

Court of Justice EU, 3 March 2022, Acacia v BMW



COMMUNITY DESIGN LAW - PROCEDURAL LAW - PRIVATE INTERNATIONAL LAW

COMPETENT COURT - APPLICABLE LAW

Community court of Member State where (threatened) infringement takes place by offering for sale and delivery in advertising competent (not cross-border) (Article 82(5) CD-Regulation)

- Such acts may be the subject of an action for infringement which targets, in accordance with Article 82(5) of Regulation No 6/2002, a single Member State. The fact that the defendant took decisions and steps in another Member State to bring about those acts does not preclude such an action from being brought (see, by analogy, judgment of 5 September 2019, AMS Neve and Others, C-172/18, EU:C:2019:674, paragraph 65).

Applicable law ancillary claims

- Law of Member State where (threatened) infringement occurs ("lex loci delicti") applicable to claims for destruction of infringing products ("other appropriate sanction", Article 89(1)(5) CD-Regulation)

- Law of that Member State applicable to claims for compensation and for the provision of (accounting) information and documents ("lex fori")("matters not regulated by the Regulation", Article 88(2) CD-Regulation).

- If (imminent) infringement takes place on the territory of one Member State, the law of that Member State shall be the law applicable in accordance with Article 8(2) Rome II

44. In a situation where the infringement or threatened infringement which may be examined is located within a single Member State, that rule cannot be understood as intending the law of another Member State or the law of a third country to apply. Since, pursuant to Article 8(2) of Regulation No 864/2007, the applicable law is that which is in force at the place of such an infringement, in the case of an action for infringement brought pursuant to Article 82(5) of Regulation No 6/2002 and which therefore relates to acts of infringement committed or threatened within a single Member State, that applicable law is the same as the law of that Member State.

Source: [ECLI:EU:C:2022:152](#)

Court of Justice EU, 3 March 2022

(E. Regan, K. Lenaerts, C. Lycourgos (rapporteur), I. Jarukaitis and M. Ilešič)

JUDGMENT OF THE COURT (Fifth Chamber)

3 March 2022 (*¹)

(Reference for a preliminary ruling – Intellectual property – Community designs – Regulation (EC) No 6/2002 – Article 82(5) – Action brought before the courts of the Member State in which an act of infringement has been committed or threatened – Claims supplementary to the action for infringement – Applicable law – Article 88(2) – Article 89(1)(d) – Regulation (EC) No 864/2007 – Law applicable to non-contractual obligations (Rome II) – Article 8(2) – Country in which the intellectual property right was infringed)

In Case C-421/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 31 August 2020, received at the Court on 8 September 2020, in the proceedings

Acacia Srl

v

Bayerische Motoren Werke AG,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, C. Lycourgos (Rapporteur), President of the Fourth Chamber, I. Jarukaitis and M. Ilešič, Judges, Advocate General: M. Szpunar,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 8 July 2021,

after considering the observations submitted on behalf of:

– Bayerische Motoren Werke AG, by R. Hackbarth and F. Schmidt-Sauerhöfer, Rechtsanwälte,

– European Commission, initially by T. Scharf, É. Gippini Fournier and M. Wilderspin, subsequently by T. Scharf, É. Gippini Fournier and D. Triantafyllou, acting as Agents,

after hearing the [Opinion of the Advocate General at the sitting on 28 October 2021](#),

gives the following

Judgment

1. This request for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1) and Article 8(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).

2. The request has been made in proceedings between Acacia Srl and Bayerische Motoren Werke AG ('BMW') in relation to alleged infringement of a Community design of which BMW is the holder.

¹ Language of the case: German.

Legal context**Regulation No 6/2002**

3. Article 19 of Regulation No 6/2002, entitled ‘Rights conferred by the Community design’, states in paragraph 1: ‘A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.’

4. Article 80 of that regulation, entitled ‘Community design courts’, provides, in paragraph 1:

‘The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance (Community design courts) which shall perform the functions assigned to them by this Regulation.’

5. Article 81 of that regulation, entitled ‘Jurisdiction over infringement and validity’, provides:

‘The Community design courts shall have exclusive jurisdiction:

(a) for infringement actions and – if they are permitted under national law – actions in respect of threatened infringement of Community designs;

(b) for actions for declaration of non-infringement of Community designs, if they are permitted under national law;

(c) for actions for a declaration of invalidity of an unregistered Community design;

(d) for counterclaims for a declaration of invalidity of a Community design raised in connection with actions under (a).’

