

**STANDING COMMITTEE ON THE LAW OF TRADEMARKS,
INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**

Forty-Third Session
Geneva, March 23 to 26, 2020

**ANALYSIS OF THE RETURNS TO THE SECOND QUESTIONNAIRE ON GRAPHICAL
USER INTERFACE (GUI), ICON AND TYPEFACE/TYPE FONT DESIGNS**

Document prepared by the Secretariat

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INTRODUCTION

1. The topic of Graphical User Interface (GUI), Icon and Typeface/Type Font Designs was included on the Agenda of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) at its thirty-fifth session, held in Geneva from November 12 to 16, 2016, based on the proposal made by the Delegations of Israel, Japan and the United States of America, entitled “*Industrial Design and Emerging Technologies: Similarities and Differences in the Protection of New Technological Designs*” (document SCT/35/6).

2. Following that session, the Secretariat prepared and addressed to all Member States of the World Intellectual Property Organization (WIPO) a first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, which contained 18 questions on:

- Systems of Protection;
- Application for a design patent/industrial design registration;
- Examination of the Application;
- Scope and Duration of Protection.

3. At the thirty-eighth session of the SCT, held in Geneva from October 30 to November 2, 2017, the Secretariat:

- presented a Compilation of the Replies to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, containing returns from 66 Member States, two Intergovernmental Intellectual Property Organizations and comments from six non-governmental organizations (NGOs) (SCT/36/2 Rev. 2);
- presented an Analysis of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs (document SCT/37/2 Rev.)¹;
- organized an Information Session addressing (i) the practices of offices and (ii) the experience of users, with regard to graphical user interface (GUI), icon and typeface/type font designs (SCT/IS/ID/GE/17/1).

4. At the thirty-ninth session of the SCT, held in Geneva from April 23 to April 26, 2018, the Secretariat presented:

- a Summary of the main points emerging from the information session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs (document SCT/39/2);
- a Compilation of proposals by Member States and accredited non-governmental organizations (NGOs) on aspects of Graphical User Interface (GUI), Icon and Typeface/Type Font Designs on which further work would be desirable, forwarded by three Member States and four NGOs (document SCT/39/3);

¹ Where appropriate, findings from the Analysis of the Returns to the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs are presented for information throughout this document.

5. Following the fortieth session of the SCT, held in Geneva from November 12 to 16, 2018, the Secretariat circulated to all SCT members and Intergovernmental Intellectual Property Organizations with observer status, a second Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, which contained 39 questions on:

- The requirement for a link between GUI, icon, typeface/type font designs and the article or product;
- The methods allowed by Offices for the representation of animated designs;
- Additional questions on exclusion from protection, examination, infringement and priority documents for GUI and icon designs.

6. At the forty-second session of the SCT, held in Geneva from November 4 to 7, 2019, the Secretariat presented a finalized Compilation of the Replies to the second Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs (hereinafter – the questionnaire), containing returns from 38 Member States and two Intergovernmental Intellectual Property Organizations (document SCT/41/2).

7. At the end of that session, the Chair of the SCT requested the Secretariat to keep document SCT/41/2 open for further or revised replies by delegations and asked the Secretariat to prepare a document analyzing all replies, for consideration of the SCT at its next session (document SCT/42/8, paragraph 9).

8. Accordingly, the Secretariat prepared document SCT/41/2 Rev., containing replies to the questionnaire from 40 Member States and two Intergovernmental Intellectual Property Organizations, as well as the present document, analyzing all returns to the questionnaire.

9. The analysis is divided into three chapters, as per the structure of the questionnaire, followed by a conclusion.

QUESTIONS CONCERNING THE REQUIREMENT FOR A LINK BETWEEN GUI, ICON, TYPEFACE/TYPE FONT DESIGNS AND THE ARTICLE OR PRODUCT (Questions 1 - 17)

Question 1 – Does your jurisdiction provide protection for GUI, icon, typeface/type font designs?

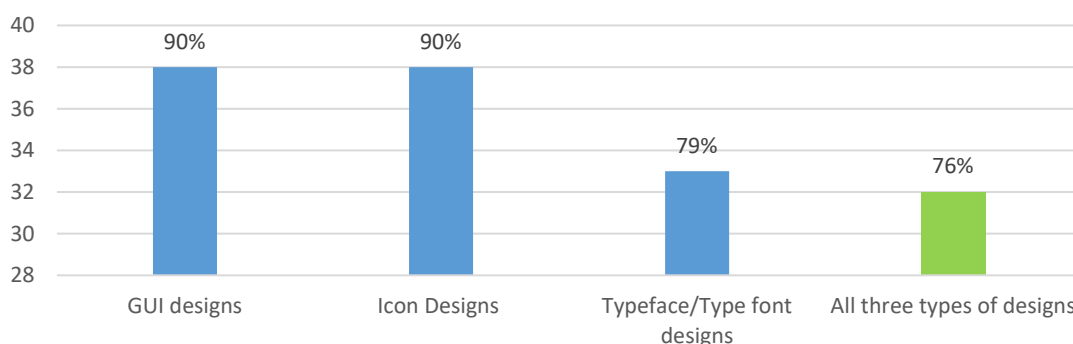
10. Protection for GUI, icon and typeface/type font designs is provided in the vast majority of jurisdictions that responded to the questionnaire (hereinafter referred to as “responding jurisdictions”), as follows²:

- Protection is provided for GUI and icon designs in 90 per cent of the responding jurisdictions;
- Protection is provided for typefaces/type font designs in 79 per cent of the responding jurisdictions;
- Protection is provided for all three types of designs in 76 per cent of the responding jurisdictions.

² These data corroborate the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 1 – Does your jurisdiction provide protection for: GUIs, icons, typefaces/type fonts?

Protection is provided for GUIs and icons in 95 per cent of the returns; protection is provided for typefaces/type fonts in 87 per cent of the returns”.

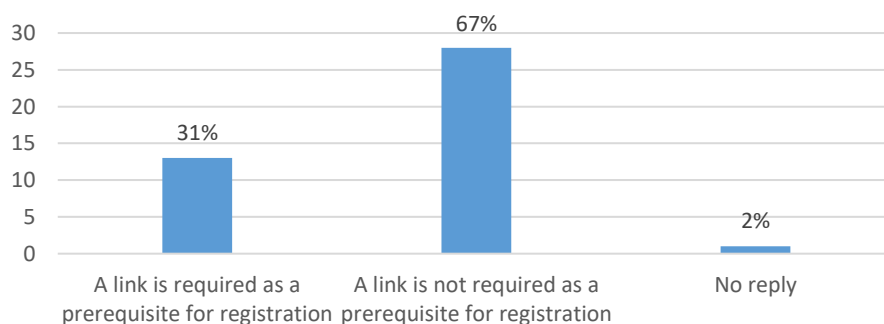


11. In their comments to Question 1, the two jurisdictions³ that replied “No” to this question (10 per cent of the responding jurisdictions) indicated that their legislation does not provide specifically for protection for GUI/icons or typeface/type font designs *per se*. However, such designs could be covered by industrial design protection or other intellectual property rights (IPRs), such as copyright.

Question 2 – In your jurisdiction, is a link⁴ between a GUI/icon design and an article required as a prerequisite for registration?

12. The returns to the questionnaire reveal that:

- a link between a GUI/icon design and an article is required as a prerequisite for registration in almost a third of responding jurisdictions (31 per cent of the responding jurisdictions);
- a link between a GUI/icon design and an article is not required as a prerequisite for registration in the majority of responding jurisdictions (67 per cent of the responding jurisdictions).



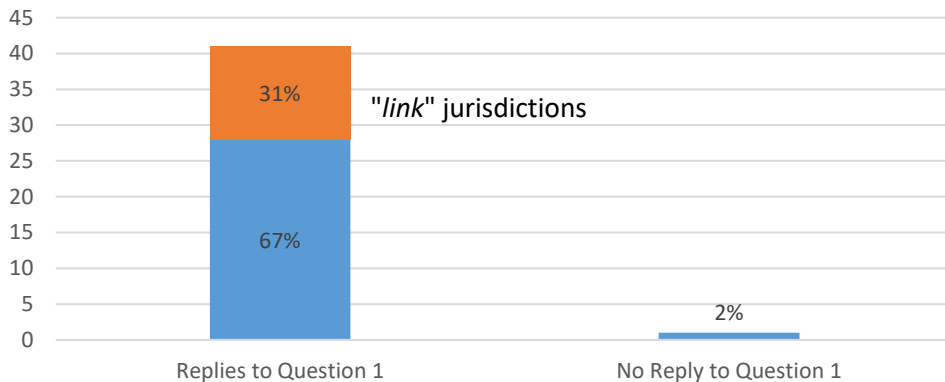
³ See the comments by Ecuador and New Zealand to Question 1 in document SCT/41/2 Rev.

⁴ For the purpose of the questionnaire, the term “link” refers to the fact that a GUI or icon design should be associated with an article.

(a) Requirement for a link

13. Questions 3 to 12 were addressed to the respondents who answered “Yes” to Question 2, i.e., to jurisdictions in which a link between a GUI/icon design and an article is required as a prerequisite for registration. Therefore, the percentages in Questions 3 to 12 are calculated based on the total of affirmative replies to Question 2 (13 replies or 31 per cent of the responding jurisdictions).

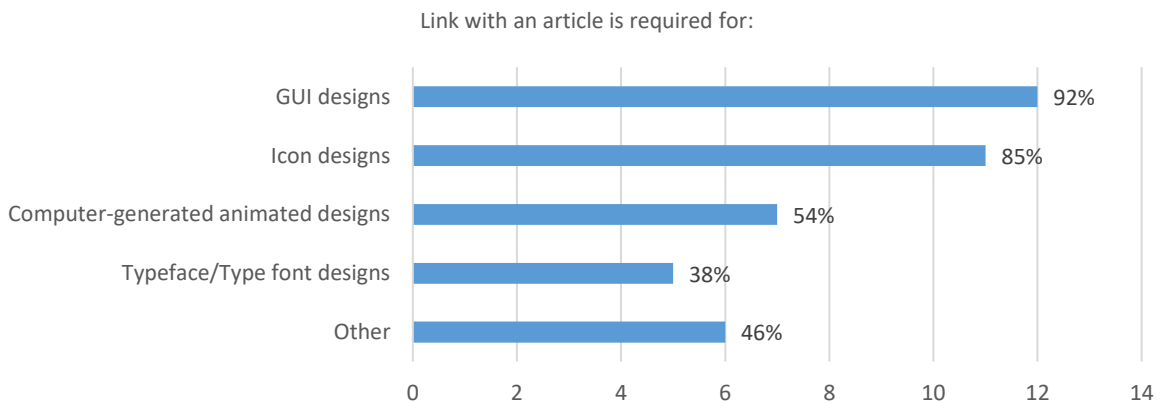
14. For the ease of reference, hereinafter, these jurisdictions will be referred to as “link” jurisdictions.



Question 3 - In your jurisdiction, for which type of designs is a link with an article required?

15. In the responding jurisdictions where a link between a design and an article is required as a prerequisite for registration, the link is required as follows:

- between a GUI design and an article (92 per cent of the “link” jurisdictions);
- between an icon design and an article (85 per cent of the “link” jurisdictions);
- between a computer-generated animated design and an article (54 per cent of the “link” jurisdictions);
- between typeface/type font designs and an article (38 per cent of the “link” jurisdictions);
- Other (46 per cent of the “link” jurisdictions).

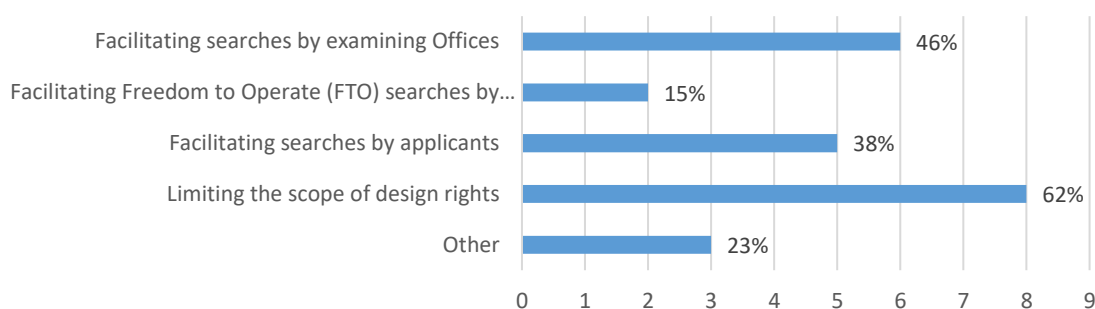


16. Under the category “other”, some jurisdictions⁵ indicate that a link with an article is required for all types of designs, not only for GUI, icon and typeface/type font designs.

Question 4 - For which reason is such a link required in your jurisdiction?

17. The three main reasons why a link between a design and an article is required are the following:

- Limiting the scope of design rights (62 per cent of the “link” jurisdictions);
- Facilitating searches by examining Offices (46 per cent of the “link” jurisdictions);
- Facilitating searches by applicants (38 per cent of the “link” jurisdictions).



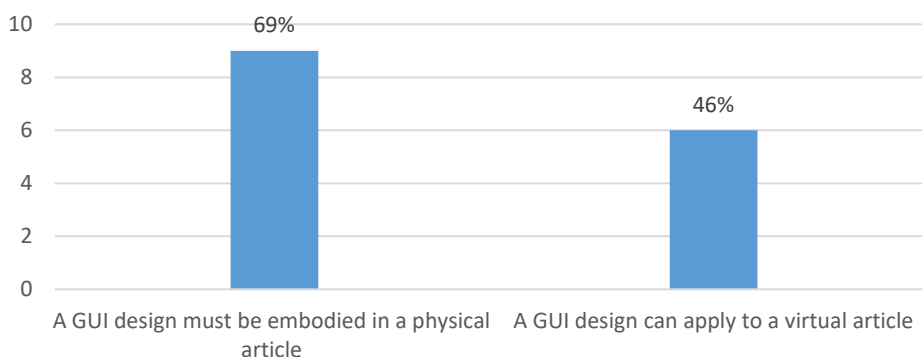
18. Under the category “other”, the following reasons are indicated:

- statutory requirement setting forth what is eligible for protection⁶;
- for graphic images filed as a part of an article, to define the scope of protection⁷.

