

BL O/0983/25

IN THE MATTER OF THE REGISTERED DESIGNS ACT 1949

IN THE MATTER OF REGISTERED DESIGN NO 9,003,494,624,009 IN THE NAME OF
LU ZHANG

AND IN THE MATTER OF AN APPLICATION FOR INVALIDATION UNDER NO 9/24
IN THE NAME OF MUNCHUN LIN

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF ROSE LE
BRETON (O/636/25) DATED 14 JULY 2025

DECISION

Introduction

1. This is an appeal from the decision of Rose Le Breton, for the Registrar, dated 14 July 2025 (O/636/25). Munchun Lin applied to invalidate registered design (No 9,003,494,624,009) on the grounds the design lacked novelty and individual character. This application was successful, and the registered design was invalidated. Lu Zhang appeals.
2. The illustrations for the registered design are set out below:



3. The application date for the registered design was 1 December 2016.

The prior art

4. The Respondent applied to invalidate the registered design under section 11ZA(1)(b) of the Registered Designs Act 1949 on the basis that the registered design lacked novelty and individual character (section 1B) based on five earlier designs. However, only two of these designs were substantively considered by the Hearing Officer. She found that the registered design lacked novelty by reason of Design 5, an earlier Chinese copyright registration (CN 347,580), and that the registered design was novel, but lacked individual character, by reason of Design 2, a product made available on Amazon (ASIN B0177BBS00) from at least 25 November 2015. As the Hearing Officer found Design 2 to be the closest design (other than Design 5) she did not go on to consider Designs 1, 3 or 4. Indeed, for reasons that will become apparent, I only need to consider Design 5.

Standard of appeal

5. The standard of appeal is by way of review. Neither surprise at a Hearing Officer's conclusion nor a belief that the Hearing Officer has reached the wrong decision will suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer's findings were rationally insupportable. The principles to be applied were summarised by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch), [24] and in terms of evaluative decisions the Supreme Court's guidance in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, [49] where it stated that:

...on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.
6. When considering this appeal, and applying these principles, it is important to remember the high bar set.

Absence of any challenge to Design 5

7. The Grounds of Appeal do not include any grounds relating to the Hearing Officer's conclusion that the registered design lacked novelty over Design 5. Indeed, as the Hearing Officer noted, the Appellant did not provide any submissions below in relation to this issue (Decision, [22]). The only section of the Grounds of Appeal which could relate to novelty is the one entitled "No sufficient disclosure", but it refers to only "D1", "D2" and "D4".
8. The finding that the registered design lacked novelty over Design 5 means that the registered design is invalid, and as this finding is not challenged, the appeal could be dismissed at this point. An appeal to the Appointed Person is not a rehearing and so it is necessary for an Appellant to identify grounds of appeal sufficient to overturn the order below (in this case, to invalidate the design). The absence of any mention of Design 5 in the Grounds of Appeal makes it clear this has not been done.

9. Even though there was no challenge to the findings on Design 5, I will set out below why I believe the Hearing Officer was right in her conclusion in respect of this Design. I will not consider the other prior art as the registered design is so clearly invalid in light of Design 5.

Novelty of registered design over Design 5

10. Design 5 was a copyright registration, which had been accompanied by a Chinese copyright certificate. The dates on the registration were found by the Hearing Officer to include 2 August 2011 and 28 May 2012 and it was stated in a witness statement by Mon-Yin Lin Chinen that the registration was published on the latter date (Decision, [21]).
11. Once it has been established that the design has been made available anywhere in the world, that is sufficient for it to be prior art: *Magmatic Ltd v PMS International* [2013] EWHC 1925, [2014] RPC 23, [33]. The Hearing Officer found the design was available from 28 May 2012 and this finding is not challenged by the Appellant.
12. The Hearing Officer concluded that the Appellant was not seeking to rely on section 1B(5) and (6)(a) of the Registered Designs Act 1949, which in combination provide that something in the prior art is not treated as made available to the public where “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”.
13. Nevertheless, the Hearing Officer went on to consider whether the Chinese copyright registration would have been known in the normal course of business to persons carrying on business in the relevant sector. She found that the Chinese copyright registration would be known relying on T-22/13 *Senz Technologies BV v OHIM*, EU:T:2015:310.
14. In *Senz*, the General Court concluded that the person challenging the disclosure had failed to establish: (i) that a designer in the EU would not consult the U.S. patents register (*Senz*, [32]), (ii) that EU intellectual property lawyers are unaware that U.S. designs are registered in the patents register (*Senz*, [33]); and (iii) that searching such registers would be beyond the means of those operating in the sector (*Senz*, [35]).
15. It is important to note that *Senz* is also authority for the proposition that once a design has been made available to the public before the relevant date it is for the party challenging the disclosure to discharge the burden of establishing that the circumstances of the case prevented the disclosure from becoming known in the relevant sector (*Senz*, [26]; also see T-651/16 *Crocs v EUIPO*, EU:T:2018:137, [47] and [54]). It is also the case that whether a design would be so known in the relevant sector is a question of fact that is dependent on the circumstances of each individual case: C-479/12 *H. Gautzsch Großhandel*, EU:C:2014:75, [34].

16. Accordingly, a Hearing Officer needs to consider only whether a disclosure is excluded for one of the reasons set out in section 1B(6) where it is specifically raised by the person alleging it, and where such a finding is made it is one where appellate tribunals will give the usual deference to factual findings by Hearing Officers.
17. Indeed, in *Senz*, the General Court was not saying that anything on an intellectual property register anywhere in the world would always be known to a designer in the EU, but rather, that the person challenging the disclosure had failed to establish that what was on the U.S. patents register would be unknown to the relevant sector. It may be in other cases the relevant sector would be unaware of a particular register or registration. Indeed, the registered designs system acknowledges that some individuals cannot be expected to know what is on the domestic register (section 24B of the Registered Designs Act 1949) and so, in an appropriate case, it would not be unreasonable for a tribunal to find a whole sector is unaware of a particular foreign registration.
18. Nevertheless, as the Appellant did not challenge the fact that the Chinese copyright registration was disclosed, see Decision [34], there was no need for the Hearing Officer to consider whether that disclosure fell within section 1B(6) at all. But, in any event, the finding in relation to disclosure was not challenged on appeal.
19. The Hearing Officer also considered whether Design 5 had been pleaded adequately for the purposes of section 11ZA(1)(b) of the Registered Designs Act 1949. She concluded that it had, Decision [22], and once more this finding was not challenged by the Appellant.
20. The Hearing Officer compared the registered design to Design 5, set out below, and concluded that the registered design lacked novelty as the Hearing Officer saw no material difference between the top side of the designs and in relation to the underside she thought any differences are trivial in nature: Decision, [40 and 41].

Registered Design	Prior Art – Design 5
	
	
	
	
	

21. I entirely agree with the Hearing Officer’s novelty assessment, but once more the Appellant did not challenge this finding.

22. In summary, even though there was no challenge to the Hearing Officer’s finding in relation to the novelty of the registered design over Design 5, it is apparent that her decision was right.

Conclusion

23. I dismiss the appeal. The Respondent made no further submissions in relation to the appeal and so I make no order as to costs.

PHILLIP JOHNSON
THE APPOINTED PERSON
21 OCTOBER 2025

Representation

For the Appellant: Isabelle Bertaux of IBE Avocat

The Respondent filed no further submissions in relation to the appeal.