

BL O/0024/26

IN THE MATTER OF THE REGISTERED DESIGNS ACT 1949 (AS AMENDED)

IN THE MATTER OF REGISTERED DESIGN NO. 6274888 IN THE NAME OF FURNEO LIMITED



AND IN THE MATTER OF THE APPLICATION FOR INVALIDATION THERETO (NO. 0291/24) BY PROSPERO MEBLE SP. Z O.O.

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF J PIKE (O/1003/25) DATED 29 OCTOBER 2025.

DECISION

Introduction

1. This is an appeal by Furneo Limited (“**Appellant**”) from decision O/1003/25 of Judi Pike (“**Decision**”) concerning the application by Prospero Meble SP. Z O.O. (“**Respondent**”) to invalidate the Appellant’s registered design no. 6274888 (“**contested design**”). The contested design was filed and registered on 11 April 2023 and is for “extending dining table” in Class 06, Sub class 03 of the Locarno Classification (tables and similar furniture). The contested design is depicted in the four 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 22 November 2024, the Respondent requested that the contested 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 (verbatim):

"Design No. 6274888 is class 06-FURNISHING, however, it does not meet the conditions necessary for registration. In order to obtain design protection, Furheo Limited has not search the EUIPO database, where this design was previously registered. The condition of new models and individual character is also not met. The number of the design registered in 2018 is 005866233 – 0001 (euipo), the creator and owner is PROSPEPO MEBEL SP. Z O.O., CEO-Klandia Rabieja , This is a violation of my property rights."

4. The design relied upon by the Respondent ("the Earlier Design"), which is also registered for a table, shows a single image:



5. The Appellant filed a notice of defence and counterstatement on 8 January 2025, denying the ground. The counterstatement listed the alleged differences between the Earlier Design and the contested design.

6. Both parties filed written submissions, rather than evidence during the evidence rounds. Neither party requested a hearing, and neither filed written submissions in lieu.
7. Ms J. Pike for the Registrar held that the application for invalidity was successful. On 20 November 2025 the Appellant filed a Notice of Appeal to the Appointed Person against the Decision under Section 27A of the Act.

The Hearing Officer's decision

8. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):
 - a. The Earlier Design is prior art upon which the Respondent may rely.
 - b. The relevant sector is the market for tables, especially dining tables. The informed user is a member of the public with an interest in tables, especially dining tables. The informed user will be reasonably attentive to dimensional, construction and aesthetic requirements.
 - c. There is a large degree of design freedom in the relevant sector.
 - d. Whereas there are some differences between the designs, the differences are small enough to be considered minimal. Bearing in mind the weight and the high degree of similarity of components of the respective designs, and balancing those features with the large degree of design freedom, the contested design does not produce a different overall impression on the informed user compared to the Earlier Design.
 - e. The contested design therefore did not have individual character at the relevant date and is accordingly invalid.

Grounds of Appeal

9. The Appellant's Grounds of Appeal are as follows:
 - a. **Ground 1:** The Hearing Officer misidentified the structural configuration of the contested design, particularly the number and arrangement of the table-top planks;
 - b. **Ground 2:** The Hearing Officer improperly reconstructed unshown features of the prior art from ambiguous CAD reflections, effectively adding features not visible in the sole representation;
 - c. **Ground 3:** The Hearing Officer misapplied the principles governing design freedom and the weighting of differences under section 1B(4) of the Act;
 - d. **Ground 4:** The Hearing Officer failed to give proper weight to multiple visible differences which the informed user would perceive immediately;
 - e. **Ground 5:** The Hearing Officer relied on points not supported by evidence filed by the Applicant, contrary to basic procedural fairness.
10. Neither party requested a hearing, nor did either party file submissions in lieu. I have made this decision following a careful review of the Decision, the Notice of Appeal and the submissions made below.

Standard of review

11. The approach to be adopted in an appeal hearing has been laid down a number of times in case law, most recently in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at §§94-95:

"94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:

- (i) The trial is not a dress rehearsal. It is the first and last night of the show.
- (ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.
- (iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:

"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72-76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJ) contributed, the court concluded, at para 76, in terms with which we agree, 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.

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation. ""

12. Further guidance was provided in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

"24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS O/039/21*), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

- i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);
- ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS O/039/21* at [14]);
- iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);
- iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.
- v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).
- vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).
- vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections

simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).

- viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).
- ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).

13. To the above should be added the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where Arnold LJ said at §110 "It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable".

