BL O/1009/26

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

IN THE MATTER OF REGISTERED DESIGNS NOS. 6238953, 6238954 AND 6238956 IN THE NAME OF STURDY SOLUTIONS LIMITED



AND IN THE MATTER OF THE APPLICATIONS FOR INVALIDATION THERETO (NOS. 0038/26, 0036/26 AND 0035/26) BY HOONGUP CO., LIMITED

AND IN THE MATTER OF AN APPEAL FROM THE DECISIONS OF C WILLIAMS DATED 6 AND 11 AUGUST 2026.

DECISION

Introduction

1. This is an appeal by Sturdy Solutions Limited ("**Appellant**") from the decisions of Caitlin Williams dated 6 and 11 August 2026 ("**Decisions**") concerning the applications by Hoongup Co., Ltd ("**Respondent**") to invalidate the Appellant's registered designs nos. 6238953, 6238954 and 6238956 ("**contested designs**"). Each of the contested designs was filed on 24 October 2022, and the invalidity applications were filed on 22 January 2026. All three applications were brought pursuant to s.11ZA(1)(b) of the Registered Designs Act 1949 ("**the Act**"), i.e. on the basis that the contested designs were not new and/or did not have individual character. Further details of the contested designs and invalidity applications are set out in the table below. The contested designs are depicted above.

Registered design no.	Indication of product	Invalidity application no.
6238953	bag clips for food storage	0038/26
6238954	bag clips for food storage	0036/26
6238956	bag clips for food storage	0035/26

2. The Appellant did not file Form DF19Bs and counter-statements within the 6 week period in accordance with Rule 15(5) of the Registered Designs Rules 2006 ("**the Rules**"). Nor did it respond to the Registrar's official letters dated 8 April 2026. On 6 August (in respect of 6238954) and 11 August 2026 (in respect of 6238953 and 6238956) Caitlin Williams on behalf of the Registrar wrote to the parties stating that "As the registered proprietor has not responded to the allegations made, I am prepared to infer from this that they are admitted. Therefore, in accordance with Rule15(5) I order that the registration of the said design be deemed to be invalid".

3. On 16 August 2026 the Appellant filed three Notices of Appeal to the Appointed Person against the Decisions under Section 27A of the Act.

Grounds of Appeal

4. The Appellant's Grounds of Appeal are in similar form across each of the three appeals. The grounds for 6238956 read as follows:

> "The Appellant respectfully appeals the Hearing Officer's decision dated 11 August 2026 on the grounds that the invalidity proceedings and subsequent correspondence were not received by the Appellant at its registered office at 23 Abercorn Avenue, Glasgow, and no related emails were received or brought to the attention of the Appellant. Consequently, the Appellant was unaware of the invalidity proceedings and was unable to file Form DF19B within the prescribed period. The failure to respond was not deliberate.
>
> The Appellant respectfully requests that the Hearing Officer's decision be set aside and that the Appellant be permitted to file Form DF19B and its Counter-Statement out of time, so that Registered Design No. 6238956 may be properly defended against the invalidity application. Full details of the grounds of appeal, including the circumstances surrounding the non-receipt of the correspondence, the email issue, and delivery to the neighbouring premises are provided in the additional sheets attached to this form".

5. Neither party requested a hearing, nor did either party file submissions in lieu. I have made this decision following a careful review of the Decisions and the Notices of Appeal.

Standard of review

6. I set out the principles applicable to appeals before the Appointed Person in *MIUI* O/0939/26. Although those principles (derived from cases concerning trade marks) apply equally to cases involving registered designs, for reasons which I explain in the next section the issues on this appeal are:

   (i) whether the Hearing Officer followed the procedure required by Rule 15(5);

   (ii) if so, whether the Appellant has shown a good reason for its failure to respond to the invalidity applications; and

   (iii) whether the Appellant has demonstrated a real prospect of successfully defending the invalidity applications or some other good reason why it should be permitted to do so.

Discussion

Law and procedure in relation to applications to set aside a decision on invalidity

7. The Decisions, which were entered in the absence of any engagement by the Appellant, are analogous to judgments entered in default in civil proceedings. Neither the Act nor the Rules contain any provisions analogous to CPR 13.2 and 13.3 (which contain the rules for setting judgment in default aside).

