

# Functional Designs

**A recent decision of the Court of Justice of the European Union has clarified how the validity of a European Union Registered Design should be assessed when features of the design provide a technical function.**



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## Registered Designs

European Union and UK Registered Designs provide protection for the appearance of a product, including its shape, colour and any surface patterning. Protection is available for designs that are both new and have individual character.

In contrast to patents, registered designs do not provide protection for the technical function of a product. A long-standing feature of design law in both the UK and the EU is that, in simplified terms, a design that is solely dictated by technical function is not registrable.

## Inconsistent Approaches

In recent years, courts across the EU have taken divergent approaches to the assessment of whether or not features of a design are solely dictated by technical function. One approach is to ask if alternative designs exist that provide the same technical function – the reasoning being that if such alternatives exist, the design in question has been chosen for some reason other than technical function. The alternative approach is to ask only if aesthetic

considerations were irrelevant to the design and thus whether or not the features of a design depend purely on the provision of a technical solution. Following a referral by the Higher Regional Court, Düsseldorf, Germany, the Court of Justice of the European Union (CJEU) has stepped in to clarify which approach should be followed.

## The Decision

The CJEU has firmly dismissed the ‘alternative designs’ approach, holding that:

*“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**”* (emphasis added).

An aspect of the CJEU’s reasoning in reaching this conclusion is that the ‘alternative designs’ approach could

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have allowed design registrants to obtain patent-like exclusivity simply by filing registrations for all design alternatives that achieve a given technical function. You can find the CJEU decision [here](#).

## **Effects of the Decision**

This decision may come as a disappointment to some design registrants, but provides a welcome clarification to this important aspect of registered design regulations across the EU. It will also provide comfort to manufacturers of technical products with no aesthetic considerations. Nevertheless, determining whether or not features of a design are dictated *solely* by technical function continues to require careful consideration. In a recent case before the High Court of England and Wales in the UK ([read more here](#)), the Court found that while technical function was the most important consideration in designing the product, aesthetic considerations still played a part in its design, and so its appearance was not solely dictated by technical function.

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