14. Whereas the above principles were laid down in cases concerning trade marks, they are equally applicable to this appeal, and I shall bear all the above in mind when reviewing the Decision.

Discussion

(1) **The Hearing Officer misidentified the structural configuration of the contested design, particularly the number and arrangement of the table-top planks**

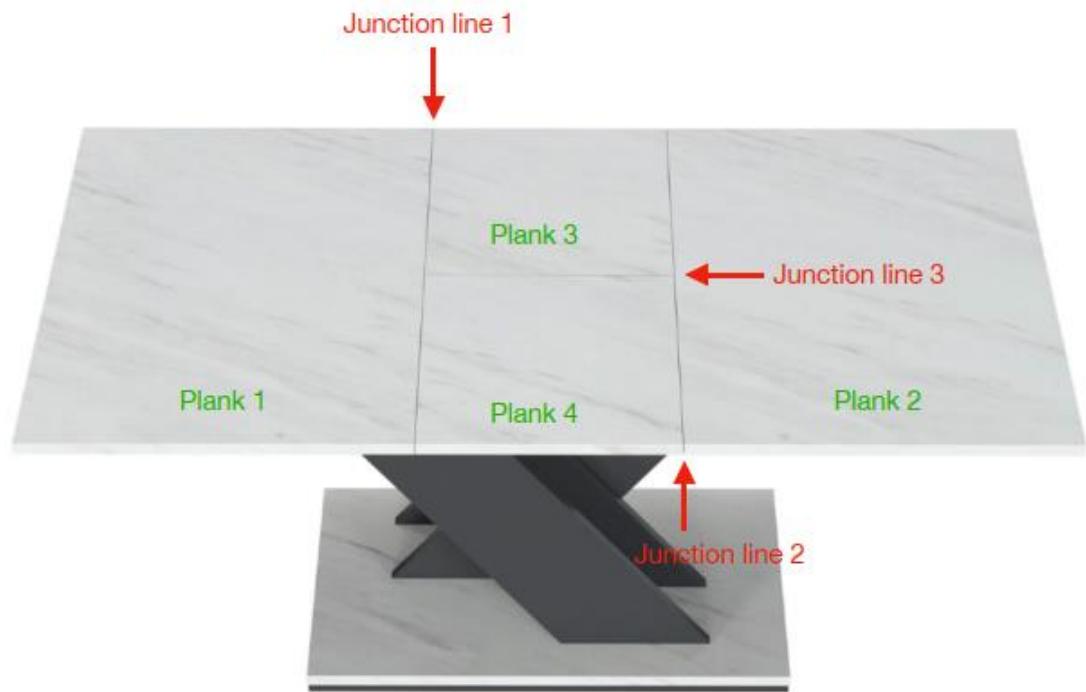
15. At §20 of the Decision, the Hearing Officer stated that the similarities include that:

"both are tables with rectangular tops, in three sections, which appear to extend in roughly equal proportions to either side of the leg structure; the middle section of the table-top is narrower than the sections either side".

16. She accordingly proceeded on the basis that both designs have three table-top sections.

17. The Appellant contends that this is factually incorrect, and that the contested design clearly shows a four-plank table-top, not a three-part top. The Appellant relies on the following annotated version of one of the representations in the contested design:

Exhibit A



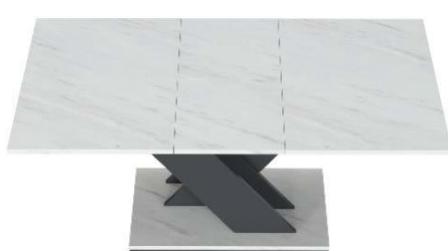
18. An initial difficulty for the Appellant is that neither the above annotated image, nor the contention that the contested design shows a table-top in four parts, was put before the Hearing Officer. Neither the Appellant's notice of defence and counterstatement nor its written submissions make any reference to this issue. The Hearing Officer clearly cannot be criticised for failing to take into account evidence and arguments which were not relied upon by the Appellant.
19. Nevertheless, I shall briefly address the argument raised in ground 1. It is true that one of the two representations of the table in its extended position does appear to show a join in the middle of the central section, such that the table top is in four parts. However, the other representation of the table in its extended position does not show any such join – see the image below, where I have expanded the central section of the second representation. It is therefore unclear whether the table top in the contested design is in four sections, or whether the line relied upon by the Appellant is merely a glitch in that particular (computer-generated) representation.



