

**BL O/1060/24**

**REGISTERED DESIGNS ACT 1949 (AS AMENDED)**

**IN THE MATTER OF REGISTERED DESIGN No. 6229521 IN THE NAME OF  
FUZHOU GULOU YISHENG ELECTRONIC COMMERCE CO., LTD.**



**AND**

**THE APPLICATION FOR INVALIDATION THERETO (No. 170/23)  
BY SHENZHEN AUTIGE TECHNOLOGY CO., LTD**

## Background and pleadings

1. Fuzhou Gulou Yisheng Electronic Commerce Co., Ltd. (“the proprietor”) filed application no. 6229521 for a registered design for “wireless charger” in Class 13, Sub class 2 of the Locarno Classification (power transformers, rectifiers, batteries and accumulators) on 7 September 2022 (“the relevant date”). The design was registered with effect from that date (“the relevant date”) and is depicted in the eight representations shown below.



2. The registration specifies the following disclaimer:

“No claim is made for the colour shown; no claim is made for the material shown.”

3. On 14 August 2023, Shenzhen Autige Technology Co., Ltd (“the applicant”) requested that the registered design be declared invalid under Section 1B/11ZA(1)(b) of the Registered Designs Act 1949 (as amended) (“the Act”), which requires that a registered design be new and have individual character. The claim is as follows:

“RCD [Registered Community Design] Registration No. 009010374-0001 Filing date 28th April 2022, registration date 12th May 2022 – copy registration certificate attached.”

4. Evidence of the claimed prior art (the RCD certificate) was attached to the application for invalidation, which I will refer to later in this decision.<sup>1</sup> This design is also registered for wireless chargers. It was the only evidence filed by the applicant.

5. A notice of defence and counterstatement was filed by the proprietor on 28 September 2023, the substance of which states:<sup>2</sup>

“The product was originally designed by the proprietor “Fuzhou Gulou Yisheng Electronic Commerce Co., Ltd.”. We applied for the protection of the UK Design 6229521 and obtained the design certificate on 7 September 2022.

On The Amazon platform, we sell this product firstly and obtain this design to protect the sale, but some unscrupulous merchants are infringing and selling this product.

Since we have applied for design and is protected by Amazon platform, Amazon has restricted the sale of those merchants who have not applied for the design. We are using the legitimate right, but it also has caused the applicant’s dissatisfaction to apply to invalid our design. We believe that it is not a valid reason to object to a design registered. Our design should be effectively protected by the Trademark Office, rather than invalidated.

Furthermore, the principle of design protection is to apply first and protect first. We applied for the design of this product first, and the applicant did not apply for the design of this product of applied for it earlier than us. We believe it cannot constitute the reason for invalidation of our design.”

---

<sup>1</sup> The document filed with the applicant’s statement of case constitutes evidence in accordance with rule 21(1)(a) of the Registered Designs Rules 2006 (as amended).

<sup>2</sup> Form DF19B and counterstatement.

6. The Tribunal wrote to the proprietor on 23 October 2023 pointing out that the proprietor's statement that it applied for the design before the applicant could not be the case because the RCD certificate showed that the applicant's design was applied for on 28 April 2022. The proprietor was given 14 days to amend the counterstatement. A second version of the counterstatement was filed on 3 November 2023, correcting an address for service irregularity, but not addressing the claims made about who had filed the design first. The Tribunal wrote again on 3 November 2023 pointing out that this had not been addressed and giving a further 14 days for the proprietor to explain its defence. The proprietor filed a third defence and counterstatement on 7 November 2023. The counterstatement had been amended to:

"The product was originally designed by the proprietor "Fuzhou Gulou Yisheng Electronic Commerce Co., Ltd.". We applied for the protection of the UK Design 6229521 and obtained the design certificate on 7 September 2022.

On The Amazon platform, we sell this product firstly and obtain this design to protect the sale, but some unscrupulous merchants are infringing and selling this product.

Since we have applied for design and is protected by Amazon platform, Amazon has restricted the sale of those merchants who have not applied for the design. We are using the legitimate right, but it also has caused the applicant's dissatisfaction to apply to invalid our design. We believe that it is not a valid reason to object to a design registered. Our design should be effectively protected by the Trademark Office, rather than invalidated. We believe it cannot constitute the reason for invalidation of our design. Hopefully, the UKIPO will consider all of the evidence and the facts to make a decision."