Question 5 - In your jurisdiction, must a GUI design be embodied in a physical article to be protected? Can a GUI design apply to a virtual article?

19. In the responding jurisdictions where a link between a design and an article is required as a prerequisite for registration, a GUI design:

- must be embodied in a physical article (69 per cent of the “link” jurisdictions);
- can apply to a virtual article (46 per cent of the “link” jurisdictions);



⁵ See the comments by Canada, Singapore and the United States of America to Question 3 in document SCT/41/2 Rev.

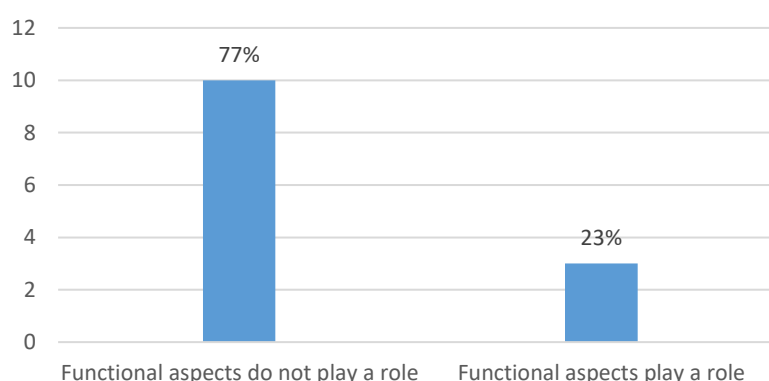
⁶ See the comments by Colombia and the United States of America to Question 4 in document SCT/41/2 Rev.

⁷ See the comments by Japan to Question 4 in document SCT/41/2 Rev.

Question 6 - In your jurisdiction, do functional aspects of the article displaying the GUI/icon design play a role in assessing the link between such design and the article? If YES, what role?

20. It follows from the replies to Question 6 that:

- functional aspects of the article displaying the GUI/icon design do not play a role in assessing the link between such design and the article in 77 per cent of the “link” jurisdictions;
- functional aspects of the article displaying the GUI/icon design play a role in assessing the link between such design and the article in 23 per cent of the “link” jurisdictions.



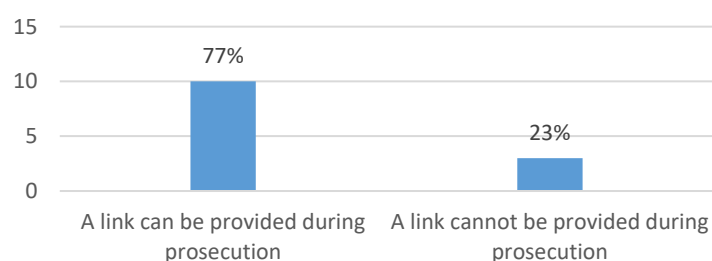
21. In the latter jurisdictions, the returns reveal that such role is:

- to limit the scope of designs⁸ (15 per cent of the “link” jurisdictions);
- to show how the function of graphic image enables the article to perform⁹ (8 per cent of the “link” jurisdictions).

Question 7 – In your jurisdiction, if a link between a GUI, icon, typeface/type font design and an article is required, but not provided in the design application, can it still be provided during prosecution? If YES, who is empowered to provide it?

22. Where a link between a GUI, icon, typeface/type font design and an article is required, but not provided in the design application,

- it can still be provided during prosecution in 77 per cent of the “link” jurisdictions;
- it cannot be provided during prosecution in 23 per cent of the “link” jurisdictions.

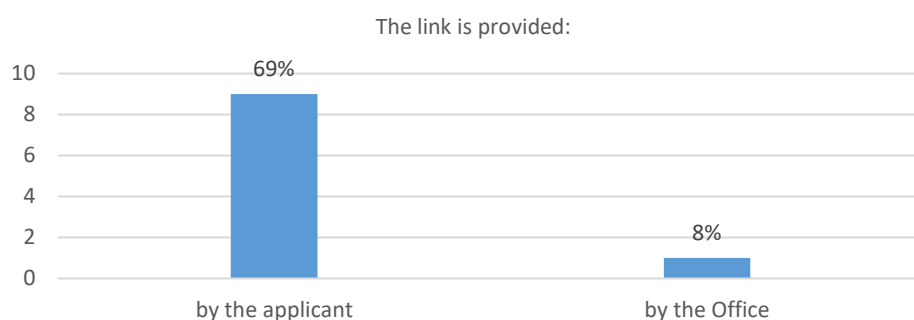


⁸ See the replies by China and Thailand to Question 6 in document SCT/41/2 Rev.

⁹ See the replies by Japan to Question 6 in document SCT/41/2 Rev.

23. Where it can be provided during prosecution, the link is provided:

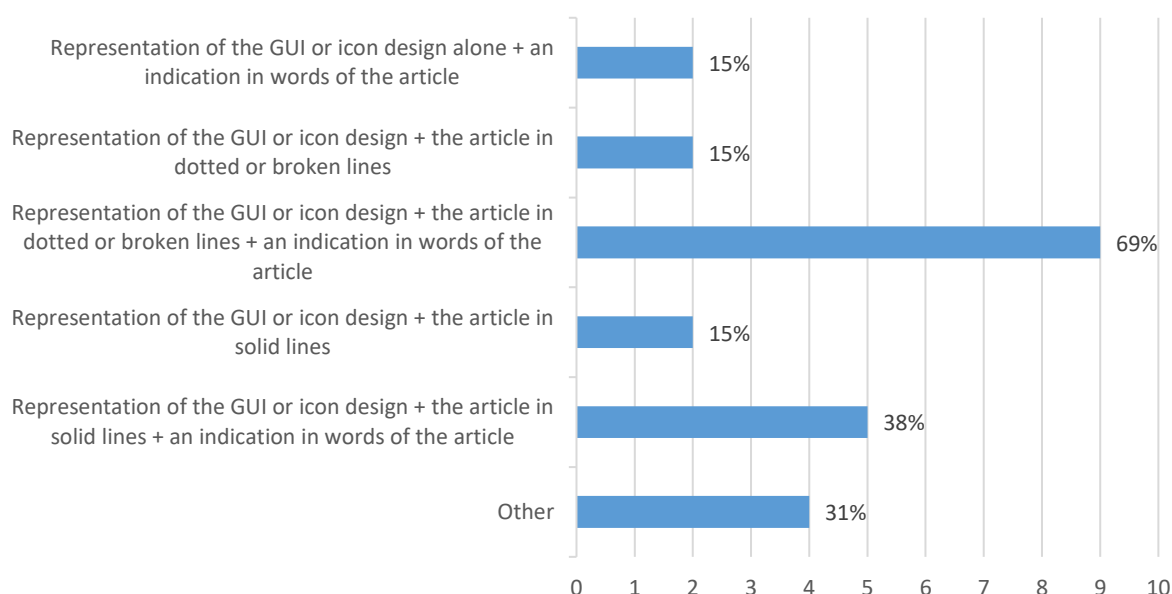
- by the applicant (69 per cent of the “link” jurisdictions),
- by the Office (8 per cent of the “link” jurisdictions).



Question 8 – In your jurisdiction, if a link between a GUI/icon design and an article is required, how can/must the GUI/icon design be represented in the application?

24. The most widespread ways of representing a GUI/icon design in the application are the following:

- Representation of the GUI/icon design with the article in dotted or broken lines, accompanied by an indication in words of the article (69 per cent of the “link” jurisdictions);
- Representation of the GUI/icon design with the article in solid lines, accompanied by the indication in words of the article (38 per cent of the “link” jurisdictions).

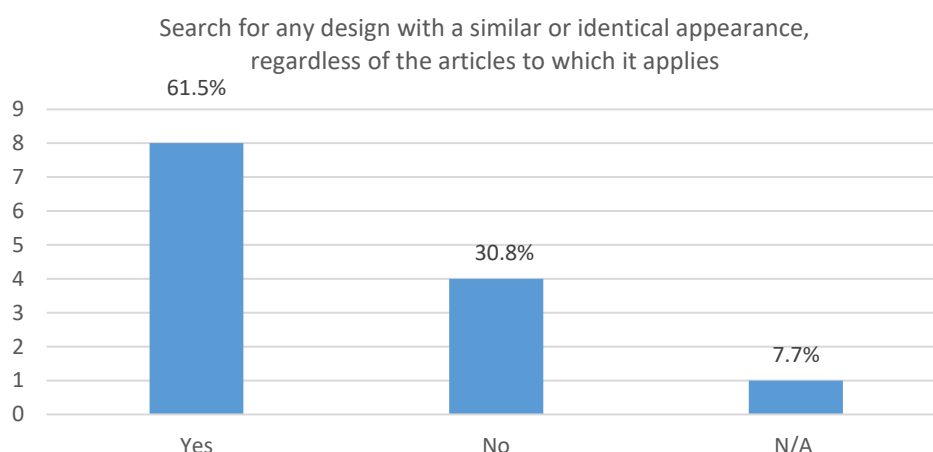


25. It follows from the replies and comments to Question 8 that in some responding jurisdictions there is more than one manner in which a GUI/icon design could be represented¹⁰.

¹⁰ See the comments by Canada, Japan, Kenya, Pakistan, Peru, United States of America and BOIP to Question 8 in document SCT/41/2 Rev.

Question 9 - If a link between a GUI/icon design and an article is required in your jurisdiction and your Office is an examining Office, does your Office search for any design with a similar or identical appearance, regardless of the articles to which it applies?

26. The replies to Question 9 reveal that an examining Office will search for any design with a similar or identical appearance, regardless of the articles to which it applies in 61.5 per cent of the “link” jurisdictions.



27. The comments indicate the reason why some responding jurisdictions replied “No” to Question 9 are:

- the examination is limited to formality check¹¹;
- the Office carries out a search for designs applied to the same article or articles sharing an analogous function¹².

Question 10 - If a design is represented within an article which is disclaimed (e.g., broken lines), what is the effect of the article on the scope of protection of the design? Is there an exception for GUI/icon designs?

28. Eight out of 13 responding jurisdictions replied to Question 10 (62 per cent of the “link” jurisdictions). In those responding jurisdictions, the scope of protection:

- is limited only to the specific type of article that was disclaimed in 23 per cent of the “link” jurisdictions;
- is limited to articles that fall within the same classification¹³ in 23 per cent of the “link” jurisdictions;

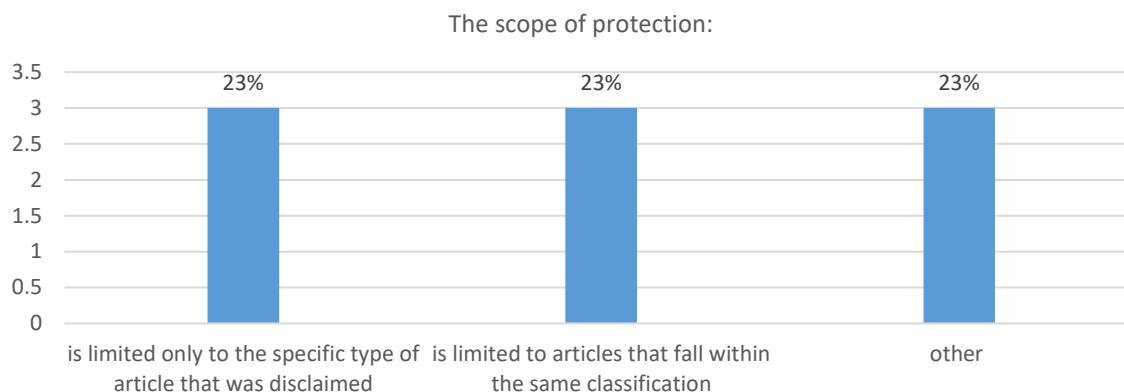
¹¹ See the comments by Singapore to Question 9 in document SCT/41/2 Rev.

¹² See the comments by Canada and Kenya to Question 9 in document SCT/41/2 Rev.

¹³ These data corroborate the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 16 – Is the scope of protection of GUI, icon or typeface/type font designs limited by the classification of the industrial design?

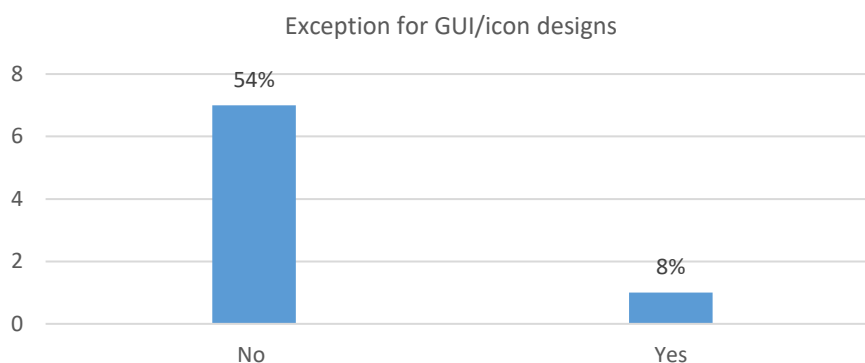
The majority of respondents indicate that the scope of protection of GUI, icon or typeface/type font designs is not limited by the classification of the industrial design (76 per cent of the returns in respect of GUIs, 74 per cent of the returns in respect of icons, and 66 per cent of the returns in respect of typefaces/type fonts). Eighteen per cent of the returns in respect of GUIs, 19 per cent of the returns in respect of icons, and 17 per cent of the returns in respect of typefaces/type fonts indicate that the scope of protection is limited by the classification of the industrial design”.