20. Furthermore, I do not agree with the Appellant's contention that, in this particular instance, "a four-plank arrangement will give a different visual rhythm and perceived function than a three-plank arrangement". Whereas I am prepared to accept that a four-part arrangement could look very different to a three-part arrangement, the dividing line shown in only one of the representations is very faint, and would barely be noticed by the informed user. In this particular case, the layout of the table top is primarily a matter of construction and functionality rather than appearance. Accordingly, even if the Appellant is correct that the contested design shows a table top in four parts, it has little or no impact on the overall impression produced on the informed person.
21. I dismiss this first ground of appeal.

(2) The Hearing Officer improperly reconstructed unshown features of the prior art from ambiguous CAD reflections, effectively adding features not visible in the sole representation

22. In its notice of defence and counterstatement, and also in its written submissions, the Appellant contended that the Earlier Design shows a table with only three legs, whereas the contested design has four legs (see the two representations below).



23. At §§31-32 the Hearing Officer said
"31. I show below an enlarged version of the prior art:



32. I have pointed two arrows at two reflections. The reflection to the right is clearly the reflection of the rear plank. But there is another reflection to the left of that. It cannot be a reflection from the double-planked leg because it is in the wrong place. It must be a reflection from another plank in the rear leg; i.e. the rear leg is also a double-planked leg (as set out by Ms Rabiega). The angle of the computer-aided design image has simply obscured the other plank; just as has happened in the first image of the contested design. The angle of that image only shows a single plank, whereas the second image of the contested design shows two double-planked legs: obviously, in the same design. In my view, the double reflection/shadowing in the prior art allows the shape and the features of the design to be identified; i.e. the formation of the rear leg. Interpretation of this representation, which is not the type of design in which informed users are likely to have specialised knowledge and are better able to interpret the representation than the court, is a matter for me, not for the informed user: see *Sealed Air Limited v Sharp Interpack Limited & Anor*, [2013] EWPCC 23, at paragraph 20 and *Safestand Ltd v Weston Homes PLC & Ors*, at paragraph 187”.

24. The Appellant contends that the Hearing Officer’s analysis was a “speculative leap, inconsistent with *Framery* and *Sealed Air*, and goes beyond the proper role of the tribunal. If anything, the ambiguous nature of the reflections means the prior art does not clearly disclose a second rear plank. Ambiguity cannot be resolved against the registered proprietor in this way”.
25. In *Framery Oy v EUIPO* (T-373/20), the General Court said:

“22. In the first place, the applicant submits that the single view image produced by Smartblock to demonstrate disclosure of the earlier design, within the meaning of Article 7(1) of Regulation No 6/2002, does not constitute a clear and unambiguous presentation of that design. It argues that disclosure of only one side of the earlier design, without giving sufficient information on its exterior although the latter constitutes the part of the earlier design that is mostly visible during its normal use, does not allow an actual and effective comparison to be made of the designs at issue. In that regard, it submits that the Board of Appeal could not have made out the missing sides of the earlier design.

23. It should be noted that, as regards the assessment of disclosure for the purposes of Article 7 of Regulation No 6/2002, it is not apparent from that regulation that the representation of the earlier design at issue must include views reproducing it from all possible angles, so long as that representation allows the shape and the features of the design to be identified (see, to that effect, judgment of 29 April 2020, *Bergslagernas Järnvaru v EUIPO – Scheppach Fabrikation von Holzbearbeitungsmaschinen (Wood-splitting tool)*, T-73/19, not published, EU:T:2020:157, paragraph 42 and the case-law cited).

26. In *Sealed Air Ltd v Sharp Interpack Ltd* [2013] EWPCC 23, HHJ Birss QC (as he then was) said:

“18. A problem in this case related to the proper interpretation of the drawings on the register. The drawings all show a star shape on the base of the punnet. Sharpak submitted that the informed user looking at the drawings would understand that they meant that the punnet should have a visible star pattern on the base. Sealed Air did not agree. It submitted that when one understood CAD drawing conventions, the star shape represents a slight dome feature on the base. Sharpak replied that the informed user, a buyer of punnets for a supermarket chain or the like, would not know about CAD drawing conventions and, seeing the drawing, would expect to see a star shape pattern on the punnet itself. Mr Howe submitted that Sharpak's argument was wrong in principle. He said a distinction had to be drawn between the design itself and representations of the design on the register. While the informed user was the notional person employed in the law in order to assess overall impression and so on, it was not right to say that the informed user was supposed to be the person who interpreted the representations of the design which appeared on the register. Mr Howe contended that the identification of what the design registered actually is, by scrutinising the representations registered, was a matter for the court and was a question of law and construction. Once the court had determined what the design registered actually was, the notional informed user was to be employed in answering the questions of validity and infringement. So he argued that it was not relevant what an informed user would make of the drawings on the register when a problem like this one arose. Generally the distinction between the design and the representations of the design would not matter but in a proper case it was important. Ms Edwards-Stuart did not agree. She submitted that the informed user was the person to whom the design registration was addressed and so in this case, if the informed user would understand that the design had a star shape on its base, that was that.