7. The defence and counterstatement were served upon the applicant on 22 November 2023. The applicant informed the Tribunal that it did not propose to file any further evidence. The proprietor did not file any evidence. Neither filed written submissions during the evidence rounds. In these proceedings, the applicant is represented by Alpha & Omega. The proprietor is represented by Axis Professionals

Ltd. Neither party opted to be heard and neither filed written submissions in lieu of a hearing. I make this decision after careful consideration of all the papers filed.

## **Decision**

8. Following the amendment to the counterstatement, there does not appear to be any basis for a defence. There is a reference to undated Amazon sales, but no evidence to back this up was filed. The previous basis for the defence, that the proprietor's design was filed first, was clearly untenable because the applicant's registered community design was filed on 28 April 2022, months before the proprietor's design (7 September 2022). No other basis for a defence has been identified, such as differences between the designs. This means that, because there is no defence, the application is undefended and succeeds by default. The consequence of the failure of the proprietor to file a defence is that the application for invalidation of the contested design succeeds. Design 6229521 is invalid.

9. For completeness, and in case of appeal, I will set out why the applicant would have succeeded anyway, even if the proprietor had denied the claim made that the design was not new and did not have individual character when it was filed. Since the application has succeeded by default, for economy I will focus on why I consider that the design does not have individual character.

10. Section 11ZA of the Act provides the capacity for a registered design to be invalidated on the ground that it was not new or that it did not have individual character on the date on which it was filed (section 1B). Section 11ZA(1)(b) reads:

“(1) The registration of a design may be declared invalid

(a)...

(b) on the ground that it does not fulfil the requirements of sections 1B to 1D of this Act...”

11. Section 1B reads:

- “(1) A design shall be protected by a right in a registered design to the extent that the design is new and has individual character.
- (2) For the purposes of subsection (1) above, a design is new if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.
- (3) For the purposes of subsection (1) above, a design has 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 relevant date.
- (4) In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken into account.
- (5) For the purposes of this section, a design has been made available to the public before the relevant date if-
- (a) it has been published (whether following registration or otherwise), exhibited, used in trade or otherwise disclosed before that date; and
  - (b) the disclosure does not fall within subsection (6) below.
- (6) A disclosure falls within this subsection if-
- (a) it could not reasonably have become known before the relevant date in the normal course of business to persons carrying on business in the geographical area comprising the United Kingdom and the European Economic Area and specialising in the sector concerned;

- (b) it was made to a person other than the designer, or any successor in title of his, under condition of confidentiality (whether express or implied);
  - (c) it was made by the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date;
  - (d) it was made by a person other than the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date in consequence of information provided or other action taken by the designer or any successor in title of his; or
  - (e) it was made during the 12 months immediately preceding the relevant date as a consequence of an abuse in relation to the designer or any successor in title of his.
- (7) In subsections (2), (3), (5) and (6) above “the relevant date” means the date on which the application for the registration of the design was made or is treated by virtue of section 3B(2), (3) or (5) or 14(2) of this Act as having been made.
- (8) .....
- (9) ....”.

Prior art

12. The RCD was filed on 28 April 2022, before the filing date of the contested design. Registering a community design at the European Union Intellectual Property Office clearly constitutes a disclosure that could reasonably have become known to persons carrying on business in the UK and the European Economic Area and specialising in

the sector concerned. The proprietor has not claimed that any of the exceptions in section 1B(6) apply. It is prior art upon which the applicant may rely. The eight images of the earlier design in the RCD certificate which was attached to the application are shown in the annex to this decision.

13. Section 1B(3) states that a design has individual character when it produces a different overall impression on the informed user than that produced by any design made available to the public before the relevant date. A design may create the same overall impression on the informed user as another design, while being different from it in some respects. I need to assess the similarities and differences and decide upon their impact on the overall impression of the design.

