



DECISION
of the Third Board of Appeal
of 11 February 2008

In Case R 1437/2006-3

Bosch Security Systems B.V.

Glaslaan 2 Bldg SX
5616 LW Eindhoven
The Netherlands

Appellant

represented by NautaDutilh N.V., Strawinskyalaan 1999, 1077 XV Amsterdam,
The Netherlands

v

Taiden Industrial (Shenzen) Co., Ltd.

Unit 2302-2303, Poly Building, Nanshan
District Shenzhen
GuangDong 518054
China

Respondent

represented by Markus Albert Richardt, Leergasse 11, D-65343 Eltville, Germany

APPEAL relating to Invalidity Proceedings No ICD 1469 (Registered Community
Design No 214903-0001)

THE THIRD BOARD OF APPEAL

composed of Th. Margellos (Chairperson), D.T. Keeling (Rapporteur) and
I. Mayer (Member)

Registrar: J. Pinkowski

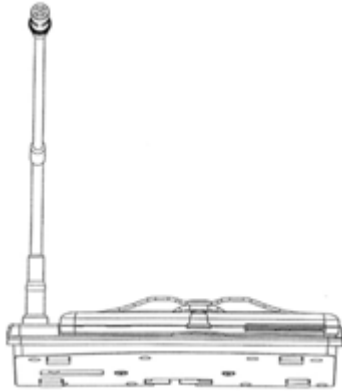
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Decision

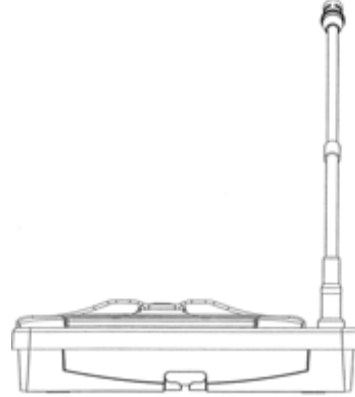
Summary of the facts

- 1 The respondent is the holder of Registered Community Design No 214903-0001 ('the contested RCD'), which has a filing date of 11 August 2004. The contested RCD is registered for 'communications equipment'. It is represented as follows:

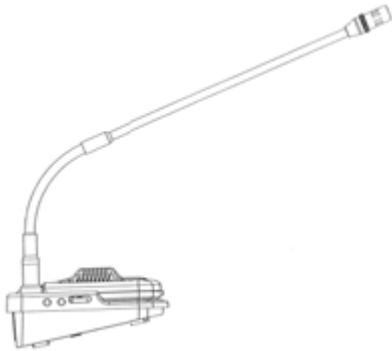
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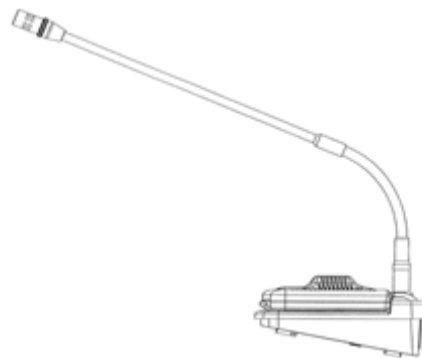
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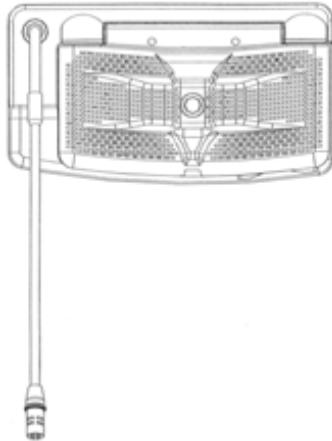
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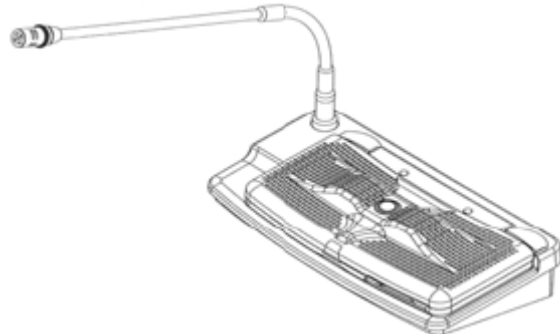
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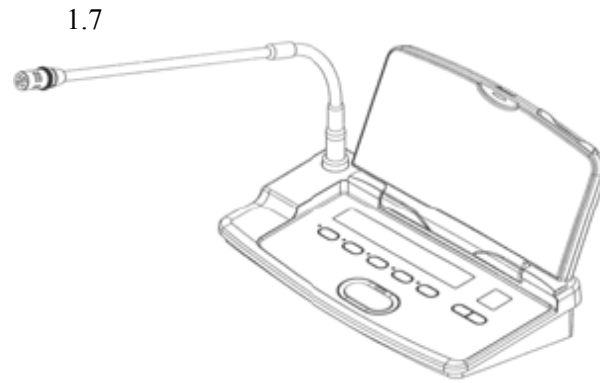


