
From: Kincses Ágnes <agnes.kincses@hipo.gov.hu>
Sent: Thursday, August 16, 2018 10:25 AM
To: Forum, SCT
Cc: Jókúti András; Jámbor Eszter; Baticz Csaba; Dr. Györke-Sipos Mónika
Subject: Re.: Circular C. 8775

Dear Madam, dear Sir,

With reference to Circular C. 8775 by Deputy Director General Wang Binying, I have the pleasure of sending you the input of the Hungarian Intellectual Property Office as follows:

The Hungarian Intellectual Property Office (HIPO) has very limited experience with actual applications relating to GUI and icon designs: overall, HIPO has granted merely three designs in the Locarno classes 14-04 and 32-00 as "computer graphics". Within the Hague system, Hungary has been designated only once as regards a design in the 14-04 Locarno class.

As for the two topics, Hungary wishes to submit the following considerations that are worth exploring in the future work of the SCT relating to GUIs, icons and typeface designs.

(1) Requirement of a link between the design and an article/product

As document SCT/39/2 in its paragraphs 10-15 points out, the degree of de-linking the design from the product has an interplay with the determination of the scope of protection that design rights convey in the individual jurisdictions. Where the scope is not dependent on the actual product the design relates to, a required link seems superfluous - it is an extra hurdle that has no impact on the extent of protection. Conversely, where the protection only extends to a given product category, the required link can ensure that the application is duly indicating the purpose of the design. There seems to be less arguments to restrict design protection to physical/tangible goods in this domain, taking into account the versatility of devices on which GUIs, icons and typefaces may be perceived and utilized. De-linking also has an impact on the use of designs outside of the devices they have been originally devised for. A successful graphical element (avatar, icon, typefont etc.) may easily grow so popular that the design holder may want to exploit its success on merchandise (clothing, notebooks etc.) or by other means, not necessary as merely an aid that facilitates the use of a certain application. In this respect, therefore, **Hungary would like to extend the discussion on the degree of de-linking to its impact on the potential utility and attractiveness of design protection vis-a-vis uses beyond the original purpose of the designs in question.** This debate is inextricably linked to the relationship of certain Locarno classes (32-00 and 14-04) with each other and with the scope of protection enjoyed by the design holder.

(2) Representation

Representation of GUIs, especially 3D and/or animated ones, raises similar questions to those relating to "new types of trade marks". This means that in order to duly tackle the accessibility and clarity issues in the applications, registers, and bulletins, appropriate technical background should be in place: **acceptable file formats and means of display should be provided for** in the filing systems and databases of IP offices, with due regard to the interoperability of the various interlinked systems (e.g. national, regional and international office databases). Harmonization in this respect would greatly enhance the transparency and practicability of the design system.

Representation of 3D and/or animated designs opens up other questions as well relating to the unity and classification of such designs. Traditionally, these are customarily represented by sequences of still images, but this means of representation for "shape shifting" designs may not be the most appropriate one: it may suggest that the application consists of multiple designs, and it is questionable whether it may be classified as a "graphic symbol" or a "screen display" at all.

With kind regards,

Ágnes KINCSES (Ms)
Deputy Head
International Cooperation Section
Hungarian Intellectual Property Office
Tel.: +36 1 474 5547
www.hipo.gov.hu