6. Article 82 of that regulation, entitled ‘International jurisdiction’, provides:

‘1. Subject to the provisions of this Regulation ..., proceedings in respect of the actions and claims referred to in Article 81 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in any Member State in which he has an establishment.

2. If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in any Member State in which he has an establishment.

3. If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member State where the Office has its seat.

...

5. Proceedings in respect of the actions and claims referred to in Article 81(a) and (d) may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened.’

7. Under Article 83 of Regulation No 6/2002, entitled ‘Extent of jurisdiction on infringement’:

‘1. A Community design court whose jurisdiction is based on Article 82(1), (2) (3) or (4) shall have

jurisdiction in respect of acts of infringement committed or threatened within the territory of any of the Member States.

2. A Community design court whose jurisdiction is based on Article 82(5) shall have jurisdiction only in respect of acts of infringement committed or threatened within the territory of the Member State in which that court is situated.’

8. Article 88 of that regulation, entitled ‘Applicable law’, states:

‘1. The Community design courts shall apply the provisions of this Regulation.

2. On all matters not covered by this Regulation, a Community design court shall apply its national law, including its private international law.

3. Unless otherwise provided in this Regulation, a Community design court shall apply the rules of procedure governing the same type of action relating to a national design right in the Member State where it is situated.’

9. Article 89 of that regulation, headed ‘Sanctions in actions for infringement’, provides in paragraph 1:

‘Where in an action for infringement or for threatened infringement a Community design court finds that the defendant has infringed or threatened to infringe a Community design, it shall, unless there are special reasons for not doing so, order the following measures: (a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design;

(b) an order to seize the infringing products;

(c) an order to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect would have been obvious in the circumstances;

(d) any order imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law.’

10. Article 110 of that regulation, entitled ‘Transitional provision’, provides in paragraph 1:

‘Until such time as amendments to this Regulation enter into force on a proposal from the [European] Commission on this subject, protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance.’

Regulation No 864/2007

11. Recitals 14, 16, 17, 19 and 26 of Regulation No 864/2007 state as follows:

‘(14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. This Regulation provides for the connecting factors which are the most appropriate to achieve these objectives. ...

...

(16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.

(17) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. ...

...

(19) Specific rules should be laid down for special torts/delicts where the general rule does not allow a reasonable balance to be struck between the interests at stake.

...

(26) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term ‘intellectual property rights’ should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.’

12. Article 4 of that regulation, headed ‘General rule’, provides in paragraph 1:

‘Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.’

13 Article 8 of that regulation, entitled ‘Infringement of intellectual property rights’, provides:

‘1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.

2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.

...

The dispute in the main proceedings and the questions referred for a preliminary ruling

14. Acacia is a company incorporated under Italian law which produces, in Italy, wheel rims for motor vehicles and distributes them in a number of Member States. 15. Taking the view that Acacia’s distribution of certain wheel rims in Germany constitutes an infringement of a registered Community design of which it is the holder, BMW brought an action for infringement before a Community design court designated by the Federal Republic of Germany. That court declared that it had jurisdiction pursuant to Article 82(5) of Regulation No

6/2002. Acacia, in its capacity as defendant, argued that the wheel rims at issue are covered by Article 110 of that regulation and that there is therefore no infringement.

16. That court held that Acacia had committed the acts of infringement alleged by BMW, ordered that the infringement be brought to an end and, referring to Article 8(2) of Regulation No 864/2007, applied German law to BMW’s ‘supplementary’ claims seeking damages, the provision of information, the provision of documents, the surrender of accounts and the handing over of infringing products with a view to their being destroyed. On the basis of the rules contained in that national law, those claims were, in essence, upheld. 17. Acacia brought an appeal before the referring court. It disputes the existence of an infringement and takes the view, furthermore, that the law applicable to BMW’s supplementary claims is Italian law. 18. The referring court states that the jurisdiction of the Community design courts designated by the Federal Republic of Germany arises, in the present case, from Article 82(5) of Regulation No 6/2002 and that Acacia has committed the acts of infringement alleged by BMW.

19. However, it has doubts as to which national law applies to BMW’s supplementary claims. The referring court observes that the outcome of the dispute will, to some extent, depend on that question, since the rules of German law on the provision of documents and the surrender of accounts differ from those of Italian law. 20. That court considers that it could follow from Article 8(2) of Regulation No 864/2007, as interpreted by the Court in [the judgment of 27 September 2017, Nintendo \(C-24/16 and C-25/16, EU:C:2017:724\)](#), that Italian law applies in the present case. The referring court finds, in that regard, that the event giving rise to the damage is located in Italy, since the products at issue were delivered to Germany from that other Member State.