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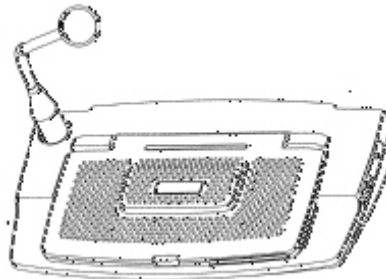
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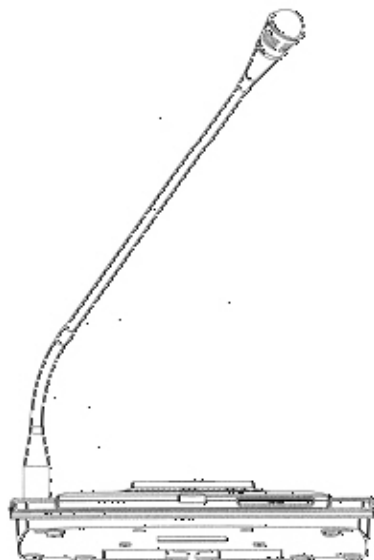


- 2 On 2 September 2005 the appellant filed an application for a declaration of invalidity against the contested RCD. The appellant argued that the design did not fulfil the requirements of novelty and individual character under Articles 4 to 6 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs ('CDR') (OJ EC 2002 No L 3, p.1).
- 3 According to the appellant, the RCD is almost identical to an earlier design made available to the public by Koninklijke Philips Electronics NV ('Philips') under the name 'Concentus'. The Concentus was registered as an International Design under No DM/055 655 on 17 May 2000.
- 4 As evidence the appellant produced a copy of DM/055 655, which was published in the WIPO Bulletin on 31 May 2001 with the following views:

1.1



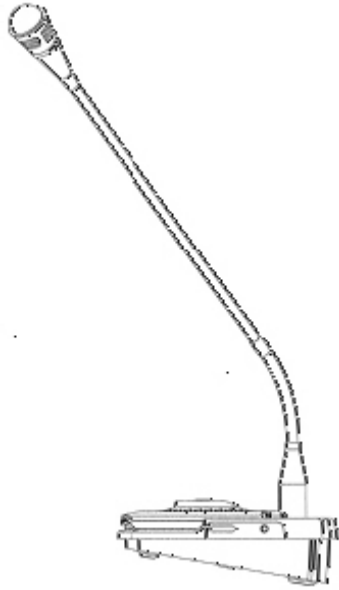
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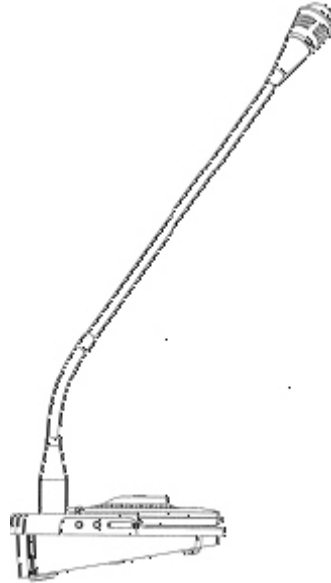
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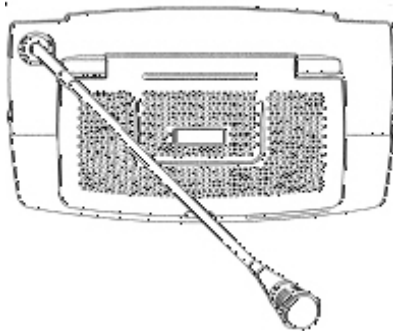
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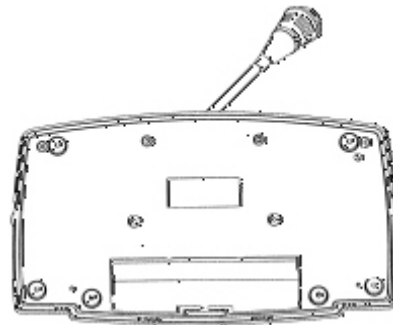
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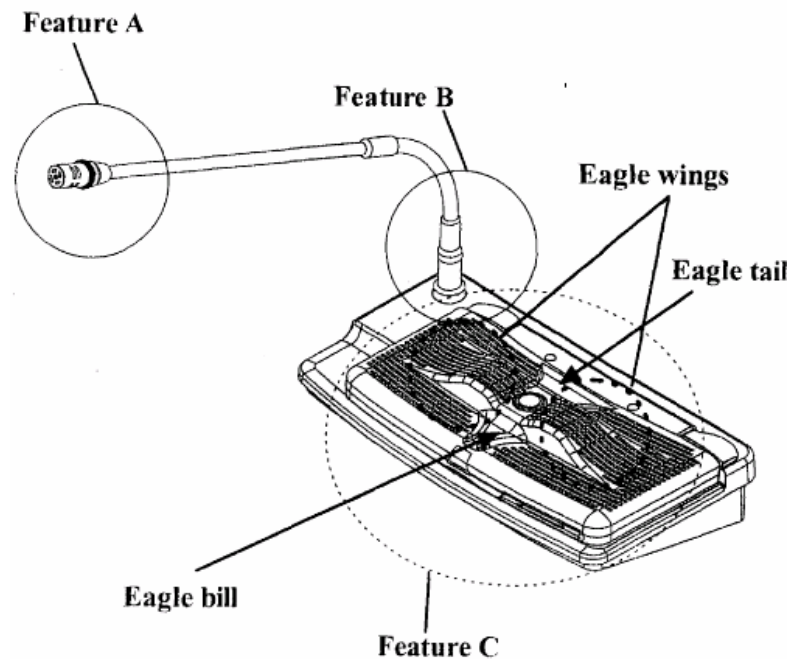
1.7