14. The provisions of the Act relied on in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

15. In *Safestand Ltd v Weston Homes PLC & Ors* HHJ Hacon, sitting as a judge of the High Court, set out at [237] the approach to the assessment of whether a design has individual character:<sup>3</sup>

“(1) Decide the sector to which the products in which the designs are intended to be incorporated or to which they are intended to be applied belong;

(2) Identify the informed user and having done so decide

(a) the degree of the informed user's awareness of the prior art and

(b) the level of attention paid by the informed user in the comparison, direct if possible, of the designs;

---

<sup>3</sup> [2023] EWHC 3250 (Pat)



(3) Decide the designer's degree of freedom in developing his design;

(4) Assess the outcome of the comparison between the RCD and the contested design, taking into account

(a) the sector in question,

(b) the designer's degree of freedom,

(c) the overall impressions produced by the designs on the informed user, who will have in mind any earlier design which has been made available to the public,

(d) that features of the designs which are solely dictated by technical function are to be ignored in the comparison, and

(e) that the informed user may in some cases discriminate between elements of the respective designs, attaching different degrees of importance to similarities or differences; this can depend on the practical significance of the relevant part of the product, the extent to which it would be seen in use, or on other matters.”

16. The sector is the market for wireless chargers.

17. The next consideration is the informed user. HHJ Birss QC (as he then was, sitting as a Deputy Judge of the Patents Court) in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat) observed that:<sup>4</sup>

“ ... the fact that the informed user is particularly observant and the fact that designs will often be considered side by side are both clearly intended to narrow

---

<sup>4</sup> [2012] EWHC 1882 (Pat)

the scope of design protection. Although no doubt minute scrutiny by the informed user is not the right approach, attention to detail matters.”

18. HHJ Birss QC also gave the following detailed summary of the characteristics of the informed user:

“33. The designs are assessed from the perspective of the informed user. The identity and attributes of the informed user have been discussed by the Court of Justice of the European Union in *PepsiCo Inc v Grupo Promer Mon Graphic SA* (C-281/10 P) [2012] FSR 5 at [53]-[59] and also in *Grupo Promer Mon Graphic SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (T-9/07) [2010] ECR II-981; [2010] ECDR 7, (in the General Court from which *PepsiCo* [2012] FSR 5 was an appeal) and in *Shenzhen Taiden Industrial Co Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (t-153/08), judgment of June 22, 2010, not yet reported.

34. Samsung submitted that the following summary characterises the informed user. I accept it and have added cross-references to the cases mentioned:

i) He (or she) is a user of the product in which the design is intended to be incorporated, not a designer, technical expert, manufacturer or seller (*PepsiCo* [2012] FSR 5 at [54] referring to *Grupo Promer* [2010] ECDR 7 at [62]; *Shenzhen* (T-153/08) at [46]);

ii) However, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* at [53]);

iii) He has knowledge of the design corpus and of the design features normally included in the designs existing in the sector concerned (*PepsiCo* at [59] and also [54] referring to *Grupo Promer* [2010] ECDR 7 at [62]);

iv) He is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* at [59]);

v) He conducts a direct comparison of the designs in issue unless there are specific circumstances or the devices have certain characteristics which make it impractical or uncommon to do so (*PepsiCo* at [55]).

35. I would add that the informed user neither (a) merely perceives the designs as a whole and does not analyse details, nor (b) observes in detail minimal differences which may exist (*PepsiCo* [2012] FSR 5 at [59]).”

19. The informed user in the present proceedings is a member of the public with an interest in wireless chargers. The informed user will be reasonably attentive to ensure that the charger is compatible with the devices to be charged, the charging efficiency, and aesthetic considerations. There do not appear to be any special circumstances which would mean that the informed user does not conduct a direct comparison of the designs; in fact, the proprietor’s counterstatement implies that the parties both sell their products on Amazon. Direct comparisons of the designs are, therefore, likely to be made.

20. As the case law states, the informed user will have knowledge of the design corpus. This means that they will be aware of current trends in the design of wireless chargers. This factor can be significant if a contested design were markedly different from what has gone before and so is likely to have a greater visual impact: see *The Procter & Gamble Company v Reckitt Benckiser (UK) Limited*.<sup>5</sup> Beyond the two parties’ designs, there is nothing to tell me what the design corpus looked like at the relevant date.

21. In *Dyson Ltd v Vax Ltd*, Arnold J (as he was then) stated that:<sup>6</sup>

---

<sup>5</sup> [2008] FSR 8 Paragraph 35(ii).

