

Contribution to the WIPO questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

Summary:

- *The present document has been prepared by the European Union Intellectual Property Office as a contribution to the questionnaire addressed by WIPO in relation to Graphical User Interface.*
- *It provides a description on the practice of the Office concerning the representation of Graphical User Interface and highlights*
 - (1) that the said practice has been applied for many years;*
 - (2) that the said practice inspired a convergence programme and led to a harmonised practice among national IP offices from the EU;*
 - (3) that after the adoption of the harmonized practice filings in class 14.04 experienced an increase in volume.*

The present document is submitted by the European Union Intellectual Property Office (hereinafter the “Office”) in order to provide input to the questionnaire sent by the World Intellectual Property Organisation (WIPO) to the members of the Standing Committee of Trademarks, Designs and Geographical Indications (SCT) on the subject matter of Graphical User Interface¹.

This contribution comes as a complement to previous written submissions on the same topic² and to the presentation made by the French national office on the CP6 Convergence Programme during the 39th session of the SCT. The contribution focuses on the practice of the Office in relation with the filing and examination guidelines.

1. A practice that has been applied for many years

i) In terms of substance

When examining an application for a Community design, the Office will examine formalities. However, the Office also carries out an examination of the substantive protection requirements, which is limited to two grounds for non-registrability.

An application will be refused if the design does not correspond to the definition provided for in Article 3(a) Community Design Regulation³ (hereinafter CDR) or if is contrary to public policy or to accepted principles of morality (Article 9 CDR).

¹ WIPO circular C. 8775 June 11, 2018

² Contribution compiled in document [SCT/36/2 REV.2](#)

³ Community Design regulation (EC) No 6/2002 amended by Council Regulation No 1891/2006 of 18 December 2006

Regarding the first ground, that is the non-compliance with the definition of a design, the CDR provides that

A ‘design’ means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation (Article 3(a)).

A ‘product’ means any industrial or handicraft item, including, inter alia, parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs (Article 3(b)).

In relation to icons, the guidelines of the Office provide that designs of screen displays and icons and other kinds of visible elements of a computer program are eligible for registration as Registered Community Design⁴.

However, it is worth noting that, while GUI and computer icons, i.e. visual expressions of computer programs are protectable under EU design law, it is not the algorithm behind but only and solely the graphic expression visible on the screen what is protected. As regards the carrier – the physical product does not have to be visible in the representation of the design and the design of GUI or an icon can be filed and registered as such.

ii) In terms of formalities

When applying, the applicant may itself identify the **classification**, in accordance with the Locarno Classification, of the products indicated in the application.

Since classification is optional, no objection will be raised if the applicant does not submit a classification or does not group or sort the products as required, provided that no objection is raised with regard to the indication of products. If no such objection is raised, the examiner will classify the products ex officio according to the Locarno Classification.

In case of screen displays, icons and other kinds of visible elements of a computer program the examiner will indicate 14-04 “SCREEN DISPLAYS AND ICONS”. Indeed these are respectively the class and subclass for “Graphical user interfaces [computer screen layout]” (102529) and “Icons [for computers]” (102530).

In terms of **graphical representation**, the Office accepts sequences of snapshots for animated designs (including icons and graphical user interfaces). A more detailed explanation with examples will be provided in the next section.

⁴ Section 4.1.3 of the [Guidelines for examination of registered community designs](#)

2. A practice that inspired a convergence programme and led to a harmonised practice among national IP offices from the EU

i) *Background*

The EUIPO Convergence Programme, launched in 2011, linked EUIPO with National Offices of the European Union and User Associations in an effort to reach common ground in areas where IP offices have different practices.

One of the programmes launched under this framework concerns the graphic representations of designs⁵. The objective of the project was to define a common practice for the graphic representation of a design which safeguards both the principle of legal certainty and the objective of having a flexible system of design registration available for users.

The **type of views** was one of the four topics covered by the scope of the project. The objective was finding a harmonized practice regarding types of views which could be accepted when filing a design.

The working group that was created for implementing the project included not only EU IP offices but also, as observers, non EU IP offices (e.g. WIPO) and users associations. The working group was responsible for reaching an agreement on all deliverables of the project, which included the establishment of a common practice on the graphic representation of a design.

ii) *Snapshots*

With regards to the representation of animated designs, the working group agreed to include **snapshots** as a type of view in the common practice in order to give a solution to the applicants that wish to file this type of designs.

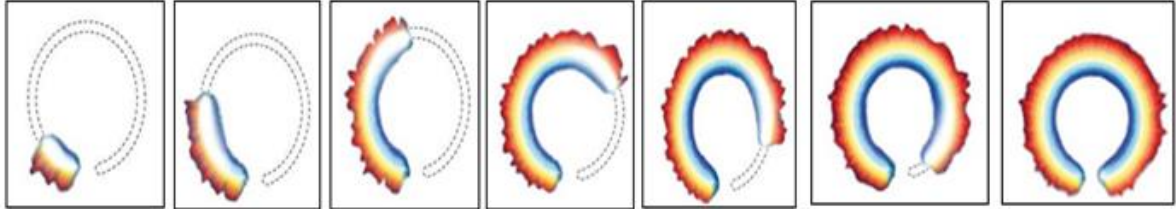
a) Definition

Snapshots are a short sequence of views used to show a single animated design at different specific moments in time, in a clearly understandable progression.

