

Design law prevented from going down the drain

06/10/2017 (EU/Competition)

The Court of Justice has given judgment in Joined Cases C-361/15P and C-405/15P, Easy Sanitary Solutions and Group Nivelles NV.

This was an appeal from a decision of the General Court concerning the Community design right in a shower drainage channel. Under the regulation, a protectable design must be both novel and produce a different impression to previous designs (so-called ‘individual character’). A heavily disputed issue in design law concerned the question of which previous designs could be taken into account when assessing novelty and individual character.

The Court of Justice accepted submissions to the effect that scope of relevant prior art is along the lines of that held by the Court of Appeal in *Green Lane Products v PMS International* (a 2008 decision in which David Vaughan QC appeared for the Appellant). The Court clarified that the sector concerned is not limited to that of the product in which the contested design is intended to be incorporated, or to which it is intended to be applied. The Court of Justice confirmed that the approach that the General Court had adopted on this important point was wrong.

The judgment is [here](#).

Nicholas Saunders acted for the United Kingdom which intervened in the appeal.

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