<sup>6</sup> [2010] FSR 39

“34. ... design freedom may be constrained by (i) the technical function of the product or an element thereof; (ii) the need to incorporate features common to such products; and/or (iii) economic considerations (e.g. the need for the item to be inexpensive).”

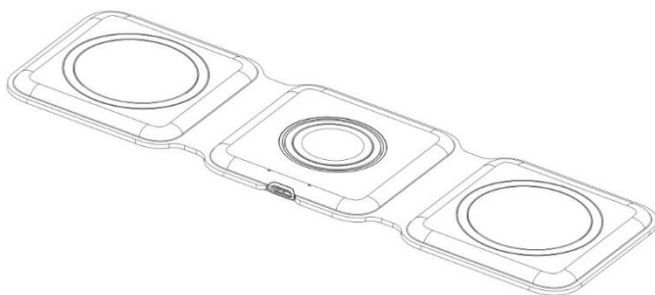
22. The point of a wireless charger is that a device can be placed upon it without being plugged into a socket or plug. It must therefore be flat or concave to keep the device from falling off the surface from where the device receives the charging signal. Beyond that, there appears to be a reasonable degree of design freedom. The outside shape of the charger does not have to be square, and chargers could be supplied singly or, as in the parties' designs, in multiple, linked form of varying numbers.

#### Comparison of the prior art and the contested design

23. As the colour and material in the contested design have been disclaimed, these form no part of the comparison.

24. I will not compare all the parties' images, but I will highlight two which I consider are the most similar. Clearly, the RCD shows the product in line-drawing form, whilst the images in the contested design are photographs of the product.

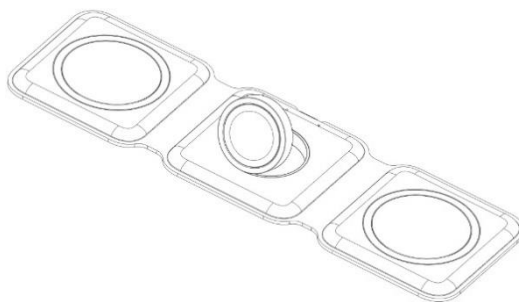
#### Prior art



## Contested design



25. The designs are for products which appear comparable in proportions. They both comprise three, linked, square-shaped sections, which are thicker than the parts which link them. The linked parts are indented in the same places in both designs. The line drawings show that the squares have curved, raised sections, which are also present in the contested design. The middle square in both designs has a USB port in the middle of the edge of the square and above that, on the top surface of the square, and either side of the USB port, are two dots.<sup>7</sup> The two outside squares have circles on the top. There are symbols in the middle of these circles in the contested design which are absent in the prior art. However, the symbols are commonly used to denote electricity supply and magnets, so are functional representations for a wireless charger, necessary to obtain a technical result. The middle square of the contested design has a circular raised piece. It is not entirely clear from the prior art what is represented by the lines in the middle square of the earlier design. However, it is clearly meant to represent a section which opens from the following image in the prior art:



---

<sup>7</sup> Moreover, from the images, there is no clear difference in the type of USB ports.

26. Returning to *Samsung Electronics (UK) Ltd v Apple Inc*, these differences and similarities will be observed by the informed user who pays attention to detail. The differences and similarities will not be picked up only through minute scrutiny. Taking all of the above into account, including the weight of the similarities and differences and the degree of design freedom in relation to the various elements, I conclude that the proprietor's design produces the same overall impression on the informed user compared to the prior art. I find that the proprietor's design did not have individual character at the relevant date and is invalid for that reason.

**Outcome:** The application for invalidation is successful. Design No. 6229521 is invalid.

### **Costs**

28. The applicant has been successful and is entitled to a contribution towards its costs based upon Tribunal Practice Notice 1/2023, as follows:

Statutory fee	£48
Filing the DF19A and considering the DF19B and counterstatement	£250
Total	£298

29. I order Fuzhou Gulou Yisheng Electronic Commerce Co., Ltd. to pay to Shenzhen Autige Technology Co., Ltd the sum of £298. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 8<sup>th</sup> day of November 2024**

**Judi Pike**

**For the Registrar,**

**The Comptroller-General**

**Annex - Images of Registered Community Design No. 009010374-0001**

