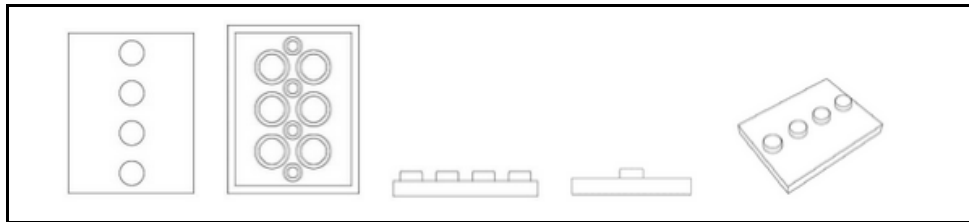




## **EUIPO erroneously declared invalid a design of a brick of a LEGO toy building set**

*EUIPO failed to examine the relevance of the application of the exception relied on by Lego and failed to take into consideration all the features of appearance of the brick*

Lego is the proprietor of the following Community design, registered on 2 February 2010, in respect of ‘building blocks from a toy building set’:



In the context of an application for a declaration of invalidity made by Delta Sport Handelskontor, the Board of Appeal of the European Union Intellectual Property Office (EUIPO) found, by decision of 10 April 2019, that all the features of appearance of the product concerned by the contested design were solely dictated by the technical function of the product, namely to allow assembly with, and disassembly from, the rest of the bricks of the set. In accordance with the provisions of the Regulation on Community Designs,<sup>1</sup> EUIPO therefore declared the design in question invalid. Lego brought proceedings before the General Court of the European Union seeking annulment of that decision.

The Board of Appeal identified the following features of appearance of the product: (i) the row of studs on the upper face of the brick; (ii) the row of smaller circles on the lower face of the brick; (iii) the two rows of bigger circles on the lower face of the brick; (iv) the rectangular shape of the brick; (v) the thickness of the walls of the brick and, (vi) the cylindrical shape of the studs. According to the Board of Appeal, all those features are solely dictated by the technical function of the building brick, namely to allow assembly with, and disassembly from, the rest of the bricks of the set.

In today’s judgment, the General Court notes, first of all, that, according to the regulation, a Community design does not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function. However, by way of exception, **the mechanical fittings of modular products may constitute an important element of the innovative characteristics of modular products and present a major marketing asset, and therefore should be eligible for protection.** Thus, a Community design subsists in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

<sup>1</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1)

The General Court notes that the Board of Appeal has not examined the relevance of the application of the exception relied on by Lego, for the first time, before it. Therefore, the General Court must, first of all, examine whether the Board of Appeal of EUIPO should have assessed the conditions for the application of that exception and thus assess whether it could be relied on for the first time before it.

The General Court considers that, since neither the Regulation on Community Designs nor the rules of procedure of the Boards of Appeal of EUIPO specify the conditions for the application of the provisions relating to the exception at issue, it is not possible to consider that Lego's reliance on that provision, for the first time before the Board of Appeal, was out of time.

The General Court adds that, in the light of the features of appearance of the product concerned by the contested design, **the Board of Appeal of EUIPO should have assessed whether that design met the requirements of the exception referred to. Since it failed to do so, it erred in law.**

Next, the General Court states that a design must be declared invalid if all the features of its appearance are solely dictated by the technical function of the product it concerns; however, if at least one of the features of appearance of the product concerned by a contested design is not solely dictated by the technical function of that product, the design in question cannot be declared invalid. **The brick in question has a smooth surface on either side of the row of four studs on the upper face and the General Court notes that that feature is not included among the features identified by the Board of Appeal, although it is a feature of appearance of the product.**

The General Court adds that **it is for the applicant for a declaration of invalidity to demonstrate and for EUIPO to find that all the features of appearance of the product concerned by the contested design are solely dictated by the technical function of that product.** It concludes that **the Board of Appeal infringed the provisions of the Regulation on Community Designs, in that it did not identify all the features of appearance of the product concerned by the contested design and, a fortiori, did not establish that all of those features were solely dictated by the technical function of that product.**

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**NOTE:** EU trade marks and Community designs are valid throughout the territory of the European Union. EU trade marks co-exist with national trade marks. Community designs co-exist with national designs. Applications for registration of EU trade marks and Community designs are sent to EUIPO. Actions against its decisions may be brought before the General Court.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within 2 months and 10 days of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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