8. I have found the decision of Richard Arnold QC (as he then was), sitting as the Appointed Person in *Applied Technologies Manufacturing Ltd's Trade Mark Application* O/348/04 to be extremely helpful in relation to this matter. In *Applied Technologies*, Mr Arnold QC reviewed the rules dealing with the consequences of failure by a proprietor of a registered trade mark to respond to an application for revocation, and the avenues open to such a proprietor to have the revocation set aside. His conclusions were as follows (all references to rules are to the Trade Marks Rules 2000, which have since been superseded):

   i. The registered proprietor has three months from "the date on which a copy of the notice is sent by the registrar to the proprietor" in which to file a counter-statement, Form TM8 and evidence of use or reasons for non-use (rule 31(2)). The operative event is the sending of the documents by the Registrar, not their receipt by the registered proprietor. The risk of late receipt or even non-receipt of the documents, is therefore imposed upon the proprietor;

   ii. Rule 31(3) states "Where a counter-statement, in conjunction with a notice of the same, on Form TM8, and evidence of use of the mark or reasons for non-use of the mark, are not filed by the proprietor within the period prescribed by paragraph (2), the registrar may treat his opposition to the application as having been withdrawn". The use of the word "may" indicates that if no counterstatement etc is filed in time, the Registrar has a discretion as to whether or not to treat the registered proprietor as not opposing the application;

   iii. However, pursuant to rule 54, where the Registrar is minded to treat the application as unopposed, it must give the registered proprietor an opportunity to be heard. Consequently, upon the registered proprietor's failure to file a Form TM8, counter-statement and evidence within the time stipulated by rule 31(2), the Registrar must notify the registered proprietor that it proposes to exercise the discretion under rule 31(3) to

treat it as not opposing the application for revocation unless the registered proprietor requests a hearing or makes written submissions in lieu thereof;

iv. In the absence of any provisions corresponding to CPR rules 13.2 and 13.3, where a mark has been revoked following the failure of the registered proprietor to respond to the revocation application, the registered proprietor's only recourse is to appeal. Such appeal is brought not on the basis that the hearing officer's decision was wrong, but on the basis that it was unjust because of a serious irregularity in the proceedings below.

v. If a hearing officer has not followed the protocol set out in (ii)-(iii) above, any revocation will be irregularly made, and the Appointed Person must set it aside on the ground of serious irregularity, cf. CPR rule 13.2;

vi. If, though, the hearing officer has followed that protocol, the revocation is regularly made and CPR rule 13.3 provides an appropriate guide as to whether it should be set aside, albeit that that provision applies after judgment has been entered and rule 31(3) applies beforehand. If a registered proprietor establishes that (a) it has not complied with the time limit under rule 31(2) for a good reason, such as not receiving the application for revocation, (b) it has a real prospect of successfully defending the application or that there is some other good reason why it should be permitted to defend and (c) there is no other good discretionary reason why it should be denied relief, then the tribunal's discretion under rule 31(3) should be exercised in its favour so as to permit it to defend the application.

9. Although *Applied Technologies* concerned registered trade marks, the procedural framework in respect of registered designs is materially identical. In both cases the proprietor is served with an application challenging an existing registered right (Rule 15(3)), is given a prescribed period in which to file a defence (Rule 15(4)), and the Registrar "may" treat the proprietor as not opposing the application if no response is filed (Rule 15(5)). The reasoning of Richard Arnold QC in *Applied Technologies* is therefore directly applicable by analogy.

Were the invalidity decisions entered in accordance with the rules?

10. The Registrar sent a copy of the Forms DF19A and the statements of case to the Appellant on 11 February 2026, giving the Appellant six weeks (until 25 March 2026) to respond. Upon the Appellant's failure to respond, the Registrar wrote on 8 April 2026, informing the Appellant in relation to each application that it "is minded to deem the opposition to the application as withdrawn as no defence has been filed within the prescribed period", but giving the Appellant until 22 April 2026 to provide full written reasons if it disagrees. No such written reasons (or indeed any response) were received from the Appellant.