21. Nevertheless, the infringing products at issue in the main proceedings were sold in Germany and, to that end, were advertised online to consumers located in the territory of that Member State.

22. In those circumstances the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. In proceedings for an infringement of Community designs, can the national court dealing with the infringement proceedings having international jurisdiction pursuant to Article 82(5) of [Regulation No 6/2002] apply the national law of the Member State in which the court dealing with the infringement proceedings is situated (*lex fori*) to [supplementary] claims in relation to the territory of its Member State? 2. If Question 1 is answered in the negative: Can the “initial place of infringement” for the purposes of the [Court in judgment of 27 September 2017, Nintendo (C-24/16 and C-25/16, EU:C:2017:724)] regarding the determination of the law applicable to [supplementary] claims under Article 8(2) of [Regulation No 864/2007]

also lie in the Member State where the consumers to whom internet advertising is addressed are located and where goods infringing designs are put on the market within the meaning of Article 19 of [Regulation No 6/2002], in so far as only the offering and the putting on the market in that Member State are challenged, even if the internet offers on which the offering and the putting on the market are based were launched in another Member State?’

Application for the oral part of the procedure to be reopened

23. By document lodged at the Court Registry on 19 November 2021, BMW lodged observations on the Opinion of the Advocate General. When questioned by the Registry on the scope of those observations, BMW explained that those observations sought the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

24. Pursuant to Article 83 of its Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order that the oral part of the procedure be reopened, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

25. In the present case BMW asserts, first, that the Advocate General did not take sufficient account of certain facts set out in the written and oral observations submitted to the Court and, second, that the Advocate General’s Opinion contains an incorrect analysis of the specific situation in which the holder of a Community design wishes to rely on his or her rights in the context of interlocutory proceedings.

26. In that regard, BMW asserts that the Advocate General paid excessive attention to Article 90(1) of Regulation No 6/2002. BMW wishes, in that regard, to reply to the Advocate General’s opinion, which it regards as incorrect.

27. It must be pointed out that the content of the Advocate General’s Opinion cannot as such constitute a new fact justifying the reopening of the oral part of the procedure, otherwise it would be possible for the parties, by invoking such a fact, to respond to those conclusions. The Advocate General’s Opinion cannot be debated by the parties. The Court has had the opportunity of underlining that, in accordance with Article 252 TFEU, the role of the Advocate General is to make, in open court, acting with complete impartiality and independence, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General’s involvement in order to assist the Court in the performance of the task assigned to it, which is to ensure that in the interpretation and application of the Treaties, the law is observed. Pursuant to the fourth paragraphs of Article 20 of that statute and Article 82(2) of the Rules of

Procedure, the Opinion of the Advocate General brings the oral part of the procedure to an end. The opinion does not form part of the proceedings between the parties, but rather opens the stage of deliberation by the Court (judgment of 6 October 2021, Sumal, C-882/19, EU:C:2021:800, paragraph 21 and the case-law cited). 28. In the present case, the Court finds, having heard the Advocate General, that the elements set out by BMW do not disclose any new fact which is of such a nature as to be a decisive factor for the decision which it is called upon to deliver in the present case and that that case must not be decided on the basis of an argument which has not been debated between the parties or the interested persons. Lastly, since the Court has at its disposal, at the close of the written and oral stages of the procedure, all the elements necessary, it is thus sufficiently informed to make a ruling. Consequently, the Court considers that it is not necessary to order that the oral part of the procedure be reopened.

Consideration of the questions referred

29. According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 15 July 2021, The Department for Communities in Northern Ireland, C-709/20, EU:C:2021:602, paragraph 61 and the case-law cited).

30. The present reference for a preliminary ruling concerns the determination of the law applicable, in the case of an action for infringement brought pursuant to Article 82(5) of Regulation No 6/2002, to the claims supplementary to that action, by which the applicant requests, outside the scope of the substantive provisions of the Community design regime established by that regulation, that the infringer be ordered to pay damages, to submit information, documents and accounts and to hand over the infringing products for destruction.

31. As the Court has previously held, claims for compensation for the damage resulting from the activities of the person responsible for the acts of infringement of a Community design and for disclosure in order to determine the extent of that damage, of information relating to those activities fall within the scope of the rule set out in Article 88(2) of Regulation No 6/2002. Under that provision, a Community design court hearing such claims relating to matters not covered by that regulation is to apply its national law, including its private international law (see, to that effect, [judgment of 13 February 2014, H. Gautzsch Großhandel, C-479/12, EU:C:2014:75, paragraphs 53 and 54](#)).

