



LEGO brick: the recent confirmation as a valid design is great news for designers of functional products

The case encourages any creative effort going into designing products that are both functional and aesthetically appealing

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The recent LEGO / Delta Sport Handelskontor GmbH case (EU General Court, T-537/22 of January 24, 2024) has illuminated further the nuanced pathways through which designs, particularly those with a functional core, can be protected under the European Union's legal framework.

1. Statutes

According to Article 8 of Regulation EC No 6/2002:

*"1. A Community design **shall not subsist in features of appearance of a product which are solely dictated by its technical function.***

*2. A Community design **shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.***

*3. **Notwithstanding paragraph 2, a Community design shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.***

2. Bridging design and functionality

The problem is that there is no definition of legal parameters

about what “technical” means in the context of said Article 8 *about “Design which subsists in features of appearance solely dictated by its technical function”*.

Accordingly, we must consider the underlying goals of this exclusion for its interpretation. These objectives are threefold¹:

- To reserve features that are essential for a technical function/solution to the realm of patent law which applies stricter criteria for the assessment of the inventive step and incurs higher associated costs to grant a patent exclusive right;
- **To ensure that those shapes which are necessary to pursue technical functions remain unprotected** to allow their **free replication**;
- To acknowledge that in circumstances where **shapes are dictated by function and designers have no design freedom, there is no design protection**: any creative contribution will pertain to the domain of an inventor, manifesting as a technological solution.

3. Currently widespread approach in case law

The jurisprudence consolidated approach to interpret what it means to say that features are **“solely” dictated by technical function** in this context was well explained in the prior case “Doceram GmbH v. CeramTec GmbH”¹.

This case has been instrumental in shaping the contours of design protection, particularly by rejecting the “multiplicity of forms approach”¹ and crystallizing **“how it looks”** as the criterion for assessing the protectability of design features.

Thereby, it is clarified that, features are solely dictated by technical function – and as such excluded from design protection – if they were chosen exclusively for the purpose of designing a product able to perform its due function, and not selected to enhance the visual appearance of the product.

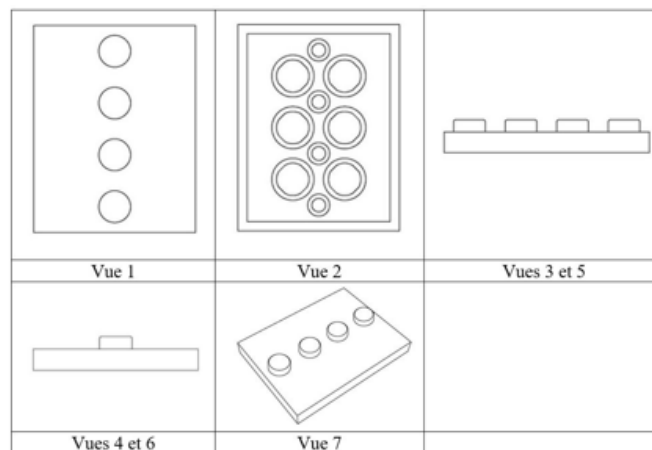
4. The Lego case's implications for design protection

The legal battleground was thus set to determine if LEGO's design for the building block from toy building set could enjoy registered design protection or could not for its inherent functional features.

Delta Sport Handelskontor GmbH's applied for the declaration of invalidity against the registered Community design owned by Lego A/S, representing the iconic building block from toy building set.

Consequently, the General Court's decision, is focused on the application of Regulation (EC) No 6/2002, specifically the grounds of invalidity under Article 25(1)(b), and clarified criteria for assessing whether a product's features are dictated by its technical function, thereby influencing how Articles 8(1), (2) and (3) of Regulation No 6/2002 should be applied.

The Lego design of the building blocks from a toy building set are represented in the following views:



The dispute ended with the Court ultimately dismissing Delta Sport's action, finding that the contested design could not be declared invalid as it fell within the exception that protects modular systems.

Besides that, the decision is notable because emphasized **that a design is declared invalid only if all its characteristics are excluded from protection.**

In the case at hand, for example, it has been established that the smooth surface of the building block does not fall within the exclusion, as it is not a feature that affects the functionality of the toy building set.

In light of the above, it was stated that the contested design of such modular system met the requirements for protection under the Regulation¹ because **at least one of its characteristics was not exclusively dictated by its technical function.**

According to *Doceram v. CeramTec*, features of a product are not solely dictated by function when are chosen to enhance the visual aspect of the product as a whole.

Given that, and considering that products of design are used to including both functional and aesthetical features, the decision in the *Delta Sport v. Lego* case **lower the threshold of protectability**.

In a modular system **just one non-functional feature by itself could be sufficient** to lead the design to protection.

5. Why this case is important for the design caselaw

This legal discourse is not merely an academic exercise but unfolds practical implications for designers, innovators, opening new perspective within the protective ambit of design law.

For designers, this decision serves as a guiding light, encouraging registration of functional designs in a market increasingly characterized by the fusion of technology and design, where differentiation often lies on the unique visual appeal of products.

The LEGO case represents a significant milestone in the evolution of laws on the protection of designs of modular systems, as it encourages the appreciation of any creative effort that goes into designing products that are both functional and aesthetically appealing: **just one non-functional feature could make the difference**.