11. It seems to me that the invalidation of the contested designs was done entirely in accordance with the Rules. The question therefore becomes whether the Appellant satisfies the criteria identified in *Applied Technologies* for relief from the consequences of its default.

Should the invalidity decisions be set aside?

12. The first requirement is whether there is a good reason for the Appellant's non-compliance. In that regard, the annexes to the Appellant's DF55 Notices of Appeal contain the following explanation:

"Sturdy Solutions Ltd did not receive the Form DF19A, Statement of Case or accompanying documents at the time they were sent. We were likewise unaware of the subsequent correspondence dated 8 April 2026 at the relevant time.

Our registered business address is:

Sturdy Solutions Ltd
23 Abercorn Avenue
Hillington Park
Glasgow
G52 4JL

Our company operates from a separate office at this address, with a clearly identifiable office entrance marked No. 23.

There is, however, another small office/entrance situated outside the warehouse area. This premises is separate from and not part of Sturdy Solutions Ltd's office and is associated with the neighbouring premises at No. 22.

Due to the layout of the premises, there have unfortunately been occasions when couriers or postal services have delivered correspondence intended for Sturdy Solutions Ltd to the neighbouring premises at No. 22. On some occasions, correspondence delivered there has subsequently been passed on to us.

Unfortunately, the correspondence relating to these invalidation proceedings was not brought to our attention at the relevant time.

We only became aware of the proceedings after receiving the Hearing Officer's Order dated 11 August 2026. Following receipt of the Order, we immediately investigated the circumstances and visited the neighbouring premises. During this visit, we discovered that the earlier DF19A correspondence had been received there.

This was the first occasion on which we became aware of the invalidation application …".

13. I am prepared to accept, for present purposes, that the above explanation provides a good reason for the Appellant's non-compliance.

14. The second requirement is that the Appellant has a real prospect of successfully defending the application or that there is some other good reason why it should be permitted to defend it. Regrettably, the Appellant has not provided any details at all of the basis on which it proposes to defend the contested designs.

15. The annexes to the Appellant's DF55 Notices of Appeal go on to say "Having now obtained and reviewed the invalidation application, we understand that the Applicant alleges that [the design] lacks novelty and individual character. Sturdy Solutions Ltd has a genuine and substantive defence to those allegations and has evidence that it wishes to place before the Tribunal". No further details are set forth in the Notices of Appeal.

16. The Appellant was specifically informed (by the secretariat on my behalf) on 22 October 2026 that, absent proposed Forms DF19B and draft counter-statements, it would be difficult to demonstrate a realistic prospect of successfully defending the invalidity applications. A further opportunity was afforded on 2 November 2026, by which the Appellant was informed that it had until 13 November 2026 to file proposed Forms DF19B and accompanying documents. No

response was received. The Appellant has therefore failed to engage with an issue that is central to the exercise of discretion in its favour.

17. Having reviewed the applications for invalidity, I am satisfied that the applications disclose an arguable and properly particularised case of invalidity. The burden lies on the Appellant to demonstrate a real, as opposed to merely fanciful, prospect of successfully defending the invalidity applications. The Appellant was expressly invited to provide the material necessary for such an assessment, but failed to do so. It has done no more than assert that it possesses a defence. That falls considerably short of establishing a "real prospect" of success within the meaning conventionally given to that expression in CPR 13.3 jurisprudence. In those circumstances I am unable to conclude that the requisite threshold has been met. Nor is there any other good reason why the Appellant should be permitted to defend the applications.

18. The final requirement – there is no other good discretionary reason why the Appellant should be denied relief – falls away in the circumstances.

Conclusion

19. The appeal is dismissed. Design Nos. 6238953, 6238954 and 6238956 are invalid.

Costs

20. Whereas the Respondent is the successful party, it has played no part in this appeal and therefore has incurred no costs. Furthermore, neither party has sought costs, and I accordingly make no order as to costs in the appeal.

21. The Hearing Officer made no order as to costs in the three invalidity applications.

Dr. Brian Whitehead

17 November 2026

Representation

The Appellant company acted in person through its director, Ume Kalsoom

The Respondent did not participate in the appeal