29. Under the category “other” (23 per cent of the “*link*” jurisdictions), some respondents indicated that:

- “the disclaimed structure is not part of the claimed design and thus not limiting on the scope of the claim. The structure that is not part of the claimed design, but is considered necessary to show the environment in which the design is associated, may be represented in the drawing by broken lines. This includes any portion of an article in which the design is embodied, or applied to, that is not considered part of the claimed design¹⁴”.
- “protection is granted for the portion of the design in solid lines and extends to the same or analogous articles¹⁵”.

30. As to the question whether there is any exception for GUI/icon designs, seven jurisdiction replied “No” (54 per cent of “*link*” jurisdictions).



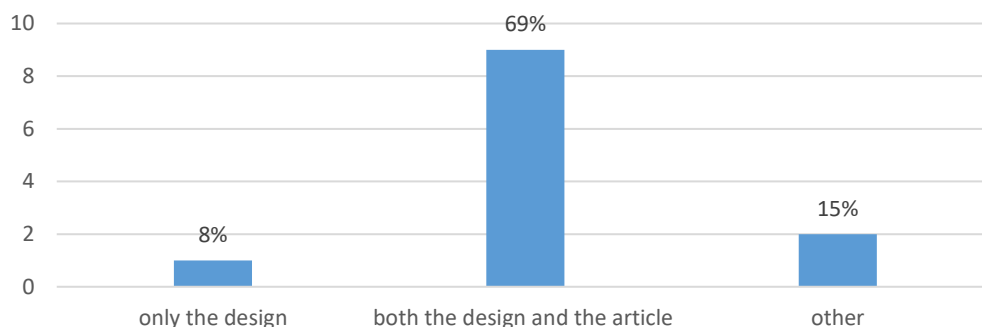
¹⁴ See the comments by the United States of America to Question 10 in document SCT/41/2 Rev.

¹⁵ See the comments by Canada to Question 10 in document SCT/41/2 Rev.

Question 11 - If a design is represented within an article which appears in solid lines, the scope of the design patent/design registration would be considered to cover: only the design; both the design and the article; other?

31. If a design is represented within an article which appears in solid lines, the scope of the design patent/design registration is considered to cover:

- both the design and the article in 69 per cent of the “link” jurisdictions;
- only the design in 8 per cent of the “link” jurisdictions.



32. Under the category “other” (15 per cent of “link” jurisdictions), the scope of the design patent/design registration would be considered to cover:

- the article embodying the design¹⁶;
- the form or composition of lines or colors which has to be used with such article¹⁷.

Question 12 - If a design is represented within an article which is disclaimed (e.g., broken lines) and the identification of the article(s) in relation to which the industrial design is to be used is required, what is the purpose of that identification?

33. It follows from the replies to Question 12 that the purpose of the identification of the article(s) in relation to which the industrial design is to be used varies from one responding jurisdiction to another.

34. The following purposes are mentioned:

- To demonstrate that the claimed design is a proper subject matter of protection¹⁸;
- Limitation of the scope of the design¹⁹;
- To assess the applicability/use/function of the design/article²⁰;
- Classification of the article²¹.

(b) No requirement for a link

35. Questions 13 to 17 were addressed to the respondents who answered “No” to Question 2, i.e., to jurisdictions in which a link between a GUI/icon design and an article is not required as a prerequisite for registration. Therefore, the percentages in Questions 13 to 17 are calculated

¹⁶ See the comments by Kenya to Question 11 in document SCT/41/2 Rev.

¹⁷ See the comments by Thailand to Question 11 in document SCT/41/2 Rev.

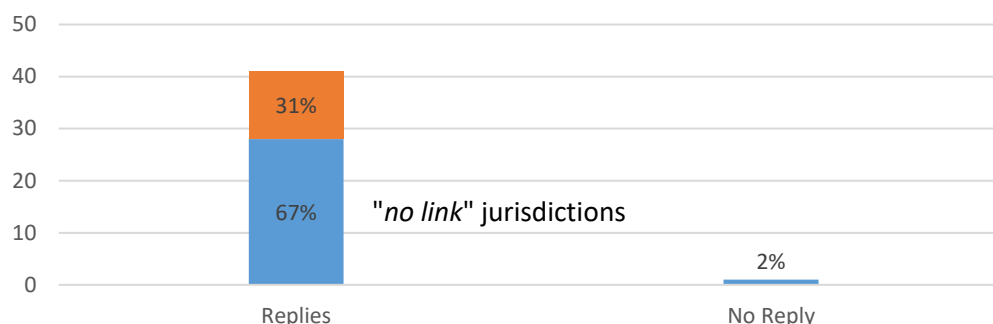
¹⁸ See the comments by the United States of America to Question 12 in document SCT/41/2 Rev.

¹⁹ See the reply by Canada and Singapore to Question 12 in document SCT/41/2 Rev.

²⁰ See the reply by Japan and the Republic of Korea to Question 12 in document SCT/41/2 Rev.

²¹ See the reply by Chile and Colombia to Question 12 in document SCT/41/2 Rev.

based on the total of negative replies to Question 2 (28 replies or 67 per cent of responding jurisdictions). For the ease of reference, hereinafter, these jurisdictions will be referred to as “no link” jurisdictions.

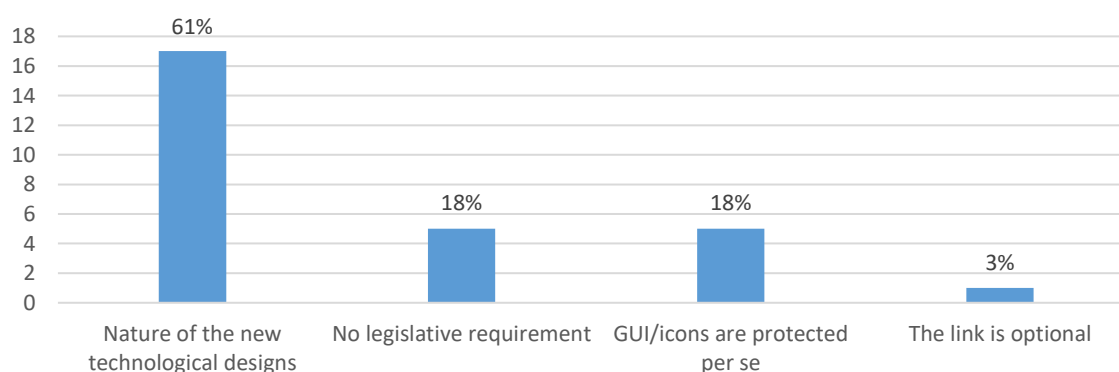


Question 13 - In your jurisdiction, why is no link between a GUI/ icon design and an article required?

36. It follows from the returns to Question 13 that, largely, the reason why a link between a GUI/ icon design and an article is not required is because of the nature of new technological designs, which may be used in different articles/environments (61 per cent of the “no link” jurisdictions).

37. Other reasons include:

- there is no legislative requirement for such a link (18 per cent of the “no link” jurisdictions²²);
- a GUI/icon design may be protected *per se*, in its own right (18 per cent of the “no link” jurisdictions²³);
- the indication of the link is optional (3 per cent of the “no link” jurisdictions²⁴).



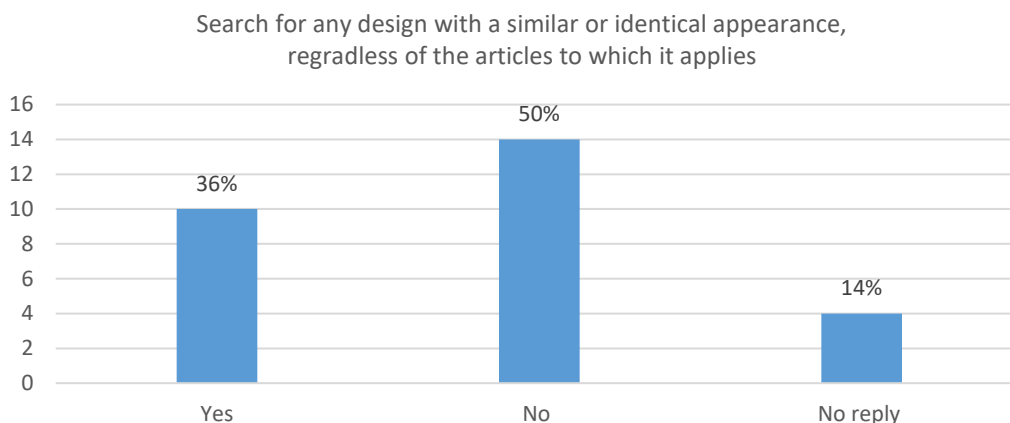
²² See the replies by Ecuador, Hungary, Iceland, Ireland and Kazakhstan to Question 13 in document SCT/41/2 Rev.

²³ See the replies and comments by Finland, Germany, Japan, United Kingdom and EUIPO to Question 13 in document SCT/41/2 Rev.

²⁴ See the reply by Brazil to Question 13 in document SCT/41/2 Rev.

Question 14 - If no link is required in your jurisdiction and your Office is an examining Office, does your Office search for any design with a similar or identical appearance, regardless of the articles to which it applies?

38. The replies to Question 14 reveal that examining Offices search for any design with a similar or identical appearance, regardless of the articles to which it applies, in over a third of the “no link” jurisdictions (36 per cent of the “no link” jurisdictions).



39. The comments indicating the reasons why half of the “no link” jurisdictions replied “No” to Question 14, are:

- the Office is not an examining Office²⁵;
- the *ex officio* examination is limited to formal requirements only²⁶;
- the *ex officio* examination is limited to definition/public order or morality²⁷;
- no application has been received so far²⁸.

Question 15 - If no link is required in your jurisdiction, how do users conduct Freedom to Operate (FTO) searches?

40. The following comes out from the replies to Question 15:

- Users may conduct searches in the registered design databases, available online on the official websites of Offices²⁹;
- Generally, searches for GUI/ icon designs may be conducted in the same manner as for other designs, that is:
 - By the class of the Locarno Classification for Industrial Designs³⁰, namely:
 - class 14.02 Interfaces for computers;
 - class 14.04 Interfaces for a display screen;

²⁵ See the replies by Denmark, Iceland, Ireland, Latvia, Norway, Portugal, Switzerland and the United Kingdom in document SCT/41/2 Rev.

²⁶ See the replies by Estonia to Question 14 in document SCT/41/2 Rev.

²⁷ See the replies by EUIPO in document SCT/41/2 Rev.

²⁸ See the replies by Ecuador in document SCT/41/2 Rev.

²⁹ See the replies by Brazil, Czech Republic, Estonia, Georgia, Hungary, Latvia, Portugal, Romania, United Kingdom and the EUIPO to Question 15 in document SCT/41/2 Rev.

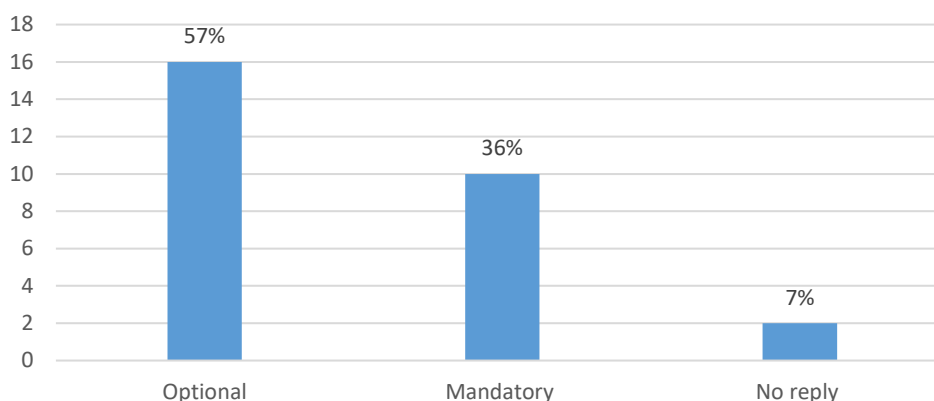
³⁰ See the replies by Brazil, Croatia, Finland, France, Georgia, Hungary, Iceland, Lithuania, Norway, Poland, Portugal, Republic of Moldova, Slovakia, Sweden, United Kingdom and the EUIPO to Question 15 in document SCT/41/2 Rev.

- class 14.04 Icons;
- class 18.03 Typefaces/Type fonts;
- class 32.00 Graphic symbols and logos, surface patterns, ornamentation.

- by the indication of the product³¹;
- by image³²;
- by the indication of the owner/designer/applicant³³.

Question 16 - If no link is required in your jurisdiction, is the indication of an article: optional, mandatory? What is the effect of such indication?

41. In the responding jurisdictions where no link between a GUI/ icon design and an article is required, the indication of an article is optional in over half of those jurisdictions and mandatory in over a third of those jurisdictions, as follows:



42. The effect of indicating the article varies among those “no link” jurisdictions³⁴. The following effects are indicated:

- limiting the scope of the protection of the GUI/icon design to that article³⁵,
- indicating the article is only a matter of form or has illustrative/administrative purposes aiding classification, or has no effect at all³⁶;
- indicating the article helps understand better the environment where the design is used and does not affect the scope of protection³⁷.

³¹ See the replies by Croatia, Georgia, Lithuania and Portugal to Question 15 in document SCT/41/2 Rev.

³² See the replies by Croatia and Georgia to Question 15 in document SCT/41/2 Rev.

