



DECISION
of the Third Board of Appeal
of 23 June 2014

In Case R 1395/2013-3

Estrella Domínguez Martínez

C/ Mayor 9, 2º C

ES-26580 Arnedo (La Rioja)

Spain

Invalidity Applicant / Appellant

represented by P.E. Enterprise, S.L., Gran Via 81, planta 5º, Dpto. 9,
ES-48011 Bilbao (Vizcaya), Spain

v

Bayerische Motoren Werke Aktiengesellschaft

AJ-55

DE-80788 Munich

Germany

RCD Proprietor / Respondent

represented by Grau & Angulo, Calle Josep Irla i Bosch, 5-7, ES-08034 Barcelona,
Spain

APPEAL relating to Invalidity Proceedings No 8701 (registered Community design
No 609458-0006)

THE THIRD BOARD OF APPEAL

composed of Th. M. Margellos (Chairperson), H. Salmi (Rapporteur) and
G. Humphreys (Member)

Registrar: P. López Fernández de Corres

gives the following

Decision

Summary of the facts

- 1 By an application filed on 16 October 2006, Bayerische Motoren Werke Aktiengesellschaft (hereinafter ‘the RCD proprietor’) sought to register the following design (hereinafter ‘the contested RCD’) with a priority date of 8 May 2006:



- 2 The indication of the products reads ‘wheels for motor vehicles’.
- 3 The design was registered and published in the Community Designs Bulletin No 76/2008 of 16 April 2008 and subsequently renewed.
- 4 On 28 March 2012, Estrella Domínguez Martínez (hereinafter ‘the invalidity applicant’) filed an application for a declaration of invalidity against the contested RCD. The invalidity applicant indicated as the grounds for invalidity that the contested RCD does not fulfil the requirements of Articles 4 to 9 CDR.
- 5 On 22 May 2013, the Invalidation Division adopted decision ICD 8701 (hereinafter ‘the contested decision’) in which it rejected the declaration of invalidity for the RCD as unfounded, ordering the invalidity applicant to bear the costs.
- 6 On 19 July 2013, the invalidity applicant filed a notice of appeal against the contested decision followed by a statement of grounds on 23 September 2013.
- 7 On 25 November 2013, the RCD proprietor submitted its observations.
- 8 On 31 January 2014, the invalidity applicant filed a reply.
- 9 On 21 March 2014, the RCD proprietor requested an extension of the time-limit to submit its rejoinder.
- 10 On 26 March 2014, the parties were informed that the Chairperson of the Third Board had granted the RCD proprietor an extension of two months to file a rejoinder.
- 11 On 26 March 2014, the invalidity applicant expressed its disagreement with the acceptance of the extension of the time-limit for the RCD proprietor to submit its rejoinder.

- 12 By a communication dated 14 April 2014, the invalidity applicant withdrew its application for a declaration of invalidity and informed the Office that the parties had reached an agreement on costs.
- 13 On 22 April 2014, the RCD proprietor was invited, by the Registry of the Boards of Appeal, to confirm the agreement on costs or to file comments on the apportionment of costs.
- 14 On 2 May 2014, the RCD proprietor confirmed that the parties had settled the invalidity proceedings including an agreement on costs.

Reasons

- 15 Article 55 CDR provides that an appeal before the Board has suspensive effect. It follows that an application for a declaration of invalidity may be withdrawn at any moment before the decision on the appeal becomes final. The Board hereby takes note of the withdrawal of the application for a declaration of invalidity as well as of the appeal.
- 16 With the withdrawal of the application for a declaration of invalidity the contested decision does not take effect.

Costs

- 17 Since the parties agreed on the settlement of costs, the Board does not have to decide on this matter.

Order

On those grounds,

THE BOARD

hereby:

- 1. Takes note that the application for a declaration of invalidity against RCD No 609458-0006 has been withdrawn;**
- 2. Declares that the appeal and invalidity proceedings are terminated;**
- 3. Takes note of the agreement on costs between parties.**

Th. M. Margellos

H. Salmi

G. Humphreys

Registrar:

P. López Fernández de Corres