32. The claim seeking destruction of the infringing products falls within the scope of the rule in Article 89(1)(d) of that regulation, which provides, as regards penalties not specified by the latter, for the application of ‘the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law’. The destruction

of those products is one of the ‘other sanctions’ which may be ‘appropriate under the circumstances’ within the meaning of that provision (see, to that effect, [judgment of 13 February 2014, H. Gautzsch Großhandel, C-479/12, EU:C:2014:75, paragraph 52](#)).

33. The referring court’s question amounts to a request for an interpretation of Article 88(2) and Article 89(1)(d) of Regulation No 6/2002 in order to ascertain the scope of those provisions where the action for infringement relates to acts committed or threatened within a single Member State.

34. Therefore, by its questions, which it is appropriate to examine together, that court asks, in essence, whether Article 88(2) and Article 89(1)(d) of Regulation No 6/2002 must be interpreted as meaning that Community design courts before which an infringement action pursuant to Article 82(5) of that regulation has been brought concerning acts of infringements committed or threatened within a single Member State must examine claims supplementary to that action seeking damages, the submission of information, documents and accounts and the handing over of infringing products with a view to their being destroyed, on the basis of the law of the Member State in which those courts are situated.

35. In that regard, it must be recalled at the outset that, in accordance with Article 83(2) of Regulation No 6/2002, a Community design court before which a case has been brought pursuant to Article 82(5) of that regulation is to have jurisdiction only in respect of acts of infringement committed or threatened within the territory of the Member State in which that court is situated.

36. Article 82(5) thus provides for an alternative forum of jurisdiction which is intended to enable the proprietor of a Community design to bring one or more targeted actions, each relating specifically to the acts of infringement committed or threatened within a single Member State (see, by analogy, [judgment of 5 September 2019, AMS Neve and Others, C-172/18, EU:C:2019:674, paragraphs 42 and 63](#)).

37. In the present case, the action for infringement brought in Germany relates to the distribution, in that Member State, of certain products of Acacia. As is apparent from the evidence submitted to the Court, the acts of infringement alleged against that undertaking consist, first, in offering those products for sale by means of online advertisements to consumers located in Germany and, second, in placing those products on the market in Germany.

38. Such acts may be the subject of an action for infringement which targets, in accordance with Article 82(5) of Regulation No 6/2002, a single Member State. The fact that the defendant took decisions and steps in another Member State to bring about those acts does not preclude such an action from being brought (see, by analogy, [judgment of 5 September 2019, AMS Neve and Others, C-172/18, EU:C:2019:674, paragraph 65](#)).

39. Since, in that situation, the Community design court before which the action is brought is to give a ruling only on acts committed or threatened by the defendant within

the territory of the Member State in which that court is situated, in accordance with Article 89(1)(d) of Regulation No 6/2002, which applies to claims for destruction of the infringing products as recalled in paragraph 32 above, it is the law of that Member State which applies for the purposes of examining the substance of such a claim.

40. Furthermore, in accordance with Article 88(2) of that regulation, the law of the Member State by which that court is governed also applies to claims seeking the award of damages and the submission of information, documents and accounts. Such claims do not seek the imposition of ‘sanctions’, within the meaning of Article 89 of that regulation, but rather, as has been pointed out in paragraph 31 of the present judgment, ‘matters’ not covered by that regulation, within the meaning of Article 88(2).

41. Article 88(2) and Article 89(1)(d) of Regulation No 6/2002 state that, in so far as the law of the Member State in question includes rules of private international law, they are to form an integral part of the applicable law as provided for in those articles.

42. Those rules of private international law include the rules set out in Regulation No 864/2007, and in particular Article 8(2) of that regulation. Accordingly, the provisions referred to in paragraph 33 of the present judgment must be interpreted in conjunction with Article 8(2) of Regulation No 864/2007.

43. As provided for in the latter provision, in the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable is to, for any question that is not governed by the relevant Community instrument, be ‘the law of the country in which the act of infringement was committed’.

44. In a situation where the infringement or threatened infringement which may be examined is located within a single Member State, that rule cannot be understood as intending the law of another Member State or the law of a third country to apply. Since, pursuant to Article 8(2) of Regulation No 864/2007, the applicable law is that which is in force at the place of such an infringement, in the case of an action for infringement brought pursuant to Article 82(5) of Regulation No 6/2002 and which therefore relates to acts of infringement committed or threatened within a single Member State, that applicable law is the same as the law of that Member State.