³³ See the replies by Croatia and Portugal to Question 15 in document SCT/41/2 Rev.

³⁴ It may be useful to recall the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 17 – Is a GUI and/or icon protected in relation to one product (e.g., a smartphone) also protected against its use in relation to another product (e.g., the display of a car)?

Nearly half of the respondents indicate that, if a GUI and/or icon is protected in relation to one product, it is also protected against its use in relation to another product. (49 per cent of the returns in respect of GUIs and 46.25 per cent of the returns in respect of icons)”.

³⁵ See the replies by Poland and Portugal to Question 16 in document SCT/41/2 Rev.

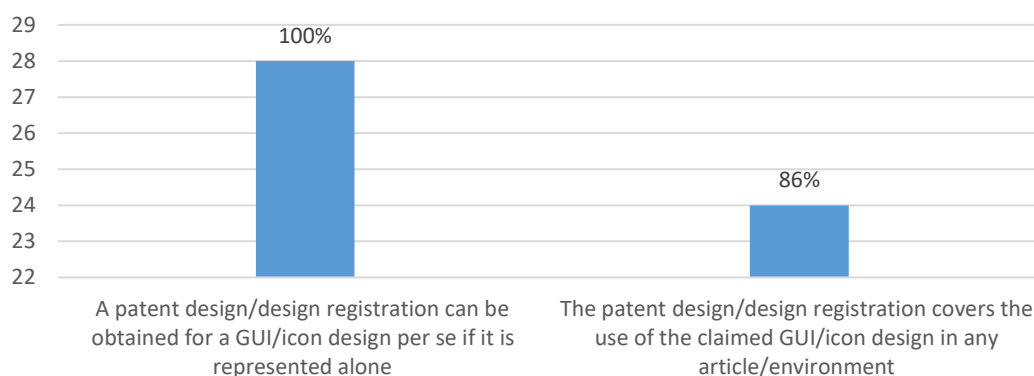
³⁶ See the replies by Azerbaijan, Brazil, Croatia, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Norway, Republic of Moldova, Romania, Sweden and the United Kingdom to Question 16 in document SCT/41/2 Rev.

³⁷ See the replies by the Czech Republic, United Kingdom and the EUIPO to Question 16 in document SCT/41/2 Rev.

Question 17 - Can a patent design/design registration be obtained for a GUI/icon design *per se* if it is represented alone (without any article such as a screen or a device)? If YES, does the patent design/design registration cover use of the claimed GUI/icon design in any article/environment?

43. A patent design/design registration can be obtained for a GUI/icon design *per se* if it is represented alone (without any article such as a screen or a device) in all responding jurisdictions where no link between a GUI/ icon design and an article is required (100 per cent of “no link” jurisdictions/28 replies)³⁸.

44. In 86 per cent of those jurisdictions, the patent design/design registration covers the use of the claimed GUI/icon design in any article/environment.



QUESTIONS CONCERNING THE METHODS ALLOWED BY OFFICES FOR THE REPRESENTATION OF ANIMATED DESIGNS (Questions 18 - 26)

Question 18 - In your jurisdiction, which methods of representation can applicants use to claim protection for animated designs? Please specify any additional requirements.

45. The most widespread methods of representation available to applicants to claim protection for animated designs are the following:

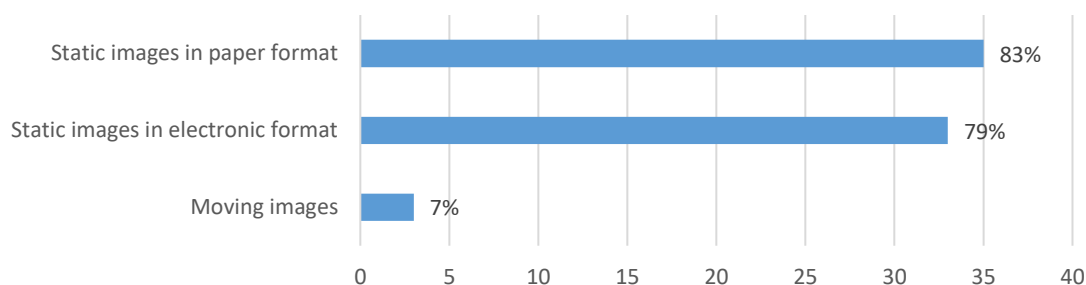
- static images in paper format (83 per cent of the responding jurisdictions);
- static images in electronic format (79 per cent of the responding jurisdictions).

³⁸ It may be useful to recall the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 7 – Can a GUI and/or icon be patented/registered as such (i.e., independently of the product that incorporates it or in relation to which it is to be used, e.g., smartphone, tablet computer, computer screen)?

GUIs can be patented/registered as such in 69 per cent of responding jurisdictions. Icons can be patented/registered as such in 67 per cent of responding jurisdictions”.

46. Only in seven per cent of the responding jurisdictions (three responding jurisdictions) can applicants represent animated designs by using moving images³⁹. In two instances, the respondents indicate that moving images are treated as reference views or are only considered as an additional technical means of viewing the design and do not replace the conventional static views⁴⁰.



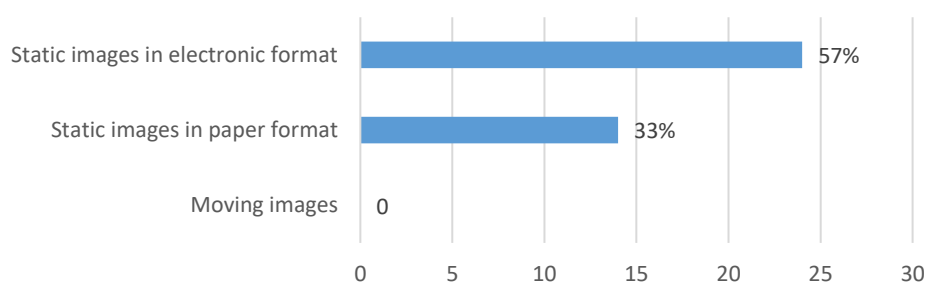
47. Concerning static images in electronic format, there are requirements as to the file format and maximum size. Though those vary from one responding jurisdiction to another, the most used file formats are .pdf, .jpeg., .tiff, .png and .gif.

48. Additional requirements as to the format, size, views, animation frames exist in several responding jurisdictions⁴¹.

Question 19 - Where a choice of different methods of representation is available in your jurisdiction, what method is used the most by applicants?

49. Where a choice of different methods of representation is available, the methods used the most by applicants to represent animated designs are the following:

- static images in electronic format (57 per cent of the responding jurisdictions);
- static images in paper format (33 per cent of the responding jurisdictions).



³⁹ It may be useful to recall the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 4 – How may a GUI, icon, typeface/type font be represented in an application for a design patent/industrial design registration in your jurisdiction?”

In three responding jurisdictions (5 per cent of the returns), other formats enabling an accurate representation of the design (e.g., video and/or audio files, 3D modeling files such as 3DS, DWG, DWF, IGES, 3DM) are admitted for GUIs and icons”.

⁴⁰ See the comments by the Republic of Korea and the EUIPO to Question 18 in document SCT/41/2 Rev.

⁴¹ See the replies by Brazil, Colombia, Croatia, Georgia, Ireland, Latvia, Lithuania, Romania and the EUIPO to Question 18 in document SCT/41/2 Rev.

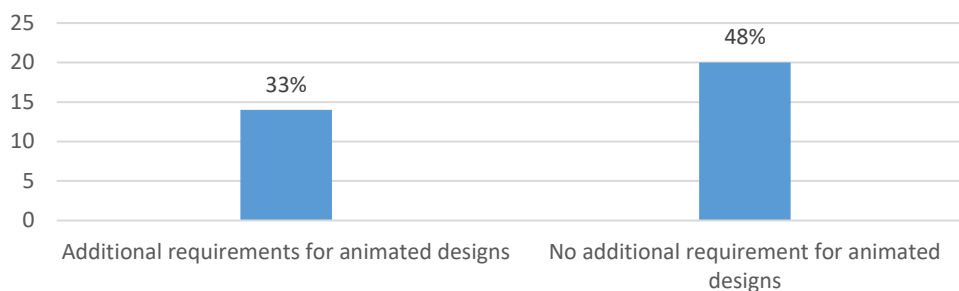
50. The comments to Question 19 disclose that in some jurisdictions the majority of applications are filed electronically⁴². The design representations are uploaded directly by the applicants, static images in electronic format being the most frequently used method by applicants, by a large margin.

51. In other jurisdictions⁴³, while the majority of applications is still filed on paper, the proportion of electronic applications increases over the years.

Question 20 - Are there any additional/special requirements regarding the contents of the application for animated designs? If YES, please specify.

52. The returns to Question 20 reveal that:

- There are no additional/special requirements regarding the contents of the application for animated designs in 48 per cent of the responding jurisdictions⁴⁴;
- Additional/special requirements for animated designs exist in 33 per cent of the responding jurisdictions.



⁴² See the comments by Colombia, Finland, United Kingdom and the United States of America to Question 19 in document SCT/41/2 Rev.

⁴³ See the comments by Canada, Georgia and Mexico to Question 19 in document SCT/41/2 Rev.

⁴⁴ These data corroborate the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 5 – Are additional or special requirements applicable to a GUI and/or icon which is animated (moving images design, transformation, transition, change of colors, or any other animation)?

There is almost a balance between those responding jurisdictions which have such additional or special requirements (33 per cent of the returns in respect of GUIs and 31.25 per cent of the returns in respect of icons) and those which do not (37.5 per cent of the returns in respect of GUIs and 39 per cent of the returns in respect of icons).

Question 6 – What are the additional or special requirements applicable to a GUI and/or icon which is animated?

Among those responding jurisdictions requiring additional or special requirements for animated GUIs and/or icons, series of static images showing a sequence of an animated GUI and/or icon are unanimously accepted (100 per cent of the returns). In over one third of the respondents, this is the only additional or special requirement for animated GUIs and/or icons (42 per cent of the returns in respect of GUIs and 43 per cent of the returns in respect of icons). Other additional or special requirements for animated GUIs and/or icons are the following: – a description (in 48 per cent of the returns in respect of GUIs and 47 per cent of the returns in respect of icons), – a statement of novelty (in 19 per cent of the returns in respect of GUIs and 20 per cent of the returns in respect of icons)”.

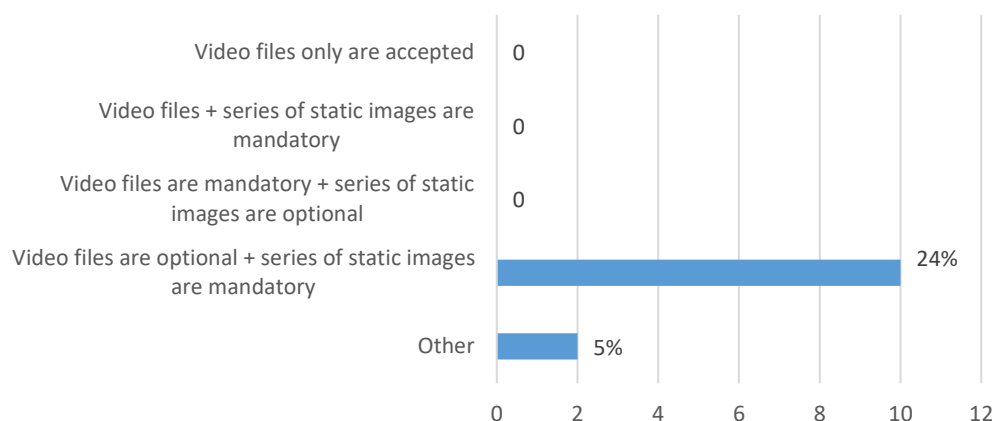
53. Most commonly, additional requirements include a series of static images to show the animation at different moments in time⁴⁵ and/or a description to illustrate the dynamic process of the application⁴⁶.

Question 21 - Where video files can be used by applicants to represent animated designs in your jurisdiction:

- **video files only are accepted**
- **video files + series of static images are mandatory**
- **video files are mandatory + series of static images are optional**
- **video files are optional + series of static images are mandatory**
- **other**

54. Only 12 jurisdictions replied to Question 21 (29 per cent of the responding jurisdictions). The replies disclose that:

- video files *only* are not accepted as means of representation in any responding jurisdiction;
- video files are not mandatory in those responding jurisdictions that accept them;
- applicants must represent animated designs by means of a series of static images, which can be accompanied, at the option of the applicant, by a video file showing the animation, in 24 per cent of the responding jurisdictions.



55. It can be deduced from the low number of responses to this question, as well as from the comments to Question 21, that most responding jurisdictions do not accept video files as means of representation of animated designs⁴⁷.

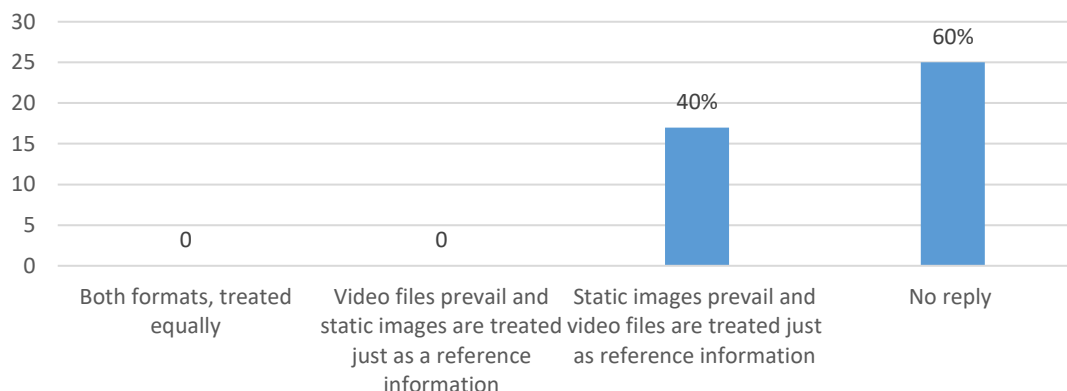
⁴⁵ See the replies by Colombia, Croatia, France, Georgia, Latvia, Norway, Poland, Republic of Korea, Singapore, United States of America and the EUIPO to Question 20 in document SCT/41/2 Rev.

