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#### **General Court of the European Union, March 12, 2025, T-66/24**

**IMPACT:** Disclosure prior to the registration of a design may compromise its novelty or distinctive character, unless it falls within the disclosure exception. This exception allows prior disclosure to be disregarded if it meets two conditions:

- (i) be performed by the creator or under his or her instructions;
- (ii) have occurred within 12 months prior to the date of filing of the application for registration.

In this ruling, the court reaffirms that this exception may apply as soon as the previously disclosed design produces the same overall impression as the registered design, without requiring that they be strictly identical.

#### ➤ **The facts**

The company LIQUIDLEDS LIGHTING CORP (LLC) is the owner of a community design registered on January 12, 2017, in class 26.04 for “Light bulbs with light-emitting diodes,” representing a decorative LED bulb.



On March 25, 2021, the company LIDL filed an application for invalidity of this design, claiming a lack of novelty and individual character, particularly with regard to prior rights.



The company LLC considered that this earlier design should be disregarded since it benefited from the disclosure exception (Article 7(2) of Regulation No. 6/2002), whereas the applicant considered that since the prior design was not identical to the registered design, the exception could not apply.

The Court rejects this restrictive interpretation. It justifies this position by taking into account both the wording of Article 7(2) of the aforementioned Regulation, the context of the provision, and the objective pursued by the text.

#### ➤ **Reminder regarding the burden of proof**

In this judgment, the Court reaffirms that it is for the applicant to demonstrate that the contested design does not meet the conditions for protection.

It was therefore up to the applicant to prove that the design was preceded by a disclosure to the public, which, according to the Court, was proven.

It was only once this evidence had been provided that the holder of the DM had to demonstrate that it benefited from the disclosure exception set out in Article 7(2) of the Regulation.

- **Prior disclosure of a design may benefit from the disclosure exception if it produces the same overall impression as the registered design.**

As a reminder, Article 7(2) of the Regulation establishes a 12-month grace period during which the creator, or any right holder or authorized third party, may disclose their design without being subject to a claim of lack of novelty or individual character.

In order to be registered, the design must:

- be new: no identical design must have been disclosed to the public prior to the filing date (Article 5 of the Regulation);
- have individual character: the overall impression it produces must be different from earlier designs (Article 6 of the Regulation).

In this particular case, the owner of the design demonstrated that the prior right had been invoked by him within the grace period, meaning that it could not be used against him to invalidate his design.

However, the company LIDL maintained that the disclosure exception could not apply since, in its view, the prior art was not identical to the registered design.

The Court decided to reject this interpretation of Article 7(2) of the Regulation, ruling that it is not necessary for the prior design invoked in the context of the disclosure defense to be identical to the registered design; it is sufficient that it produces the same overall impression.

The Court bases its reasoning in particular on the objective of the Regulation, which is to “*encourages innovation and development of new products and investment in their production*” (Recital 7).

Therefore, requiring strict identity between the disclosed design and the registered design would be contrary to this logic by preventing creators from testing their designs on the market and making adjustments if necessary before registering them.

This decision is upheld by the new Regulation No. 2024/2822, which came into force on May 1, and which states that “ *A disclosure shall not be taken into consideration [...] if the disclosed design, which is identical with or does not differ in its overall impression from the design for which protection is claimed under a registered EU design, has been made available to the public.* ”

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