- 5 The appellant also produced a Philips brochure, dated 2000, which contained the following pictures:



- 6 The respondent argued that the contested RCD differed from the Philips design in at least three respects, referred to in the following drawing as features A, B and C:



- 7 On 15 September 2006 an Invalidity Division of the Office issued a decision ('the contested decision') rejecting the application for a declaration of invalidity. The appellant was ordered to bear the costs.
- 8 The Invalidity Decision reasoned as follows:
- The informed user is familiar with units for conference systems. He understands that the degree of freedom of the designer of these products is limited by their functionality which requires the installation of certain elements, such as a microphone and a base unit supporting the microphone. Consequently, when assessing the overall impressions produced by the prior design and the contested RCD, the informed user will not focus his attention on the fact that these elements are present, but on the form in which these elements are realized.
 - Due to the difference in the base, i.e. asymmetric in the contested RCD and symmetric in the prior design, the two opposing designs produce different overall impressions on the informed user. Therefore, the prior design does not form an obstacle to the individual character of the contested RCD within the meaning of Article 6 CDR.
- 9 On 6 November 2006 the appellant filed a notice of appeal against the contested decision. The appellant submitted a statement of grounds on 15 January 2007.
- 10 The respondent submitted a response on 4 April 2007.

Submissions and arguments of the parties

- 11 The appellant requests the Board to annul the contested decision, to declare the contested RCD invalid and to award costs against the respondent. The appellant also asks for oral proceedings. Its arguments may be summarized as follows:
 - The informed user does not need to be an expert in the field of conference units, nor should he be only a normal user of such conference units. The informed user must be considered to have knowledge of the market and the available products. For the assessment of the impression made by the contested RCD and the prior product one should take into account that the informed user will almost never see the two products next to each other. Such an informed user would, when viewing the contested RCD and the Philips product separately, retain the same overall impression from both designs.
 - A wide variety of conference unit designs was known at the priority date of the contested RCD. An informed user would have been aware of this variety and would note in particular the functions and layout of each design in the market, which could all be identified clearly from one another. But there is a high degree of resemblance, with only minor, immaterial differences between the contested RCD and the prior Philips product. The overall impression the contested RCD produces on the informed user does not differ from the overall impression produced on such a user by the Philips product.
 - The Invalidity Division, erred in considering that the degree of freedom of the designer in developing the design is limited. The components required for a conference unit are relatively small and can be easily placed inside a wide variety of differently shaped containers. Any informed user of conference units would be aware of this. There was no lack of freedom for anyone designing a conference system. On the contrary, there are hundreds of possibilities for a designer of conference units, as is shown by the products on the market. The respondent's design could have gone in any number of directions, like the other products on the market, but instead they chose to create something that slavishly copied Philips' earlier product and changed only immaterial details.
- 12 The respondent requests the Board to dismiss the appeal and award costs against the appellant. Its arguments may be summarized as follows:
 - The informed user is familiar with units for conference systems, as for example those shown in the exhibits provided by the appellant. When assessing the overall impressions produced by the prior designs, the informed user gets the impression that most of the designs are 'unhip, old-fashioned, bulky and/or symmetrical'.
 - When assessing the overall impressions produced by the Philips design, the user gets the impression of a symmetrical design. In particular, the base is symmetric in the sense that it is framed symmetrically by two panels on the left and the right, respectively. Further, the cover has a substantially flat, rectangular base portion and a substantially flat, rectangular top portion that are symmetrical arranged.