⁴⁶ See the replies by China, France, Norway and the United States of America to Question 20 in document SCT/41/2 Rev.

⁴⁷ See the comments by Brazil, Colombia, Czech Republic, Denmark, Finland, Georgia, Iceland, Japan, Latvia, Poland, Portugal, Romania, Switzerland and the United States of America to Question 21 in document SCT/41/2 Rev.

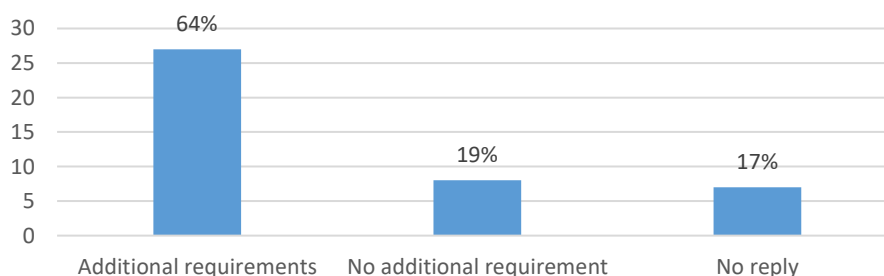
Question 22 - Where both series of static images and video files are contained in the application, which format determines the scope of protection?

56. Where both series of static images and video files are contained in the application, the static images prevail and video files are treated just as reference information in all the jurisdictions that replied to Question 22 (40 per cent of the responding jurisdictions).



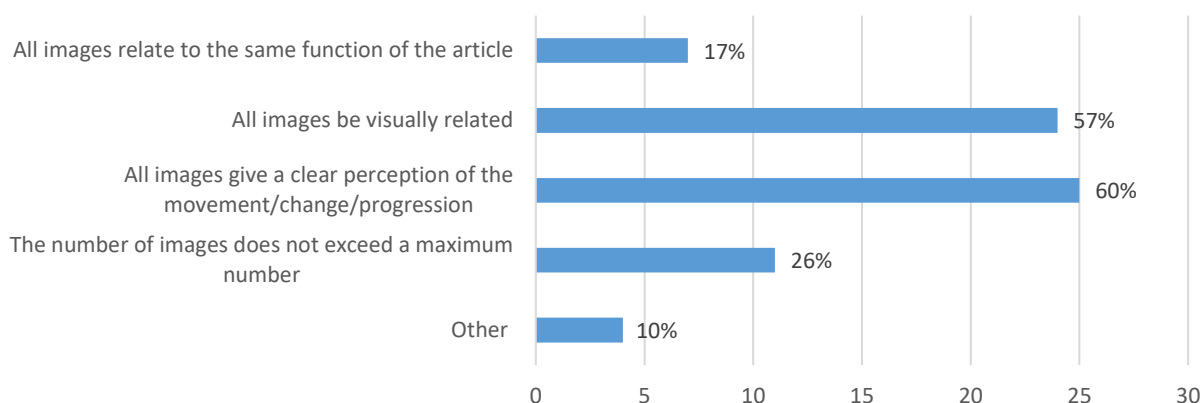
Question 23 - If animated designs are represented by series of static images or a sequence of drawings or photographs, are there additional requirements regarding the images? If YES, please specify.

57. The majority of responding jurisdictions provide for one or more additional requirement regarding the images or the sequence of drawings or photographs representing animated designs (64 per cent of the responding jurisdictions).



58. The most widespread additional requirements are that:

- all images give a clear perception of the movement/change/progression (60 per cent of the responding jurisdictions);
- all images be visually related (57 per cent of the responding jurisdictions);
- the number of images does not exceed a maximum number, which varies from one jurisdiction to another (26 per cent of the responding jurisdictions).



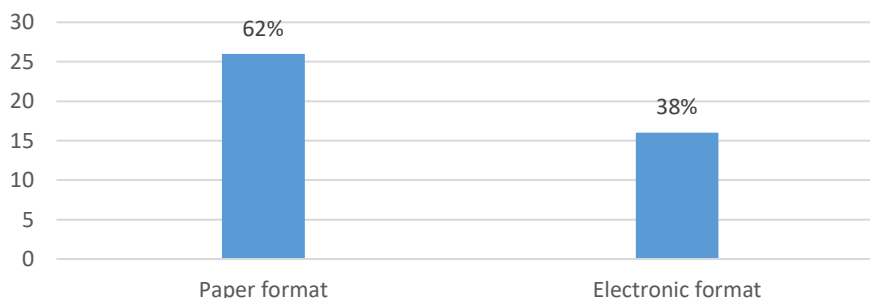
59. Under the category “other” (10 per cent of the responding jurisdictions), the respondents indicated the following requirements:

- the unity of design⁴⁸;
- the views must illustrate the product alone⁴⁹;
- the requirements provided for by the EUIPO Convergence Programme 6⁵⁰.

Question 24 - In which format are animated designs granted?

60. The responding jurisdictions grant patent designs/design registrations in:

- Paper format (62 per cent of the responding jurisdictions);
- Electronic format (38 per cent of the responding jurisdictions).



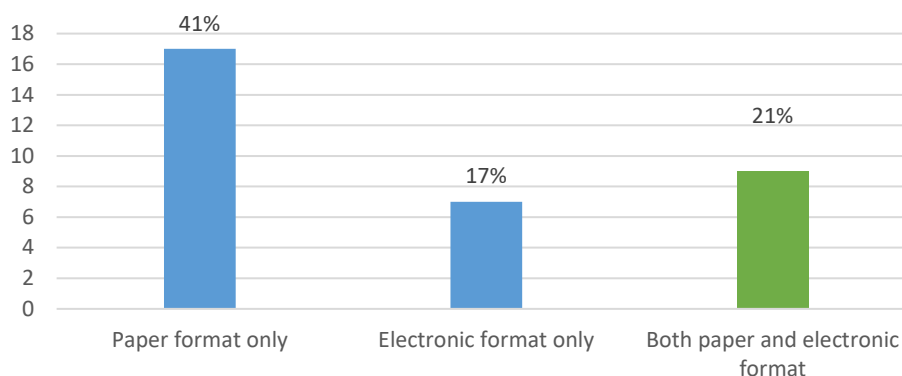
61. It follows from the replies that some jurisdictions grant patent designs/design registrations in:

- Paper format only (41 per cent of the responding jurisdictions);
- Electronic format only (17 per cent of the responding jurisdictions).
- Both paper and electronic format (21 per cent of the responding jurisdictions);

⁴⁸ See the comments by Mexico to Question 23 in document SCT/41/2 Rev.

⁴⁹ See the comments by Portugal to Question 23 in document SCT/41/2 Rev.

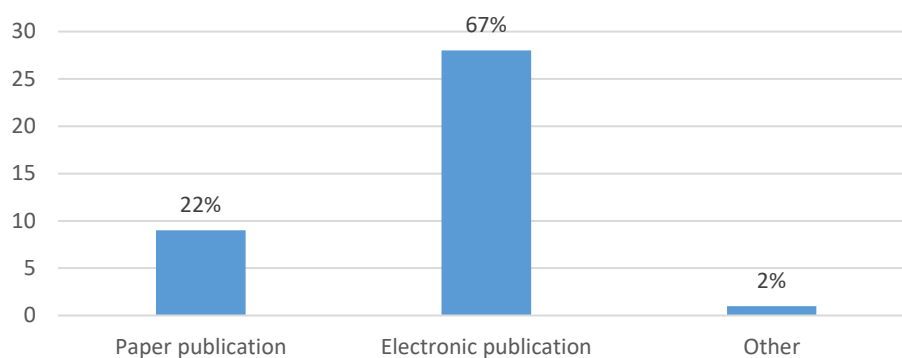
⁵⁰ See the comments by Denmark, Romania, United Kingdom, BOIP and the EUIPO to Question 23 in document SCT/41/2 Rev.



Question 25 - In which format are animated designs published?

62. In the responding jurisdictions, animated designs are published in:

- Paper publication (22 per cent of the responding jurisdictions);
- Electronic publication (67 per cent of the responding jurisdictions);

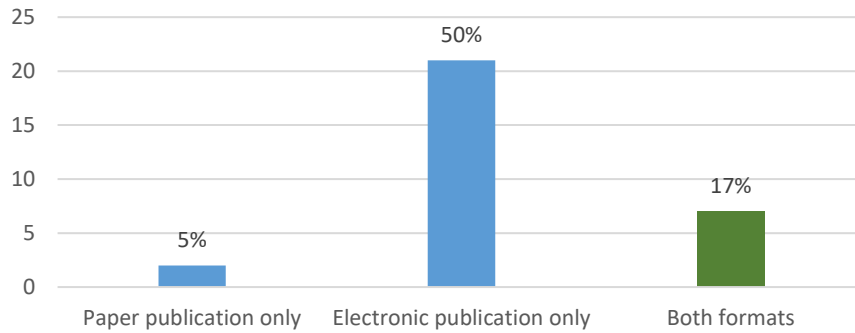


63. Under the category “other”, one respondent⁵¹ indicated that the Office does not actively publish industrial design registrations (e.g. in a Journal or Bulletin). However, applications made available to the public are entered in the Industrial Designs Database. The Office also makes paper copies of applications available to the public, which may be consulted in person via the Client Service Centre.

64. It follows from the replies that in some jurisdictions patent designs/design registrations are published in:

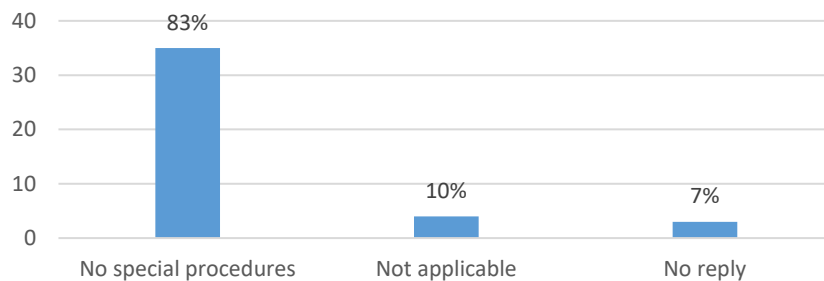
- paper publication only (5 per cent of the responding jurisdictions).
- electronic publication only (50 per cent of the responding jurisdictions);
- both paper and electronic publication (17 per cent of the responding jurisdictions);

⁵¹ See the comments by Canada to Question 25 in document SCT/41/2 Rev.



Question 26 - Are there any special publication procedures for animated designs?

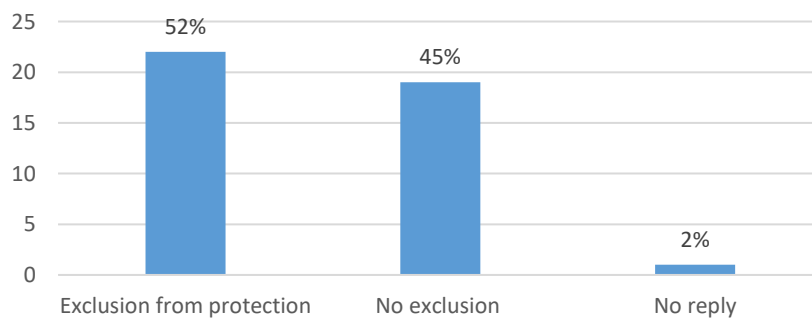
65. It follows from the returns to Question 26 that in the vast majority of responding jurisdictions there are no special publication procedures for animated designs (83 per cent of the responding jurisdictions).



ADDITIONAL QUESTIONS (Questions 27 - 39)

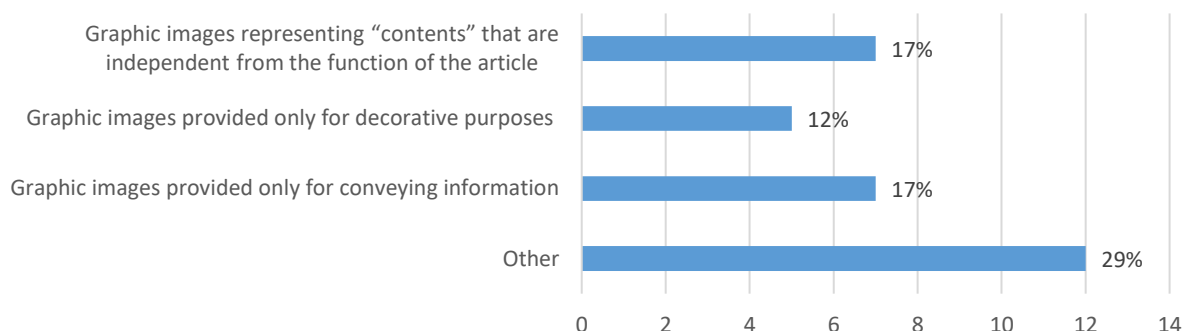
Question 27 - In your jurisdiction, are some graphic images excluded from protection under design law? If YES, which of the following types of images are excluded from protection? If YES, how is the exclusion justified? If YES, how are the graphic images subject to protection defined?

66. A little over a half of responding jurisdictions exclude one or more types of graphic images from protection under design law (52 per cent of the responding jurisdictions).