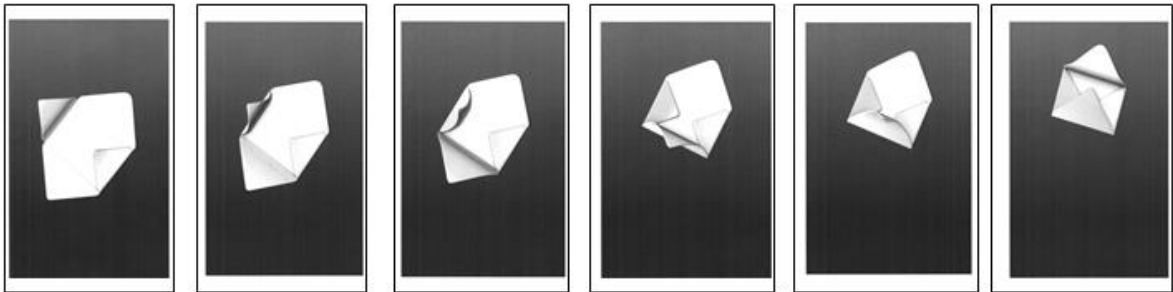
This applies to:

- An animated icon (design consisting of a sequence)

⁵ [CP6. Convergence on graphic representations of Designs](#)



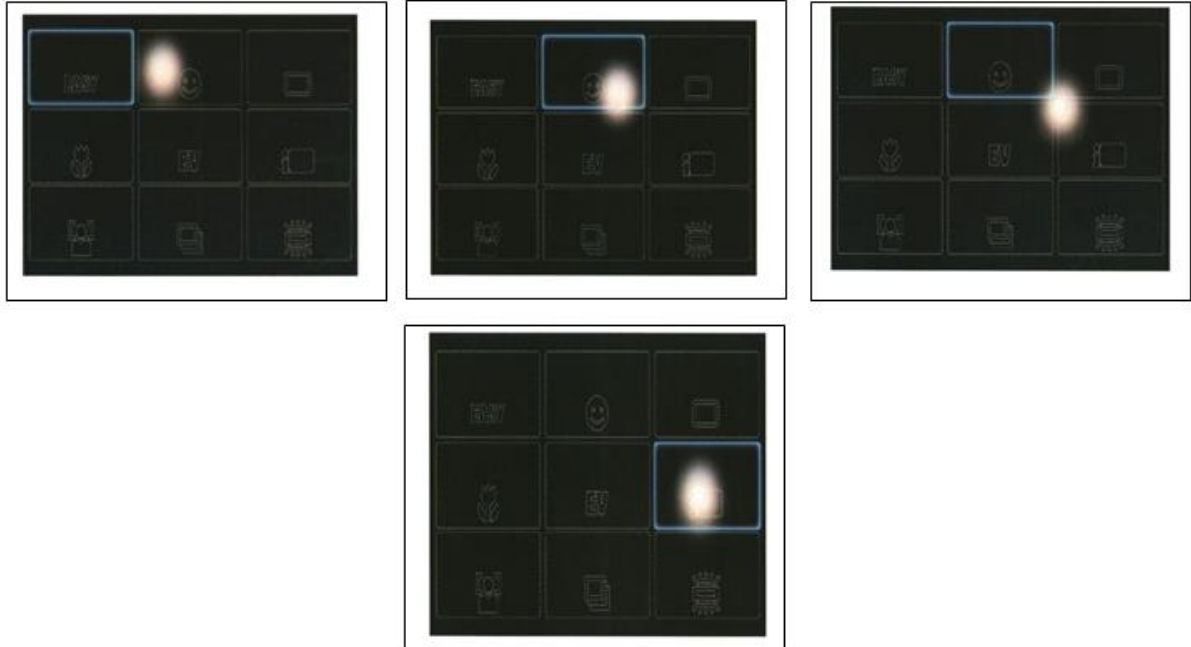
RCD No 2085894-0014 (14.04) (Animated screen displays) Owner: NIKE Innovate C.V.



RCD No 001068001-0002 (14.04) (Icons, Animated icons, Screen displays and icons) Owner: Deutsche Telekom AG

- An animated graphical user interface (design of an interface)





RCD No 001282388-0031 (14.04) (Animated graphical user interfaces for a display screen or portion thereof) Owner: Sony Corporation

b) Requirements

According to the common practice, in principle all views of an animated icon and graphical user interface need to be visually related, meaning that they must have features in common.

In addition the common practice indicates that it is the responsibility of the applicant to number the views in such a way so as to give a clear perception of the movement/progression.

The common practice identifies video clip as a potential way of representing such designs, as it allows the sequence of the movement to be seen and visually appreciated.

The examples provided in the common practice as acceptable examples of animated designs are all Community designs registered according to the practice of the Office⁶.

⁶ The Office allows filling of more than 7 views, however registration and publication is limited to those 7 first views. The additional views will only be disclosed to third parties in case of Inspection of File.

3. After the adoption of the harmonized practice fillings in class 14.04 experienced an increase in volume

Following its adoption by participating EU IP Offices, the common practice was made public through a Common Communication with the purpose of further increasing transparency, legal certainty, and predictability for the benefit of examiners and users alike.

The Common Communication was published on the website of all implementing offices on 15 April 2016.

In 2016 the Office received 2 749 applications of registered community designs under class 14.04, of which 914 before the publication of the Common Communication and 1 835 after.

In 2017 fillings in this class experienced an increase of 6.7 % amounting a total of 2 934 applications.