



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET  
(TRADE MARKS AND DESIGNS)**

DESIGNS DEPARTMENT- INVALIDITY DIVISION

**DECISION OF  
THE INVALIDITY DIVISION  
OF 23/08/06**

**IN THE PROCEEDINGS FOR A DECLARATION OF INVALIDITY  
OF A REGISTERED COMMUNITY DESIGN**

<b>FILE NUMBER</b>	ICD 000001360
<b>COMMUNITY DESIGN</b>	000288220-0005
<b>LANGUAGE OF PROCEEDINGS</b>	English
<b>APPLICANT</b>	Martin Saulespurens Elizabetes iela 57-19 LV-1050 Riga Latvia
<b>REPRESENTATIVE OF THE APPLICANT</b>	Edwards Lavrinovics Viranes 2 LV-1073 Riga Latvia
<b>HOLDER</b>	SIA SCRUPLES Gaujas iela 30 LV-2167 Marupe Latvia
<b>REPRESENTATIVE OF THE HOLDER</b>	Petersona Patents P.O.Box 61 LV-1010 Riga Latvia

The Invalidity Division,

composed of Martin Schlötelburg (rapporteur), Eva Vyoralova (member) and Anna Gobetto (member) took the following decision on 23/08/06:

1. **The registered Community design No. 000288220-0005 is declared invalid.**
2. **The Holder shall bear the costs of the Applicant.**

#### **I. FACTS, EVIDENCE AND ARGUMENTS**

- (1) The Community design No. 000288220-0005 (in the following: “the CD”) has been registered in the name of the Holder with the date of filing of 01/02/05. In the CD, the indication of products reads “microphones” and the design is represented in the following view (published at [http://oami.eu.int/bulletin/rcd/2005/2005\\_029/000288220\\_0005.htm](http://oami.eu.int/bulletin/rcd/2005/2005_029/000288220_0005.htm)):



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- (2) On 20/07/05, the Applicant filed an application for a declaration of invalidity (in the following: “the Application”) contesting the validity of the CD. The fee for the Application was paid by bank transfer with effect of 20/07/05.
- (3) The Applicant requests the invalidation of the CD because “it does not fulfil the requirements of Article 5 and 6 of the CDR, namely as lacking novelty and individual character”. He argues that a design of a microphone called “Kiwi” (in the following: the prior design) has been disclosed in various magazines published between October 1999 and September 2003, respectively. The CD and the “Kiwi” “differ only in immaterial details”.

- (4) The Applicant provided *inter alia* copies of the journal “Sound on Sound” of June 2003 (in the following: D1) showing the following photo:



- (5) The Holder replied that the prior design has “three characteristic pins on the head of microphone. These significant elements are not in the depicted design”.
- (6) On 26/06/06 the Office informed both parties that the written proceedings were closed and that a decision concerning the invalidity would be taken.
- (7) For further details to the facts, evidence and arguments submitted by the Applicant and the Holder reference is made to the documents on file.

## II. GROUNDS OF THE DECISION

### A. Admissibility

- (8) The request to declare the CD invalid due to lack of novelty and lack of individual character is a statement of the grounds on which the Application is based in the meaning of Article 28(1)(b)(i) CDIR<sup>1</sup>. Furthermore, the Application complies with Article 28(1)(b)(v) and (vi) CDIR, since the attachment contains an indication of the facts, evidence and arguments submitted in support of those grounds. The other requirements of Art. 28(1) CDIR are fulfilled as well. The Application is thus admissible.

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<sup>1</sup> Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs

## **B. Substantiation**

### **B.1 Novelty**

- (9) As rightfully observed by the Applicant, the prior design disclosed in D1 and the CD are identical except for immaterial details. The three pins at the microphone head in the CD are too small in size with respect to the size of the microphone to alter this finding.
- (10) Therefore, the CD lacks novelty in view of the prior design disclosed in D1.

## **C. Conclusion**

- (11) The evidence provided by the Applicant forms an obstacle to the novelty of the CD within the meaning of Article 5 CDR. The CD has to be declared invalid.

## **III. COSTS**

- (12) Pursuant to Article 70(1) CDR and Art. 79(1) CDR, the Holder shall bear the fees and the costs of the Applicant.

## **IV. RIGHT TO APPEAL**

- (13) An appeal shall lie from the present decision. Notice of appeal must be filed at the Office within two months after the date of notification of that decision. The notice is deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed (Art. 57 CDR).

## **THE INVALIDITY DIVISION**

**Martin Schlötelburg**

**Eva Vyoralova**

**Anna Gobetto**