The types of images excluded from protection in those jurisdictions are:

- graphic images representing “contents” that are independent from the function of the article (e.g., a scene of a film or images from a computer/TV game) (17 per cent of the responding jurisdictions);
- graphic images provided only for conveying information (17 per cent of the responding jurisdictions);
- graphic images provided only for decorative purposes (such as a desktop wallpaper) (12 per cent of the responding jurisdictions);



67. Under the category “other” (29 per cent of the responding jurisdictions), some respondents indicate images that are contrary to public order or morality or those that are not registrable under other substantive or formal legal requirements⁵².

68. It follows from the replies to Question 27 that the exclusion of certain types of images from protection is justified, in some responding jurisdictions, by non-compliance with legal requirements contained in national legislation, such as the definition of design, the grounds for refusal or the representation requirements⁵³.

Question 28 - In your jurisdiction, are certain kinds of GUI/icon designs excluded from design protection? If YES, please specify.

69. Over a third of responding jurisdictions exclude from protection certain kinds of GUI/icon designs (38 per cent of the responding jurisdictions)⁵⁴.

⁵² See the comments by Canada, France, Japan, Kazakhstan, Latvia, New Zealand, Norway, Portugal, Republic of Moldova, Romania, United States of America and the EUIPO to Question 27 in document SCT/41/2 Rev.

⁵³ See the replies by China, Japan, Lithuania, Mexico, New Zealand, Portugal, Republic of Korea, Romania and Thailand to Question 27 in document SCT/41/2 Rev.

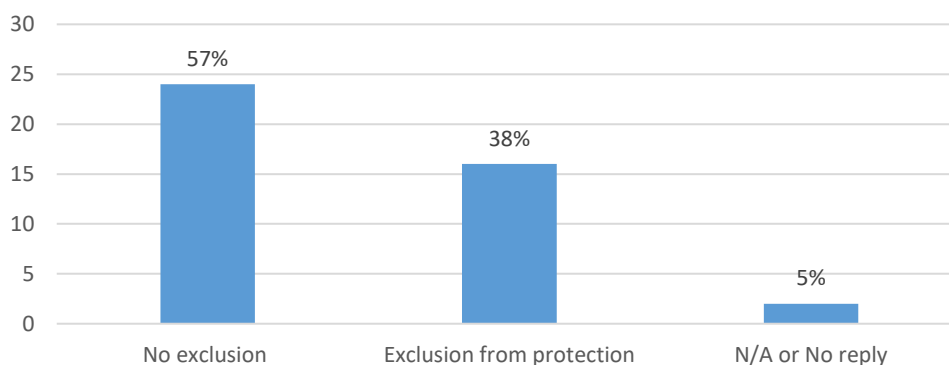
⁵⁴ It may be useful to recall the findings of the first Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, document SCT/37/2 Rev.):

“Question 13 – To the extent that your IP Office carries out a substantive examination of an application for a design patent/an industrial design registration, what eligibility criteria are examined with respect to GUIs, icons or typefaces/type fonts?

It follows from the returns that the vast majority of IP Offices examine a GUI, icon, typeface/type font for compliance with public order/morality (89 per cent of the returns in respect of GUIs, 91 per cent of the returns in respect of icons, and 87.5 per cent of the returns in respect of typefaces/type fonts). Over one half of the respondents indicate that they carry out examination as to novelty (59.25 per cent of the returns in respect of GUIs, 58 per cent of the returns in respect of icons, and 52 per cent of the returns in respect of typefaces/type fonts).

Question 14 – Are the eligibility criteria for GUIs, icons or typefaces/type fonts different from those applied to other industrial designs?

Nearly all respondents (97 per cent of the returns in respect of GUIs, 98 per cent of the returns in respect of icons, and 86.5 per cent of the returns in respect of typefaces/type fonts) indicate that the eligibility criteria for GUIs, icons or typefaces/type fonts do not differ from those applied to other industrial designs”.

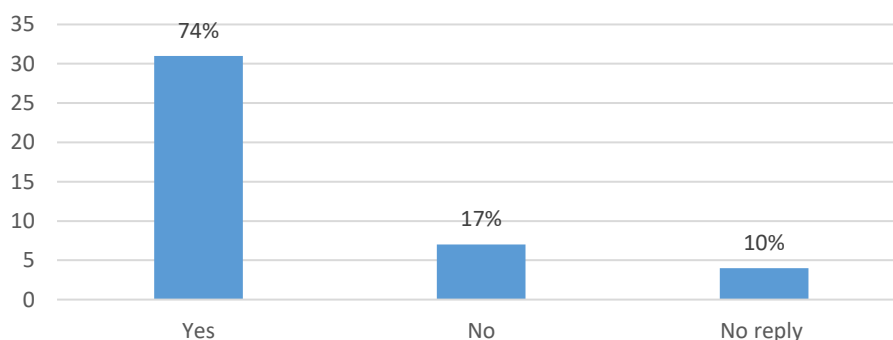


70. The replies most commonly mention the following grounds for exclusion of certain kinds of GUI/icon design from protection:

- non compliance with legal definition of design;
- designs that are contrary to public order or morality;
- signs communicated under Article 6*ter* of the Paris Convention for the Protection of Industrial Property;
- prior art, including prior protected trademarks, copyright;
- designs determined exclusively by a technical function.

Question 29 - In your jurisdiction, can a part of a GUI design (i.e., some elements only of the GUI design) be protected? If YES, how? If YES, can a part of a GUI design be protected if it appears only under certain circumstances⁵⁵?

71. A part of a GUI design can be protected in most responding jurisdictions (74 per cent of the responding jurisdictions).



72. It follows from the replies that, generally, the applicant has to indicate the part of design sought for protection in solid lines and the part not claimed for protection in broken lines, in the same way as for other partial designs⁵⁶.

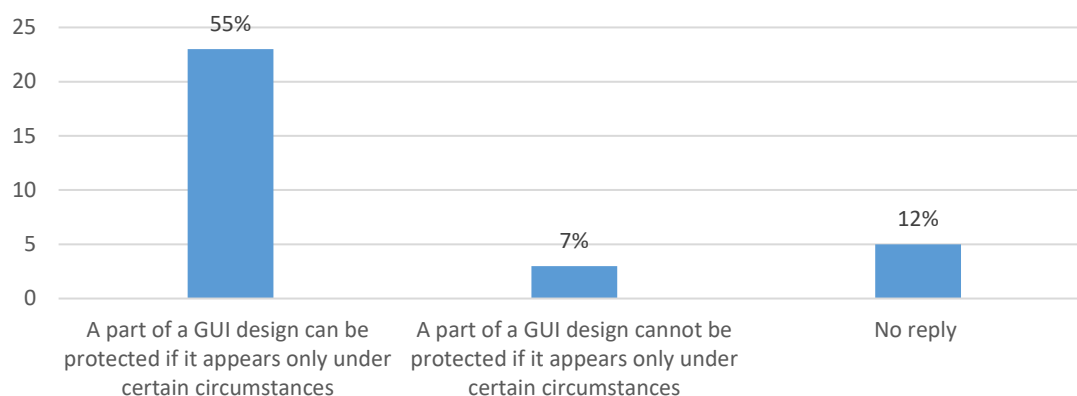
⁵⁵ e.g., in a navigation application: “icons alert” popping up in case of traffic jam, accident, etc.

⁵⁶ See the replies by Denmark, France, Japan, Lithuania, Mexico, Poland, Portugal, Republic of Korea, Singapore, Slovakia, United Kingdom, United States of America and the BOIP to Question 29 in document SCT/41/2 Rev.

73. In some cases⁵⁷, the applicant has the choice either to represent only the part sought for protection or to represent the whole design using a visual or graphical disclaimer (dotted/broken lines, shadow) for the part for which protection is not claimed.

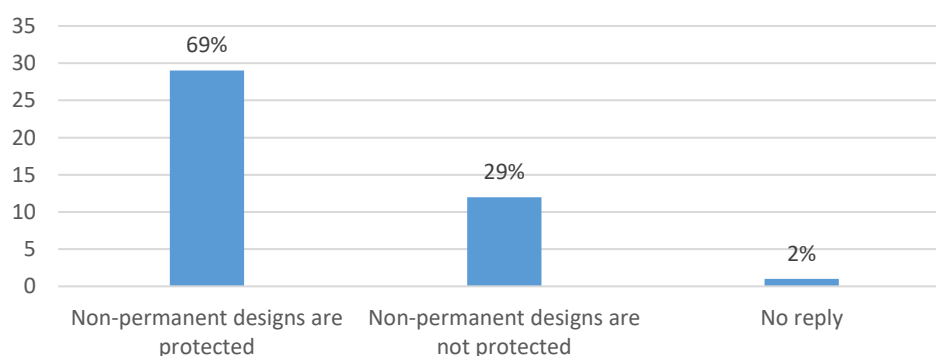
74. In two responding jurisdictions⁵⁸, the applicant must represent only the claimed part of the GUI design in solid lines.

75. As to the question whether a part of a GUI design can be protected if it appears only under certain circumstances, 55 per cent of the responding jurisdictions replied “Yes” while 7 per cent of the responding jurisdictions replied “No”.



Question 30 - In your jurisdiction, is protection provided to non-permanent designs⁵⁹? If YES, is the non-permanent design deemed to be embodied in, or tied, to an article? If YES, what is the article?

76. Non-permanent designs are protected in the majority of responding jurisdictions (69 per cent of the responding jurisdictions).

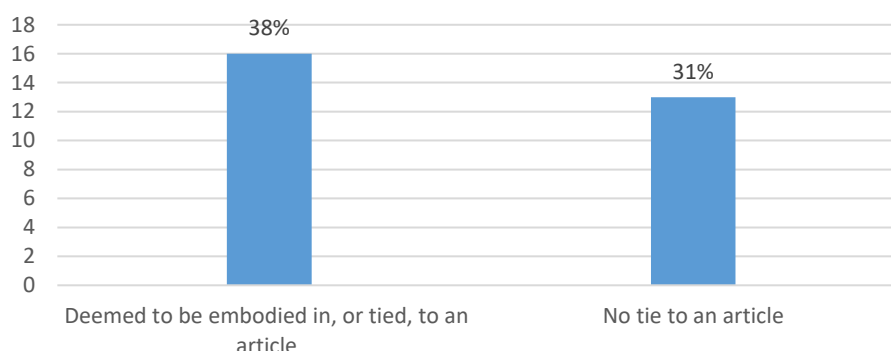


⁵⁷ See the replies by Croatia, Czech Republic, Germany and Switzerland to Question 29 in document SCT/41/2 Rev.

⁵⁸ See the replies by Brazil and Finland to Question 29 in document SCT/41/2 Rev.

⁵⁹ Footnote 14 of the questionnaire (Annex II in document SCT/41/2 Rev.) is reproduced: “The following are examples of non-permanent designs: the design of a lampshade which is not apparent unless the lamp is lighted, the design of a woman’s hosiery which is not apparent unless it is in place on her legs, the design of inflated articles, such as toy balloons, water toys, air mattresses, which are not apparent in the absence of the compressed air which gives them form, a water design in a fountain, a laser keyboard and a projection of a speedometer or radio control panel onto a windshield of a car. See the contribution of the United States of America referring to Hruby, 373 F.2d 997, 153 USPQ 61 (CCPA 1967) (p. 6).”

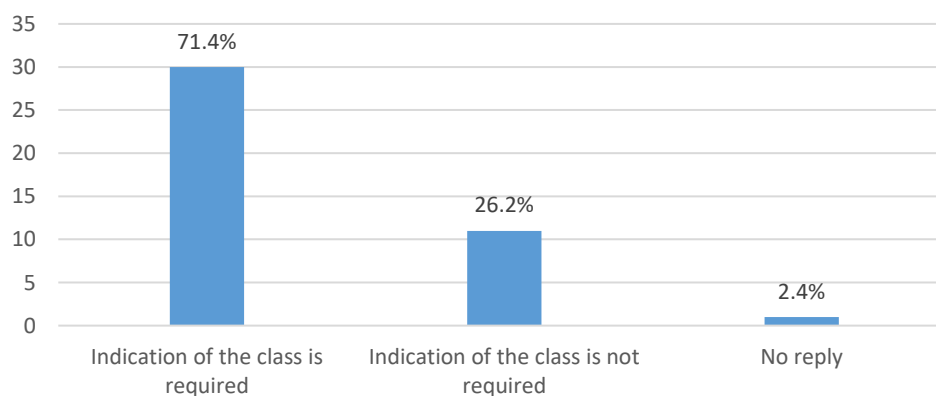
77. In over a third of responding jurisdictions, the non-permanent design is deemed to be embodied in, or tied, to an article (38 per cent of the responding jurisdictions).



78. It follows from some comments to Question 30 that the article must be the one to which the non-permanent design is attached or is applied to, or the one which allows the non-permanent design to be revealed or be visible under some circumstances⁶⁰. The article is generally indicated in the product indication or defined in the claim of the application for registration of the design.

Question 31 - In your jurisdiction, is an indication of the class required in a design application? If YES, which classification system is applied in your Office? If the Office assigns the class, can the applicant challenge or appeal the classification? Is there an exception for GUI/icon designs?

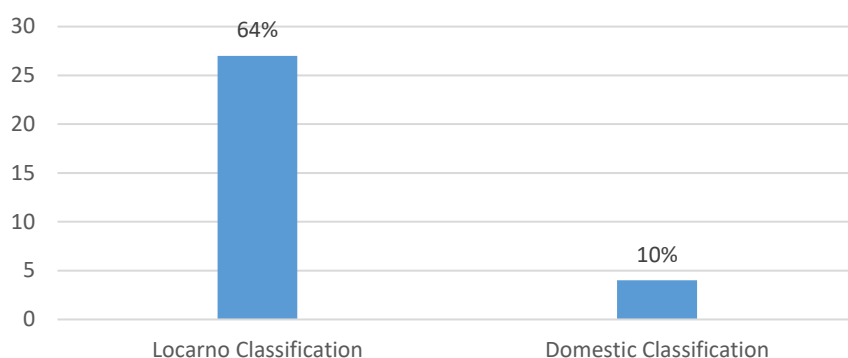
79. The majority of responding jurisdictions require the indication of the class in a design application (71.4 per cent of the responding jurisdictions).



