



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

DESIGNS DEPARTMENT- INVALIDITY DIVISION

**DECISION OF
THE INVALIDITY DIVISION
OF 06/02/06**

**IN THE PROCEEDINGS FOR A DECLARATION OF INVALIDITY
OF A REGISTERED COMMUNITY DESIGN**

FILE NUMBER	ICD 000000800
COMMUNITY DESIGN	000119961-0007
LANGUAGE OF PROCEEDINGS	English
APPLICANT	Heidelberger Druckmaschinen AG Kurfürsten-Anlage 52-60 D-69115 Heidelberg Germany
REPRESENTATIVE OF APPLICANT	Karl-Herrmann Miltner Kurfürsten-Anlage 52-60 D-69115 Heidelberg Germany
HOLDER	Microsoft Corporation One Microsoft Way Redmond, Washington 98052-6399 USA
REPRESENTATIVE OF THE HOLDER	Bosch Graf von Stosch Jehle Flüggenstraße 13 D-80639 München Germany

The Invalidity Division,

composed of Martin Schlötelburg (rapporteur), Eva Udovc (member) and Eva Vyoralova (member) took the following decision on 06/02/06:

1. **The registered Community design No. 000119961-0007 is declared invalid.**
2. **The Holders shall bear the costs of the Applicant.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The registered Community design No. 000119961-0007 (in the following: “the RCD”) has been registered in the name of the Holder with the date of filing of 14/01/04. In the RCD, the indication of products reads “type and typefaces” and the design is represented in the following views (published at http://oami.eu.int/bulletin/rcd/2004/2004_031/000119961_0007.htm):

ABCDEFGHIJ
KLMNOPQRST
UVWXYZ
abcdefghijkl
klmnopqrst
vwxyz
1234567890
.:!?,;()<>
@#\$%^&%*’”+
- = [] { } \ /

The quick red fox jumps over the lazy brown dog. An inspired calligrapher can create pages of beauty using stick ink, quill, brush, pick-axe, buzz saw or even strawberry jam. My grandfather picks up quartz and valuable onyx jewels. Just work for improved basic techniques to maximize your typing skill. The job requires extra pluck and zeal from every young wage earner.

- (2) On 21/12/04 the Applicant filed an application for a declaration of invalidity (in the following: “the Application”). The fee for the Application was paid by current account with effect of 21/12/04.
- (3) The Applicant requests the invalidation of the RCD because the RCD “does not fulfil the requirements of Article 6(1) CDR”.
- (4) As fact the Applicant claims that the Linotype Library GmbH has sold the font “FrutigerNext LT Medium Italic” (in the following: the prior design) several times since 2000. Allegedly, the prior design and the RCD differ only in minor details and should be considered identical.
- (5) As evidence, the Applicant provides *inter alia* the following documents:
 - a representation of the prior design (in the following: D1), shown below

ABCDEFGHIJ
 KLMNOPQRST
 UVWXYZ
 abcdefghij
 klmnopqrst
 uvwxyz
 1234567890
 .:!? , ; () < >
 @ # \$ % ^ & * ' " +
 - = { } \ /

The quick red fox jumps over the lazy brown dog. An inspired calligrapher can create pages of beauty using stick ink, quill, brush, pick-axe, buzz saw or even strawberry jam. My grandfather picks up quartz and valuable onyx jewels. Just work for improved basic techniques to maximize your typing skill. The job requires extra pluck and zeal from every young wage earner.

- several delivery certificates (“Lieferschein”) and invoice notes (“Rechnung”) dating from the years 2001 - 2003 and referring *inter alias* to the item “Frutiger Next” with article number “16200003”,
- a CD-ROM containing a family of fonts identified with article number “16200003” including the prior design.

As regards the evidence, the Applicant explains that the typographic fonts of Linotype Library GmbH are provided on demand and for that purpose are burnt on a CD-ROM and shipped. The invoice notes prove that these CD-ROMs were sold multiple times before the filing date of the RCD. The Applicants offers to hear Mr. Otmar Hoefler, Head of Marketing at Linotype Library, as a witness for the correctness of the explanations given above.

- (6) In response to the Application, the Holder argues that the submitted CD-ROM does not constitute relevant prior art, because it was released in 2005 and the data file containing the prior design was stored on the CD-ROM on 20/09/04. As regards the multiple invoices, the Holder insists that they do not constitute proof that the items of the invoice notes were fonts looking like the prior design. To his opinion, no relationship was ever established by the Applicant between the dates in the invoices and the “Frutiger-Fonts” stored on the CD-ROM. As regards the comparison of the RCD with the prior design, the Holder does not contest the claim of the Applicant that they should be considered identical.
- (7) For further details to the facts, evidence and arguments submitted by the Applicant and the Holder reference is made to the documents on file.

II. GROUNDS OF THE DECISION

A. Admissibility

- (8) The request of the Applicant for invalidation of the RCD because it “does not fulfil the requirements of Article 6(1) CDR” is a statement of the grounds on which the Application is based. Therefore, the requirement of Article 28(1)(b)(i) CDIR¹ is fulfilled. The further requirements of Article 28(1) CDIR are fulfilled as well. The Application is admissible.

¹ Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs

B. Substantiation

B.1 Evidence

- (9) The invoice notes presented by the Applicant are evidence that in a period before the filing date of the RCD the Linotype Library GmbH has marketed fonts of typographic typefaces, *inter alias* a family of fonts named “Frutiger NEXT” identified by the article number 1620003. The invoice notes confirm the statement of the Applicant that the fonts were shipped in form of CD-ROMs to a variety of places within the Community. The article number 1620003 establishes the link between the invoice notes and the family of fonts on the CD-ROM provided by the Applicant. The family of fonts on the CD-ROM contains the prior design which is represented in D1.
- (10) Therefore, it is considered as proven that the prior design represented in D1 has been made available to the public before the filing date of the RCD.

B.2 Novelty

- (11) As rightfully observed by the Applicant and uncontested by the Holder, the prior design and the RCD are to be considered identical. The typefaces of both designs have the same stroke thickness. The ratio from the cap-height to the x-height is equal. The ratio from the cap-height to ascender height and the ratio cap-height to descender height is equal. The proportion of character height to character pitch is identical. The type face in the specimen text does not show any differences. The minuscule “a”, “c”, “e”, “t” and “g” have the same proportion in the prior design and the RCD. The “c” shows the same shape and the same loophole. The lowercase “s” and the capital “S” show the same sweep. The capital “G” and “S” are totally identical in both designs. The numeric characters “3”, “5”, “6” and “9” do not show any difference.

C. Conclusion

- (12) The RCD does not fulfil the requirements of novelty in the meaning of in Art. 5 CDR. The RCD is to be declared invalid according to Art. 25(1)(b) CDR.

III. COSTS

- (13) Pursuant to Article 70(1) CDR and Art. 79(1) CDIR, the Holder bears the fees and costs of the Applicant.

IV. RIGHT TO APPEAL

- (14) An appeal shall lie from the present decision. Notice of appeal must be filed at the Office within two months after the date of notification of that decision. The notice is deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed (Art. 57 CDR).

THE INVALIDITY DIVISION

Martin Schlötelburg

Eva Udovc

Eva Vyoralova