Information Session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

David R. Gerk
Attorney-Advisor – Design Lead
Office of Policy and International Affairs (OPIA)
United States Patent and Trademark Office
U.S. Department of Commerce
Prevalence of Graphical User Interface (GUI) and Icon Designs

Protection of GUI/Icon designs in the United States

Issues & opportunities on the horizon with respect to new technology designs.

* From WIPO SCT 35/6
## Top Five Classes with Most Design Applications Filed in 2016

<table>
<thead>
<tr>
<th>Title of US Design Classes</th>
<th>US Class</th>
<th>Applications Filed in 2016</th>
<th>% increase from 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recording, communication, or information retrieval equipment</td>
<td>D14</td>
<td>6088</td>
<td>68%</td>
</tr>
<tr>
<td>Transportation</td>
<td>D12</td>
<td>2878</td>
<td>66%</td>
</tr>
<tr>
<td>Apparel and haberdashery</td>
<td>D02</td>
<td>2300</td>
<td>69%</td>
</tr>
<tr>
<td>Medical and laboratory equipment</td>
<td>D24</td>
<td>2295</td>
<td>37%</td>
</tr>
<tr>
<td>Furnishings</td>
<td>D06</td>
<td>2275</td>
<td>30%</td>
</tr>
</tbody>
</table>
The Statute:


Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for design, except as otherwise provided for.
3 Types of Design Claims for Articles of Manufacture

- Configuration of an article
- Configuration of an article and surface ornamentation for an article
- Surface ornamentation for an article
How It All Began

- In Mid 1980s design patent applications filed for design patents on icons related to software.
- This led to first USPTO decisions on GUIs and icons and whether they could be properly protected under design patents.
- Culminated in Two BPAI Cases
  - *Ex parte Strijland*
  - *Ex parte Donaldson*
Are GUIs/icons properly considered “designs for articles of manufacture”? YES!

The structure or form of the article of manufacture does not have to be included in the design.
Subject matter for designs is “any new, original and ornamental design for an article of manufacture.” 35 U.S.C. 171

“Article of manufacture”? → a computer
“the intended design is not merely a displayed picture, but an integral and active component in the operation of a programmed computer displaying the design.” Ex Parte Strijland

GUIs/icons are proper subject matter for protection under U.S. law.
Computer Generated Icons

If an application claims a computer-generated icon shown on a computer screen, monitor, other display panel, or a portion thereof, the claim complies with the “article of manufacture” requirement of 35 U.S.C. 171.

Title: Computer display with a graphical user interface

D655,710

Title: Portion of a display screen showing an icon

D586,822

Title: Computer screen with an icon image

D434,778
GUI and Icon

**U.S. Design Patents** *(Industrial Designs)*

**Icon Examples?**

- D577,035
- D649,975
- D635,582
- D654,926
Graphical User Interfaces Examples?

D663,737

D649,557

D656,503
Transitional (Changeable) Computer Generated Icons

Computer generated icons that include images that change in appearance during viewing may be the subject of a design claim. Such a claim may be shown in two or more views.

The images are understood as viewed sequentially, no ornamental aspects are attributed to the process or period in which one image changes into another.

A descriptive statement must be included in the specification describing the transitional nature of the design and making it clear that the scope of the claim does not include anything that is not shown.
The appearance of the transitional image sequentially transitions between the images shown in FIGS. 1-9. The process or period in which one image transitions to another forms no part of the claimed design.
Emerging Designs: Opportunities

1. **New types of designs** or new manners of using or presenting designs.

2. **New technological developments** related to:
   
i. Filing
   
ii. Examination
   
iii. Publication and Grant
Emerging Designs: **New Types of Designs**

- **Graphical user interfaces [computer screen/display layout]**
  - Static and dynamic graphical user interfaces
  - Other types of content displayed on an electronic display (websites, screen savers, etc.)

- **Icons [displayed on electronic display]** including static and animated icons

- **Transitional Images**
  - Across a plurality of screens/displays

- **Animated characters**

- **Computer related typeface/type font**

- **Virtual reality environments**
  - Holographic and projected images [including interactive holograms] (e.g. virtual keyboards)
  - 3D dimensional virtual spaces
  - Other types of virtual designs
Emerging Designs: New Technological Developments

- Industrial design application electronic filing systems and features (includes acceptable electronic file types)
- Industrial design application paper filing procedure and features
- Retention, Use and Storage of industrial design application information
- Formality examination of applications and capabilities available to examiners
- Substantive examination of applications and capabilities available to examiners
- Ability for examiners to manipulate reproductions and images provided by the applicant to better understand the design
- Electronic publication of industrial design applications
- Grant of industrial design rights including electronic grants (e.g., e-registration or e-patents) and associated effect of e-grant in enforcement
- Searching capabilities of published and granted design rights. (e.g., image searching)
The Future: A Look Ahead – Emerging Designs

**U.S. Design Patents** *(Industrial Designs)*

www.id-five.org

**ABOUT ID5**

The ID5 is an Industrial Design Forum comprised of the European Union Intellectual Property Office (EUIPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), the State Intellectual Property Office of the People’s Republic of China (SIPO) and the United States Patent and Trademark Office (USPTO).

The ID5 members are

Considering the value and the significance of industrial design in global and domestic markets, and its expanding role in innovation;

Recognizing the importance to promote and further the development of user-friendly, highly-efficient and interoperable industrial design protection systems;

Acknowledging that such aims can be achieved through mutual understanding and collaboration in initiatives, aimed at improving, promoting awareness of, and user efficiency, quality and user-friendliness of industrial design systems.

**PROJECTS**

<table>
<thead>
<tr>
<th>PROJECTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Compilation of Industrial Design Statistics</strong></td>
</tr>
<tr>
<td><strong>Development and Maintenance of ID Website</strong></td>
</tr>
<tr>
<td><strong>Catalog of Eligibility for Industrial Design Protection</strong></td>
</tr>
<tr>
<td><strong>Study of Priority Document Exchange by ID Offices</strong></td>
</tr>
<tr>
<td><strong>Study of Practices of Priority Rights by ID Offices</strong></td>
</tr>
<tr>
<td><strong>Catalogue of the View and Drawing Requirements for Designs</strong></td>
</tr>
<tr>
<td><strong>Analysis of Underlying Functional Portion and IP Office Actions on How They Impact Design Filings</strong></td>
</tr>
<tr>
<td><strong>Design Classification Codebase &amp; Practices</strong></td>
</tr>
<tr>
<td><strong>Comparative Study of Practices Concerning Product Indications</strong></td>
</tr>
<tr>
<td><strong>Comparative Study of the Application of a Grace Period for Industrial Design Applications</strong></td>
</tr>
</tbody>
</table>

**ID5 NEWS**

“Study of Practices on Protection of New Technology Designs”

**Comparative Study of Partial Designs as Effective Means of Protection Industrial Design Innovation**

Led by USPTO
Information Session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

David R. Gerk
Attorney-Advisor – Design Lead
Office of Policy and International Affairs (OPIA)
United States Patent and Trademark Office
U.S. Department of Commerce

Thank You!