

Functionality in EU designs

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Legal background

Article 7(1) of Directive 98/71/EC on the legal protection of designs:

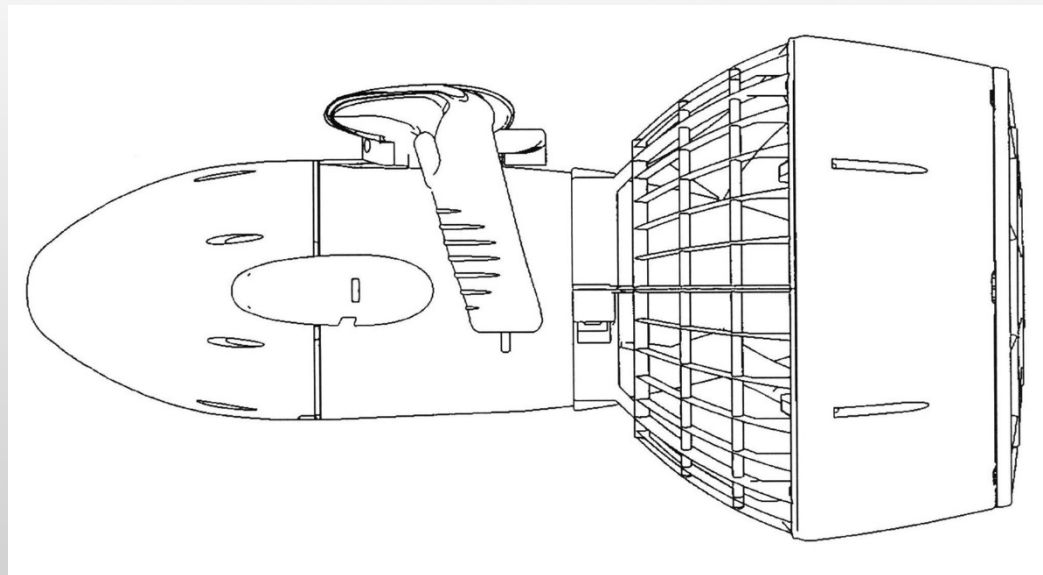
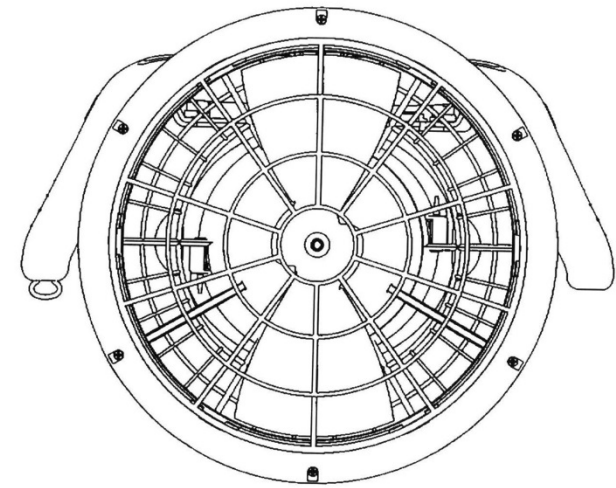
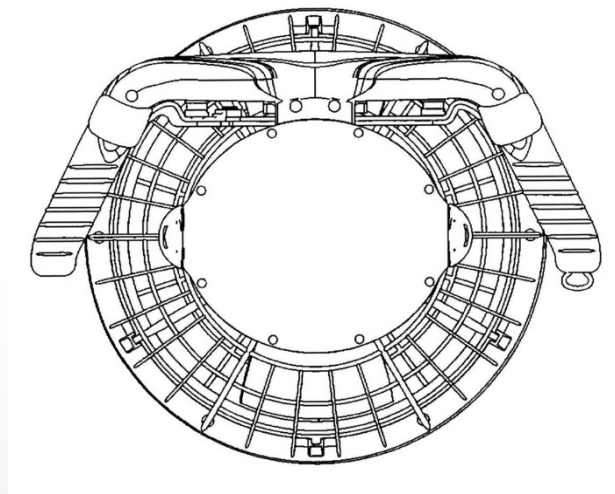
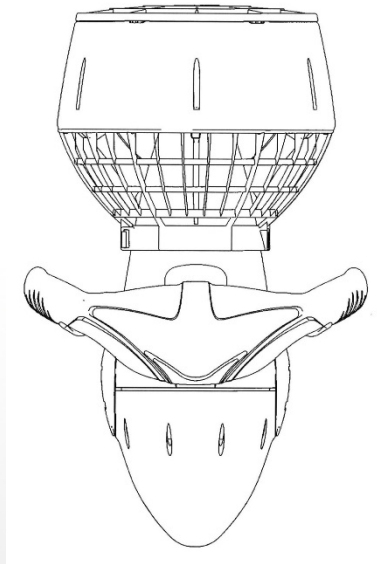
‘A design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.’

Two opposing legal traditions in interpreting this provision:

- (a) “Multiplicity of forms” theory
- (b) “Causation” theory



ICD 000000867





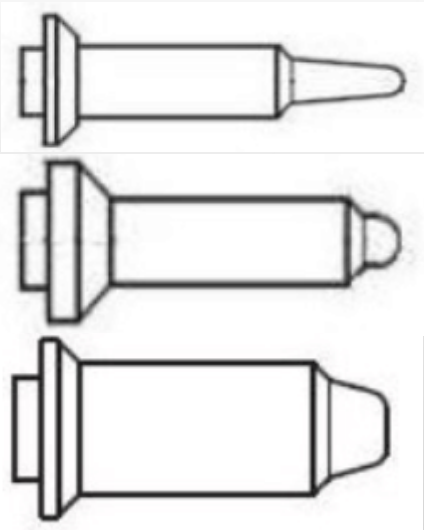
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EUIPO BoA Case R-690/2007-3



DOCERAM – case C-395/16



Regional Court, Düsseldorf,
Germany



Higher Regional Court,
Düsseldorf, Germany



Court of Justice of the
European Union [findings
binding on all EU countries]



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CJEU findings

- In order to determine whether the features of appearance of a product are exclusively dictated by its technical function, it must be established that the ***technical function is the only factor which determined those features, the existence of alternative designs not being decisive in that regard.***
- the national court must take account of ***all the objective circumstances*** relevant to each individual case, including:
 - the design at issue
 - the objective circumstances indicative of the reasons which dictated the choice of features of appearance of the product concerned
 - information on use of the design
 - the existence of alternative designs which fulfil the same technical function.
- there is no need to base the findings on the perception of an '***objective observer***'.



5 key takeaways

- 1) To survive challenge on grounds of functionality, it is not enough to show that alternative designs performing the same function are available
- 2) (Still) no requirement for 'aesthetic' quality
- 3) Nature and field of design likely to influence evidential burden
- 4) Evidence of design process could be critical
- 5) Alternative designs will continue to play a role



THANK YOU

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