80. It follows from the replies to Question 31 that:

- the Locarno Classification for the purposes of the registration of industrial designs, established by the Locarno Agreement (1968) is applied in 64 per cent of the responding jurisdictions;
- a domestic classification system is used in 10 per cent of the responding jurisdictions.

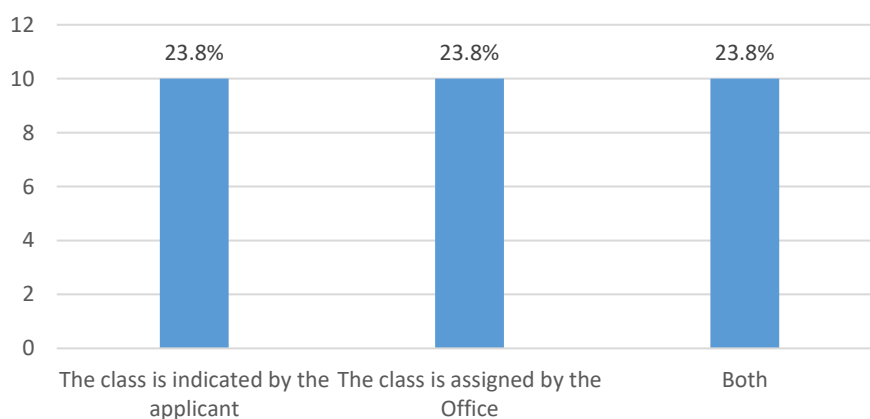
⁶⁰ See the replies by Chile, Colombia, Mexico, New Zealand, Portugal, Republic of Korea, Singapore, Slovakia and Sweden to Question 30 in document SCT/41/2 Rev.



81. Only one jurisdiction⁶¹ uses both Locarno and a domestic classification system (2 per cent of the responding jurisdictions).

82. The returns to Question 31 also reveal that:

- the class is indicated by the applicant in 23.8 per cent of the responding jurisdictions;
- the class is assigned by the Office in 23.8 per cent of the responding jurisdictions;
- both options are possible in 23.8 per cent of the responding jurisdictions.



83. It follows from the comments that, in several responding jurisdictions where the class may or must be indicated by the applicant, the Office may change or complement it⁶².

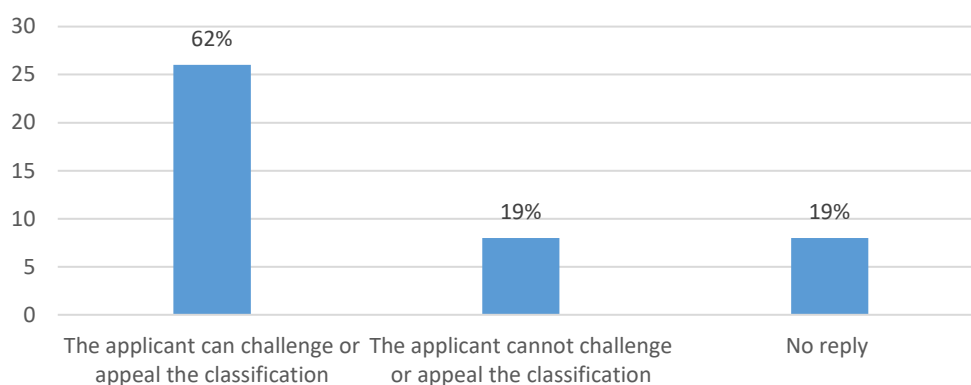
84. In some jurisdictions⁶³ the indication of the Locarno classification is not mandatory but the application for a design registration must indicate the product/s in which the design is intended to be incorporated or to which it is intended to be applied. The indication of product/s must be worded in such a way as to indicate clearly the nature of the product/s and to enable each product to be classified.

85. The applicant can challenge or appeal the classification assigned by the Office in the majority of responding jurisdictions (62 per cent of the responding jurisdictions).

⁶¹ See the reply by the United States of America to Question 31 in document SCT/41/2 Rev.

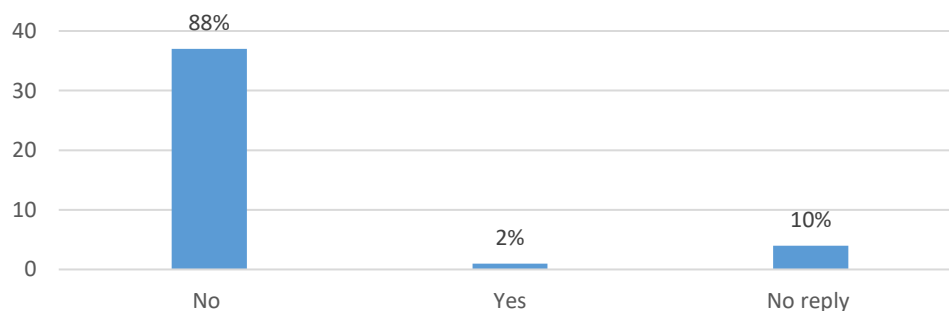
⁶² See the comments by Brazil, Chile, Colombia, Denmark, Romania, Sweden and the United Kingdom to Question 31 in document SCT/41/2 Rev.

⁶³ See the comments by Iceland and the EUIPO to Question 31 in document SCT/41/2 Rev.



86. In two of the responding jurisdictions, where it is not possible to challenge or appeal the classification, applicants may nonetheless provide information on what they believe to be the correct classification. However, it is for the Office to make the final determination of the relevant classification⁶⁴.

87. As to the question if there are exceptions to classification with regard to GUI/icon designs, almost all answers are negative (88 per cent of the responding jurisdictions).



88. One respondent (2 per cent of the responding jurisdictions)⁶⁵ indicates that there is an exception to classification with regard to GUI/icon design: a GUI must be assigned two classification symbols, namely class 14.04 of the Locarno Classification and the class which applies to the article.

Question 32 - Where GUIs are applied to an article, how are they examined in terms of weight given to the visual features?

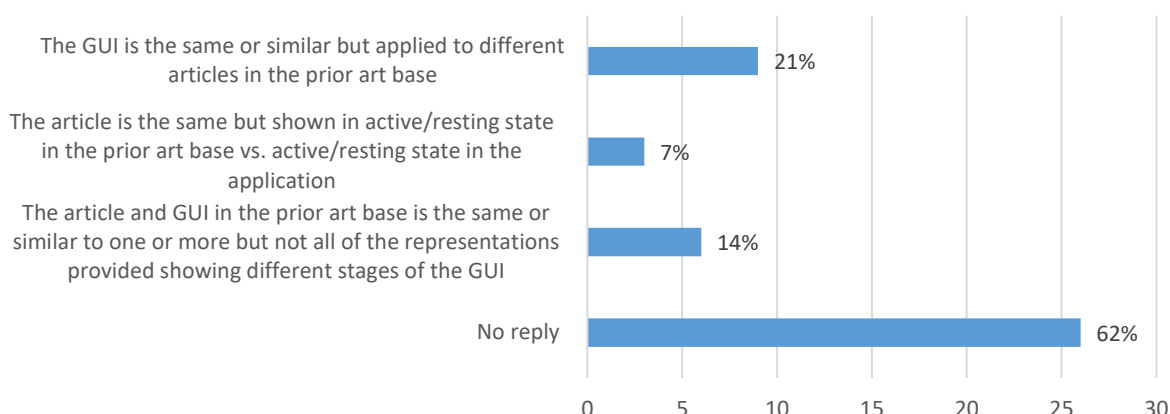
89. Where a GUI design is applied to an article, they are examined, in terms of weight given to the visual features, as follows:

- the GUI is the same or similar but applied to different articles in the prior art base (21 per cent of the responding jurisdictions);
- the article and GUI in the prior art base is the same or similar to one or more but not all of the representations provided showing different stages of the GUI (14 per cent of the responding jurisdictions);

⁶⁴ See the comments by Canada and New Zealand to Question 31 in document SCT/41/2 Rev.

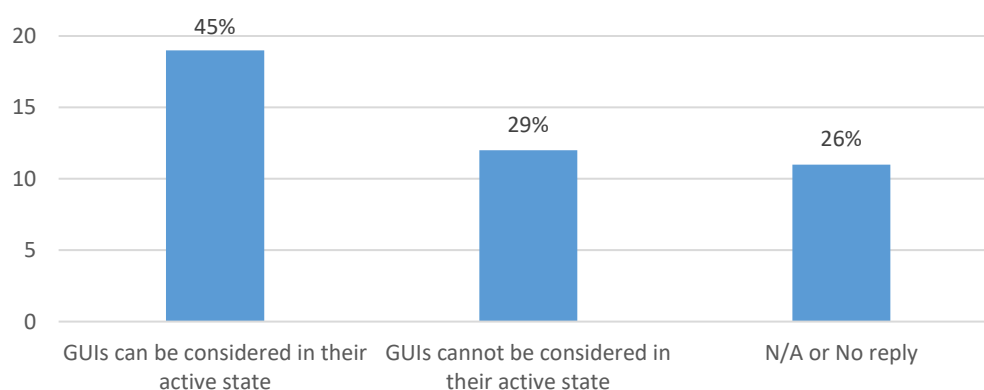
⁶⁵ See the comments by China to Question 31 in document SCT/41/2 Rev.

- the article is the same but shown in active/resting state⁶⁶ in the prior art base vs. active/resting state in the application (7 per cent of the responding jurisdictions);



Question 33 - Does your legislation allow for GUIs to be considered in their active state? If NO, is the Office practice to consider them in their active state?

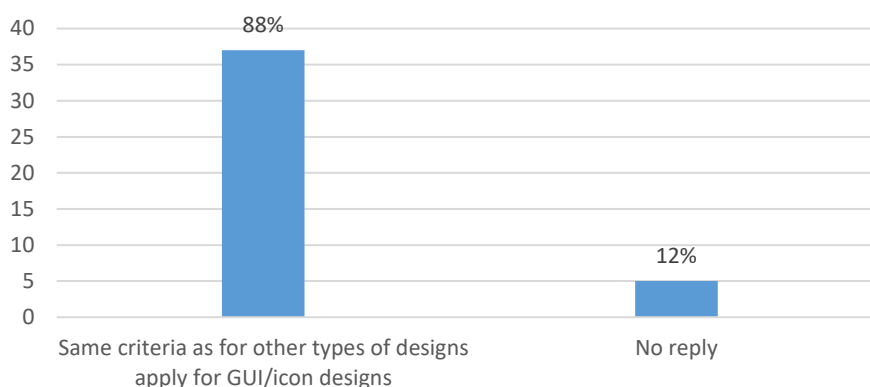
90. GUI designs can be considered in their active state in less than a half of responding jurisdictions (45 per cent of the responding jurisdictions).



Question 34 - In your jurisdiction, are the infringement criteria the same for GUI/icon designs as for other types of designs? If NO, how are they different?

91. Eighty eight per cent of responding jurisdictions replied to Question 34. All of them indicate that the same infringement criteria as for other types of designs apply for GUI/icon designs.

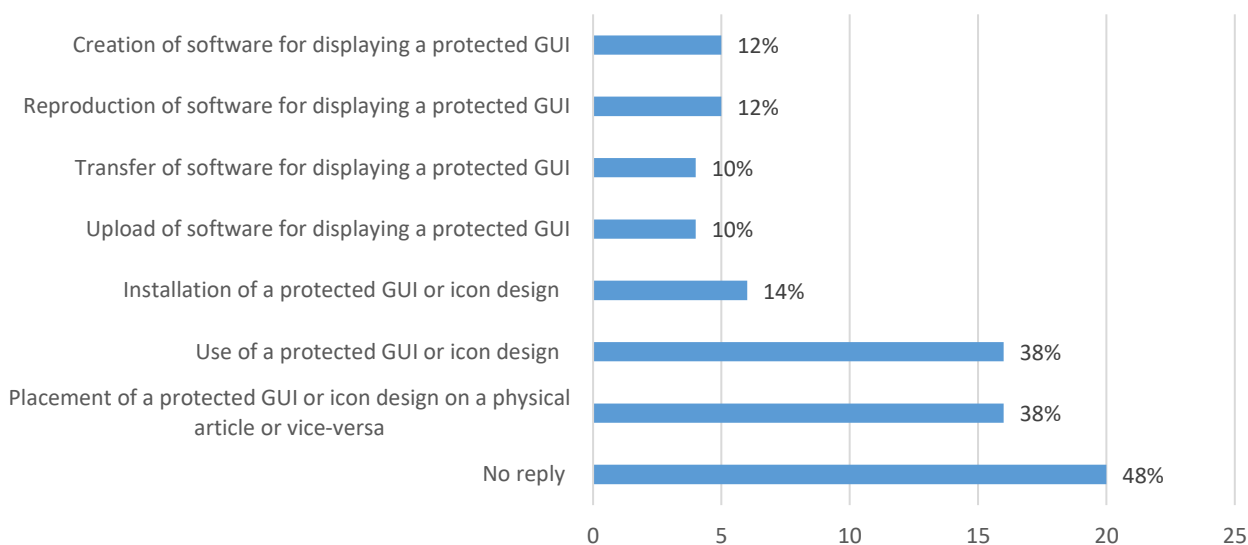
⁶⁶ Footnote 15 of the questionnaire (Annex II in document SCT/41/2 Rev.) explains the terms “resting state” and “active state” as follows: For the purpose of this questionnaire, the terms “resting state” refer to the appearance of the article before interaction with the user e.g., the user turning on, waking, or otherwise interacting with the device that contains the GUI design. The terms “active state” refer to the design as it appears after interaction or during use with the user.