19. Neither side cited any authority on the issue. Paragraph 21 of the judgment of Sir Robin Jacob in *Samsung*, which was dealing with an issue about the interpretation of dashed lines in the representations in that case, is drafted so as to refer to what the informed user would think about the drawing on the register in that case. However both sides submitted that the issue raised here was not before the Court of Appeal in that case. The language used by the Court of Appeal there was not deciding between the rival submissions I have in this case.

20. I prefer Mr Howe's submission. I suspect in the large majority of cases the distinction will not matter but in my judgment the determination of what design is actually registered is a matter for the court. Once the design has been identified, then questions of overall impression and so on are matters to be decided by reference to the informed user. I reject the submission that it is the informed user who is supposed to be employed to interpret the representations of the design which are placed on the register. As in this

case, a common way to register a design is to use technical drawings such as the drawings in this case. Informed users will not be experts in the interpretation of those drawings. It may be that the only convenient way to represent a design is by using a drawing which would be readily interpreted by a technical draughtsman but not easily interpreted by the informed user.

21. I can see no reason why the informed user needs to be brought into the analysis at this stage. The design register fulfils an important function of giving notice to the public what designs have been registered. That function does not require the law to say that the representations must be interpreted by the informed user either. After all one of the most important groups of people interested in scrutinising the register will be rival manufacturers and designers of the products in question. They are not users. They will know how to interpret technical drawings. In practice users are much less likely to consult the register than manufacturers and designers". (my underlining)

27. I extract the following propositions from the above: i) it is not necessary that a representation of the prior art includes views from all possible angles, so long as the shape and features of the design can be identified, and ii) it is for the court/Hearing Officer, rather than the informed user, to carry out the identification of the shape and features of the design.
28. As I see it, the Hearing Officer was entitled to give detailed consideration as to whether the Earlier Design showed a three- or four-legged table. First, the alleged difference in number of legs between the designs was specifically relied upon by the Appellant, and she was entitled to consider for herself whether that was correct. Secondly, the two pairs of representations in the contested design itself appear to show either a three- or four-legged table. As recognised by the Hearing Officer, the table in the contested design must be four-legged, but from certain angles one of the legs completely overlaps another leg, giving rise to the appearance of a three-legged table (compare the pair of images below). The Hearing Officer was accordingly alerted to the possibility that a single image can be misleading (as she said at §32 "The angle of the computer-aided design image has simply obscured the other plank; just as has happened in the first image of the contested design"), and was entitled to carry out her own analysis of what was actually shown in the Earlier Design.



29. As to the alleged "speculative" nature of the Hearing Officer's finding, I remind myself of the principle cited at §13 above, namely that "so far as the appeals challenge findings of fact made by the judge, [an appeal tribunal] is only entitled to intervene if those findings are rationally insupportable". Whereas there is a degree of ambiguity in the representation of the Earlier Design, and a different hearing officer might have reached a different conclusion as to the

number of legs shown in the Earlier Design, I cannot say that the Hearing Officer's finding that it showed a four-legged table was "rationally insupportable".

30. Accordingly, the Hearing Officer was entitled to carry out the analysis she did, and made a finding which is rationally supportable. I dismiss this second ground of appeal.

(3) The Hearing Officer misapplied the principles governing design freedom and the weighting of differences under section 1B(4) of the Act

31. At §33, the Hearing Officer states:

"Balancing those features with the large degree of design freedom which the proprietor had at the relevant date leads me to conclude that the contested design does not produce a different overall impression..."

32. The Appellant contends that "This reasoning inverts the correct effect of design freedom. They appear to treat high design freedom as reinforcing similarity (i.e. "you could have done anything, but you chose something similar"), whereas the established approach is that where a designer could have chosen many alternative forms, actual differences in structure, segmentation and geometry carry more weight and make it more likely that a different overall impression arises".