- The overall impression produced by the RCD is of a stylish and highly dynamic nature in particular due to the asymmetric arrangement which underlines the dynamic impression created by the stylized flying eagle shape of the swivelling cover. Further, as a consequence of the asymmetric design, the RCD gives a very compact and stylish impression.
- Such a stylized eagle shape is unique for a conference voting system. The designer has chosen the eagle motif in order to allude to the respondent's origin and location at Shenzhen, which is known as the 'City of the Eagle'.

Reasons

- 13 The appeal complies with Articles 55 to 57 CDR and Article 34(1)(c) and (2) of Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs ('CDIR') (OJ EC 2002 No L 341, p. 28). It is therefore admissible.
- 14 Under Article 4(1) CDR a design is to be protected as a Community design to the extent that it is new and has individual character.
- 15 Novelty is defined by Article 5 CDR in the following terms:
- '1. A design shall be considered to be new if no identical design has been made available to the public:
 - (a) ...
 - (b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.
 2. Designs shall be deemed to be identical if their features differ only in immaterial details.'
- 16 Individual character is defined by Article 6 CDR:
- '1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:
 - (a) ...
 - (b) in the case of a registered Community design, before the date of filing of the application for registration or, if a priority is claimed, the date of priority.
 2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.'

- 17 The Philips design was clearly made available to the public when it was published in the WIPO Bulletin on 31 May 2001 over three years before the filing date of the contested RCD. The issue therefore is whether the two designs are identical, barring immaterial details, (lack of novelty under Article 5 CDR) or whether they produce the same overall impression on the informed user, taking into consideration the designer's degree of freedom in developing the design, (lack of individual character under Article 6 CDR).
- 18 The two designs are not identical. The differences highlighted by the respondent (see paragraph 6 above) cannot be described as 'immaterial'. However, the differences are not sufficient to affect the overall impression that the two designs produce on the informed user, who may be anyone who regularly attends conferences or formal meetings at which the various participants have a conference unit with a microphone on the table in front of them.
- 19 The three features highlighted by the respondent do not have a significant impact on the overall impression produced by the two designs. Feature A relates to the microphone. On the Philips design this is conical, while on the contested RCD it is more cylindrical. The microphone is a small part of the whole unit and a small change in the shape of the microphone cannot have a significant impact on the overall impression produced by the design. Feature B relates to a small difference in the base of the microphone stem. Again the Philips design is more conical. The user would have to look closely before even noticing the difference, which also concerns a small part of the unit as a whole.
- 20 Feature C is the only difference that gives rise to any doubt. It relates to the swivelling cover of the unit. In the contested RCD this has been designed so as to incorporate the respondent's eagle motif, which has no equivalent in the Philips design. Also, in the Philips device the cover is placed centrally, whereas in the contested RCD it is further to the right, thus giving the device a more asymmetrical appearance. The difference is best appreciated by examining view 1.6 of the contested RCD alongside view 1.1 of the Philips design. If the swivelling flaps are compared in isolation it is true that the differences are clearly discernible. Against that, it must be noted that many other details of the two designs are virtually identical and that the overall shape, configuration and general appearance of the designs is very similar. This is particularly apparent if view 1.4 of the contested RCD is compared with view 1.4 of the Philips design. A comparison between view 1.7 of the contested design and the pictures of the Philips design shown in paragraph 5 likewise reveals a remarkable degree of similarity. A very close examination would be needed before the informed user could distinguish the two devices. Moreover, the differences in the swivelling covers cease to be visible when the covers are raised and the device is viewed by the user. The Board concludes that they produce the same overall impression.
- 21 In reaching that view the Board disagrees with the Invalidity Division regarding the designer's degree of freedom in developing the design. That degree of freedom is relatively wide. Certain features must be present in a conference unit if it is to perform its function but it is difficult to see any reason why the respondent's design needs to resemble the appearance of the earlier Philips design to such a remarkable extent. A conference unit could surely look significantly different but still do its job.

- 22 The Board concludes that the contested RCD is invalid for lack of individual character. The appeal must be upheld.

Costs

- 23 Since the appeal has been successful, the respondent must be ordered to bear the fees and costs incurred by the appellant, in accordance with Article 70(1) CDR.

Order

On those grounds,

THE BOARD

hereby:

- 1 Annuls the contested decision;**
- 2 Declares the contested RCD invalid;**
- 3 Orders the respondent to bear the fees and costs incurred by the appellant.**

Th. Margellos

D.T. Keeling

I. Mayer

Registrar:

J. Pinkowski