



Can consumable products be considered a component part of a complex product?

Complex products are part of our daily lives and the business related to their component parts is growing very rapidly, so it is crucial to determine what protection is applicable to them.

According to Regulation No 6/2002, a community design protects the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation. To qualify for protection, the design must be new and possess individual character.

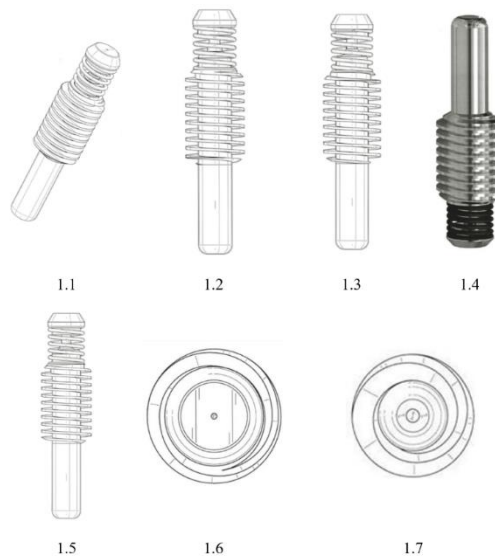
In the case of complex products, which consist of multiple replaceable components allowing disassembly and re-assembly, design protection, under Article 4(2) of Regulation No. 6/2002, is granted to component parts that, once incorporated, remain visible during normal use, and to extent that those visible features of the component part fulfil, in themselves, the requirements as to novelty and individual character.

There has been a debate surrounding the inclusion of consumable products as 'components' under Article 4(2) of Regulation No. 6/2002, and whether they can be eligible for design protection.

On March 22nd, 2023, the General Court issued a decision in case T-617/21 (B&Bartoli spol. S.r.l. v EUIPO), addressing the validity of a design registration for a consumable component part of a welding torch (an electrode), and the application of the requirements of 'visibility in normal use' for the purposes of obtaining Community design protection.

Background to the dispute

On December 22, 2017, B&Bartoni spol filed with EUIPO an application for a declaration of invalidity of the Community design registered under no. 1292122-0001. The design in question pertained to an electrode, considered a component part of a complex product, namely a torch forming part of a plasma cutting system, which was not visible during normal use of that product within the meaning of Article 4(2) of Regulation No. 6/2002.



Even though the Invalidity Division upheld the applicant's request, the Board of Appeal rejected the application for a declaration of invalidity on the grounds, *inter alia*, that the product represented in the contested Community design **could not be regarded as a component part of a complex product within the meaning of Article 4(2) of Regulation No. 6/2002.**

On this basis, B&Bartoni spol. s.r.o. sought the annulment of the Board of Appeal's decision that, on the contrary, the General Court confirmed.

Grounds for the decision

The General Court excluded the electrode to be part of a complex product, given that:

1. the electrode has a **consumable nature**. It is intended to be easily attached to the torch, consumed and used relatively quickly, and easily replaced by the end user **without that operation requiring disassembly and re-assembly of that torch**.
2. The torch is a **complete product without the electrode**. Indeed, it was sold without the electrode, which was advertised and sold separately from the torch. By purchasing a torch without an electrode, the end user will not perceive the torch as broken or incomplete. By contrast, without its component parts, a complex product will not, in principle, be perceived by the end user as a complete product capable of being subject to normal use.

In light of the above, the General Court confirmed the decision of the Court of Appeal.

Previous case law

The matter at hand had been tackled also by previous decisions.

The Board of Appeal, with the decision in case R-299/2021-1, examined the protectability of vacuum cleaner bags as complex products, and their components. The Board identified several criteria that can indicate whether *a consumable product can be protected as part of a complex product*. Some of these criteria were subsequently referenced by the General Court in decision T-617/21.

The Board of Appeal ruled that:

- consumable products are usually promoted independently on the market while **non-consumable components are generally not advertised independently and are only sold together with the complex product.**
- **Consumable products are not re-used as normal components**, they are just removed and replaced. By doing so, the complex product is usually not disassembled and reassembled again.
- Without the consumable product the complex one is still **functional**.

These decisions serve as significant guidelines for determining whether components of complex products can be considered consumable products and eligible for protection under Regulation No. 6/2002.

In the light of the aforementioned case law, in fact, consumable products may not be considered a component part of a complex product within the meaning of Article 4(2) of Regulation No. 6/2002.

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