33. I can deal with this ground briefly. In *The Procter & Gamble Company v Reckitt Benckiser (UK) Limited* [2007] EWCA Civ 936, Jacob LJ said at §§34-35:

"Another thing is also clear. Where shapes are, to some extent, required to be the way they are by reason of function, the informed user is taken to know that. That is what Art 6(2), (for validity) and Art. 10(2) (for scope of protection) require. Take an aspect of this case. Both products have a trigger and something of a "pistol grip". There is some constraint on design freedom for this – the product must be grippable so that the index finger can pull the trigger, the trigger must be shaped to fit the finger and have sufficient space behind it for it to be pulled. That is a given. The informed user must take those requirements into account when assessing overall impression.

Thus Art. 10(2) is a narrowing provision. Smaller differences will be enough to create a different overall impression where freedom of design is limited".

34. Accordingly, the Hearing Officer's approach and account of the law was entirely correct, and I dismiss this third ground of appeal.

(4) The Hearing Officer failed to give proper weight to multiple visible differences which the informed user would perceive immediately

35. The Hearing Officer carried out a comparison of the designs. At §21 she said:

"The differences are:

- the legs in the first image of the contested design comprise one with two planks with a space between them going from top-right to bottom-left behind the other leg which appears as a single plank going from top-left to bottom-right. In the prior art, the double-planked leg goes from top-right to bottom-left, but in front of the single-planked leg which goes from top-left to bottom-right;

- the triangular gap at the top of the legs where they meet the underside of the table-top is smaller in the contested design;
- the width of the flat side of the leg planks appears to be greater in the contested design;
- the pointed ends of the double-planked legs are parallel in the contested design but are slightly offset in the prior art”;

36. At §33 she said:

“I acknowledge that there are some differences; i.e. the triangular gap at the top of the legs where they meet the underside of the table-top, the width of the flat side of the leg planks appears to be greater in the contested design, and the slightly offset ends to the legs where they meet the base plinth. However, these differences are small enough to be considered minimal. I bear in mind the weight and the high degree of similarity of components of the respective designs; i.e. the table top, the formation of the legs, the proportions of the tops and the base plinth. Balancing those features with the large degree of design freedom which the proprietor had at the relevant date leads me to conclude that the contested design does not produce a different overall impression on the informed user compared to the prior art”.

37. The Appellant contends that “By underplaying these differences and over-relying on an artificially interpreted similarity (shadow-derived double leg), the decision mis-weighs the factors and reaches a conclusion that is wrong in its overall impression assessment”.
38. However, the comparison of the designs, and the weighing of similarities and differences, was a matter for the Hearing Officer alone. It was an evaluative process, and as cited at §12 above “The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible” (*Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 at §80).
39. I cannot say that the Hearing Officer's conclusion was “outside the bounds within which reasonable disagreement is possible” – indeed, for what it is worth, I agree with her conclusion that, notwithstanding the differences, the contested design does not produce a different overall impression on the informed user compared to the prior art.
40. I dismiss this fourth ground of appeal.

(5) The Hearing Officer relied on points not supported by evidence filed by the Applicant, contrary to basic procedural fairness

41. This ground builds upon ground 2. The Appellant contends that:

“Because no hearing was held and neither party was alerted that the tribunal intended to treat the CAD shadows in this way, the Appellant had no opportunity to rebut or address this key interpretive step (for example, by explaining CAD rendering artefacts or filing its own expert evidence). In circumstances where the Applicant had not discharged the burden of proving those structural facts by proper evidence, the tribunal should not have filled the gap.

While this is not a procedural irregularity in the sense of denying a formal hearing, it is a procedural unfairness in how evidence gaps were handled, and contributes to the result being unsound”.

42. I have already concluded that the Hearing Officer was entitled to carry out the interpretative process that she did into the number of legs shown in the Earlier Design. I do not agree that in doing so she acted in a procedurally unfair manner. It was open to the Appellant to have requested a hearing – had it done so, this issue would no doubt have been ventilated. However, both parties were content for a decision on the papers. The Hearing Officer dealt with a pleaded issue, and although she did so in a manner not contended for by either party, she was entitled to do so in order to decide the case.

43. I dismiss this fifth ground

Conclusion

44. The appeal is dismissed. Design No. 6274888 is invalid.

Costs

45. Whereas the Respondent is the successful party, it has played no part in this appeal and therefore has incurred no costs. I accordingly make no order as to costs in the appeal.

46. The Hearing Officer’s order that the Appellant pay the Respondent the sum of £48 stands, and that sum should be paid within 21 days of this decision.

Dr. Brian Whitehead

16 January 2026

Representation

The Appellant acted in person

The Respondent did not participate in the appeal