45. While it cannot be ruled out that the Community design in question has also been infringed in other Member States or in third countries, the fact remains that those possible infringements are not the subject of the action brought pursuant to Article 82(5) of Regulation No 6/2002. The objectives of legal certainty and predictability, highlighted in recitals 14 and 16 of Regulation No 864/2007, would be undermined if the words ‘country in which the act of infringement [of the Community design relied on] was committed’ were interpreted as designating a country in which acts of infringement which are not the subject of action in question took place.

46. Interpreting the words ‘*law of the country in which the act of infringement [in question] was committed*’, within the meaning of Article 8(2) of Regulation No 864/2007, as designating the law of the country on whose sole territory the applicant invokes, in support of his action for infringement brought pursuant to Article 82(5) of Regulation No 6/2002, the Community design at issue makes it possible, furthermore, to preserve the principle of ‘*lex loci protectionis*’, which, as is apparent from recital 26 of Regulation No 864/2007, is particularly important in the area of intellectual property.

47. It is necessary, in that regard, to distinguish the situation at issue in the main proceedings from that examined in [the judgment of 27 September 2017, Nintendo \(C-24/16 and C-25/16, EU:C:2017:724\)](#), which was, as the Court noted, in essence, in paragraph 103 of that judgment, characterised by the fact that the same defendant was accused of acts of infringement committed in different Member States in the context of the same legal proceedings.

48. The interpretation provided by the Court in that judgment, according to which, in such circumstances, the expression ‘*the law of the country in which the act of infringement [in question] was committed*’, within the meaning of Article 8(2) of Regulation No 864/2007, designates the law of the country in which the initial act of infringement was committed ([judgment of 27 September 2017, Nintendo, C-24/16 and C-25/16, EU:C:2017:724, paragraph 111](#)), makes it possible to ensure that a single law applies to all the claims supplementary to an action for infringement brought pursuant to Article 82(1), (2), (3) or (4) of Regulation No 6/2002, since such an action allows, in accordance with Article 83(1) of that regulation, the court before which the case is brought to give a ruling on acts committed within the territory of any Member State.

49. That interpretation cannot be transposed to a situation where the holder of a Community design does not bring an action pursuant to Article 82(1), (2), (3) or (4) but rather chooses to bring one or more targeted actions, relating to each of the acts of infringement committed or threatened within a single Member State, pursuant to paragraph 5 of that article. In the latter case, the court before which the action is brought cannot be required (i) to ascertain whether there is, within a Member State other than the Member State concerned by the action, an initial act of infringement and (ii) to rely on that act in order to apply the law of that other Member State, even though both that act and the territory of that Member State are not concerned by the dispute in question.

50. It should also be added that the holder of the Community design cannot, in relation to the same acts of infringement, bring actions based on Article 82(5) of Regulation No 6/2002 simultaneously with those based on the other paragraphs of that article (see, by analogy, [judgment of 5 September 2019, AMS Neve and Others, C-172/18, EU:C:2019:674, paragraphs 40 and 41](#)). There is therefore no risk of a situation occurring in which claims supplementary to an infringement action with the same subject matter would

be examined in a number of different proceedings on the basis of different laws.

51. In the light of all the foregoing, the answer to the questions referred is that Article 88(2) and Article 89(1)(d) of Regulation No 6/2002, and Article 8(2) of Regulation No 864/2007, must be interpreted as meaning that the Community design courts before which an action for infringement pursuant to Article 82(5) of Regulation No 6/2002 is brought concerning acts of infringement committed or threatened within a single Member State must examine the claims supplementary to that action, seeking the award of damages, the submission of information, documents and accounts and the handing over of the infringing products with a view to their being destroyed, on the basis of the law of the Member State in which the acts allegedly infringing the Community design relied upon are committed or are threatened, which is the same, in the circumstances of an action brought pursuant to that Article 82(5), as the law of the Member State in which those courts are situated.

Costs

52. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 88(2) and Article 89(1)(d) of Council Regulation (EC) No 6/2002 of 12 December 2001 of Community designs, and Article 8(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that the Community design courts before which an action for infringement pursuant to Article 82(5) of Regulation No 6/2002 is brought concerning acts of infringement committed or threatened within a single Member State must examine the claims supplementary to that action, seeking the award of damages, the submission of information, documents and accounts and the handing over of the infringing products with a view to their being destroyed, on the basis of the law of the Member State in which the acts allegedly infringing the Community design relied upon are committed or are threatened, which is the same, in the circumstances of an action brought pursuant to that Article 82(5), as the law of the Member State in which those courts are situated.