Question 35 - In your jurisdiction, which of the following acts constitute infringement of design rights?

92. Only 52 per cent of responding jurisdictions replied to Question 35. In over one third of those responding jurisdictions, the following acts constitute infringements of design rights:

- use of a protected GUI or icon design (in 38 per cent of the responding jurisdictions);
- placement of a protected GUI or icon design on a physical article or vice-versa (in 38 per cent of the responding jurisdictions).

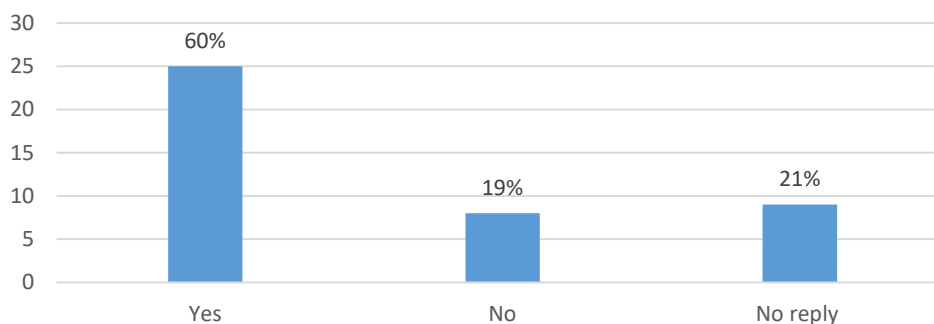


93. Several respondents⁶⁷ indicate the impossibility to accurately answer Question 35 due to a lack of case law or because this is a matter for the courts.

⁶⁷ See the comments by Ireland, Japan, Norway, Pakistan, United Kingdom, BOIP and the EUIPO to Question 35 in document SCT/41/2 Rev.

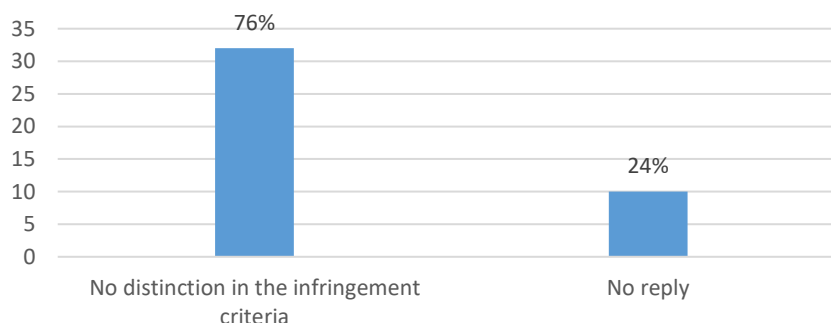
Question 36 - In your jurisdiction, can a single design registration cover use of the design in a physical environment and in a virtual or computer environment?

94. The returns to Question 36 disclose that in over a half of responding jurisdictions, a single design registration covers use of the design in a physical and in a virtual or computer environment (60 per cent of the responding jurisdictions).



Question 37 - In your jurisdiction, is there a distinction in the infringement criteria, depending on the particular virtual/electronic environment in which the design is used? If YES, how are the environments delineated? If YES, would a single design registration be capable of protecting the design in each of these varied environments?

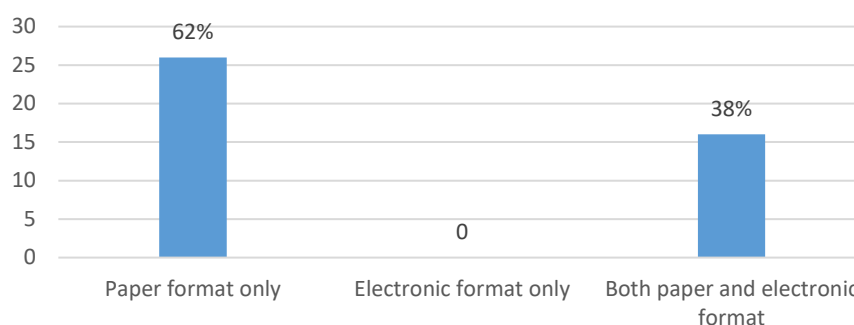
95. Seventy six per cent of responding jurisdictions replied to Question 37. All of them indicate that there are no distinctions in the infringement criteria with regard to the particular virtual/electronic environment in which the design is used.



Question 38 - In what format does your Office provide documents for priority claim purposes? Can the documents be certified? If YES, how are they certified? Are there any particulars for priority claims concerning animated designs?

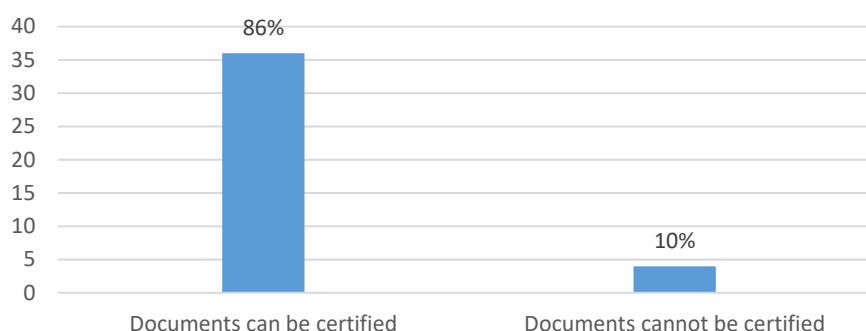
96. Offices provide documents for priority claim purposes in the following formats:

- paper format only (62 per cent of the responding jurisdictions);
- both paper and electronic format (38 per cent of the responding jurisdictions).



97. No responding jurisdiction indicates “*electronic format only*”.

98. Priority documents can be certified in the vast majority of responding jurisdictions (86 per cent of the responding jurisdictions).



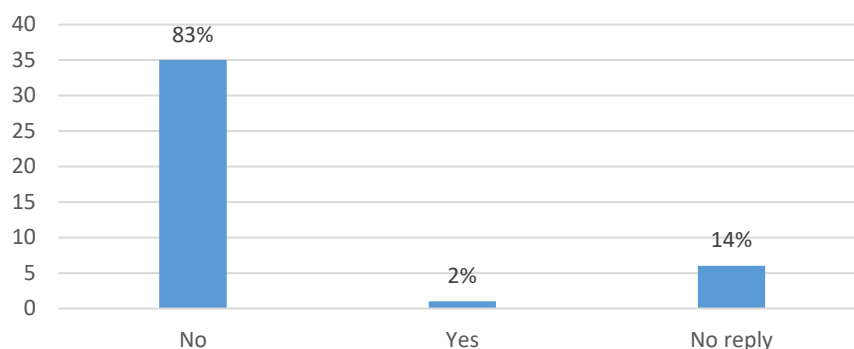
99. In those responding jurisdictions where documents can be certified, this is done in one or more of the following ways:

- By printing on a special paper;
- By signing by an Office official;
- By affixing a stamp or a seal;
- By including a legal agreement paragraph;
- By authentication by the Office ribbon;
- By exchanging through WIPO Digital Access Service (DAS);
- By electronic signature or electronic stamp;
- By autocertification from online case management facility.

100. In several responding jurisdictions, the documents for priority claim purposes are signed and stamped/sealed by the Office⁶⁸.

101. As to the question whether there are any particulars for priority claims concerning animated designs, the answer is “No” in 83 per cent of the responding jurisdictions.

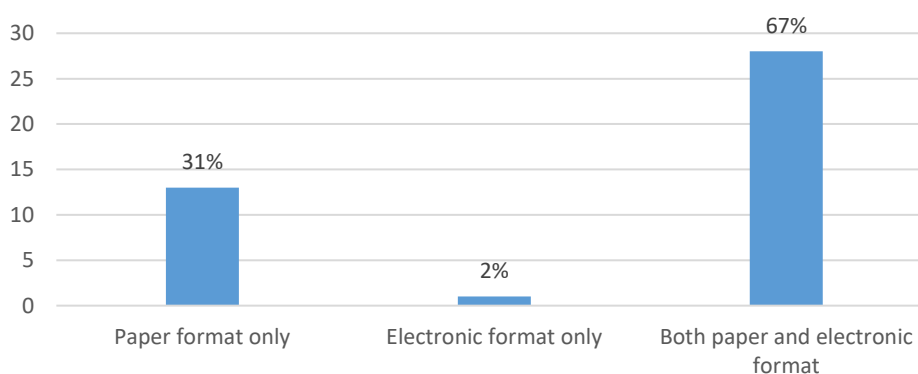
⁶⁸ See the replies by Ecuador, Finland, Iceland, Ireland, Lithuania, Republic of Moldova and Romania to Question 38 in document SCT/41/2 Rev.



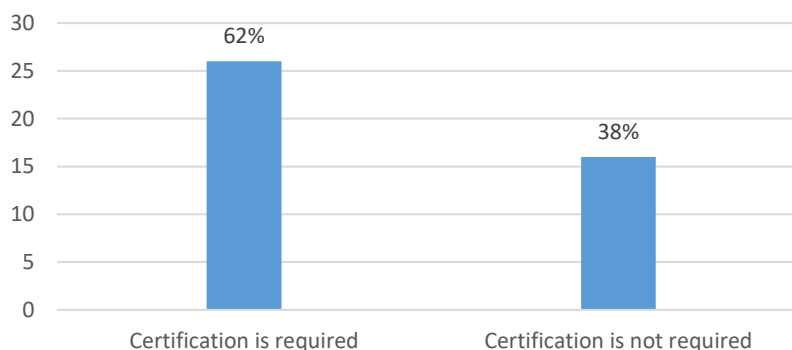
Question 39 - What format of documents does your Office accept for priority claim purposes? Does your Office require certification of priority documents? Are there any particulars for priority claims concerning animated designs? If YES, please specify.

102. Offices accept documents for priority claim purposes in the following formats:

- paper format only (98 per cent of the responding jurisdictions);
- electronic format only⁶⁹ (2 per cent of the responding jurisdictions);
- both paper and electronic format (67 per cent of the responding jurisdictions).

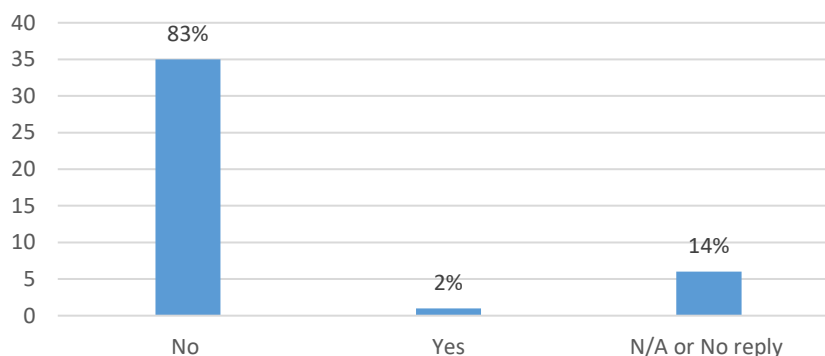


103. As to the certification of priority documents, it is required in 62 per cent of the responding jurisdictions.



⁶⁹ See the reply by New Zealand to Question 39 in document SCT/41/2 Rev.

104. As to the question if there are any particulars for priority claims concerning animated designs, the answer is “No” in 83 per cent of the responding jurisdictions.



CONCLUSION

105. In the responding jurisdictions, the main trends can be summarized as follows:

- The vast majority of responding jurisdictions protect graphical user interface (GUI), icon and typeface/type font designs.
- The majority of responding jurisdictions do not require a link between a GUI/icon design and an article as a prerequisite for registration. This is mainly because of the nature of new technological designs, which may be used in different articles/environments. In most of these jurisdictions, the indication of an article is optional. In all of them, a patent design/design registration can be obtained for a GUI/icon design *per se* if it is represented alone. In most of them, the patent design/design registration covers the use of the claimed GUI/icon design in any article/environment.
- In almost a third of responding jurisdictions a link between a GUI/icon design and an article is required as a prerequisite for registration. In the majority of those jurisdictions:
 - the link limits the scope of design rights;
 - the most widespread way of representing a GUI/icon design is representation of the GUI/icon design with the article in dotted or broken lines, accompanied by an indication in words of the article;
 - the Offices search for any design with a similar or identical appearance, regardless of the articles to which it applies.
- The most widespread methods of representation available to applicants to claim protection for animated designs are static images in paper or electronic format; where a choice of different methods of representation is available, the methods used the most by applicants is representing the design through static images in electronic format.
- The majority of responding jurisdictions provide for one or more additional requirements where animated designs are represented by series of static images or a sequence of drawings or photographs. The most widespread requirements are:
 - all images must give a clear perception of the movement/change/progression;
 - all images must be visually related.

- There are generally no special publication procedures for animated designs, they are published electronically in the majority of responding jurisdictions.
- A part of a GUI design can be protected in the majority of responding jurisdictions. A part of a GUI design which appears only under certain circumstances can be protected in over a half of responding jurisdictions.
- The majority of responding jurisdictions protect non-permanent designs.
- The majority of responding jurisdictions require the indication of the product class in a design application.
- In the majority of responding jurisdictions, a single design registration covers use of the design in a physical environment and in a virtual or computer environment.
- All responding jurisdictions provide documents for priority claim purposes in paper format. Over one third of responding jurisdictions provide them in both paper and electronic format. Offices accept documents for priority claim purposes in both paper and electronic format.
- In most responding jurisdictions, the infringement criteria are the same for GUI/icon designs as for other types of designs.

106. The SCT is invited to consider the contents of the present document.

[End of document]