



Study Question

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Protection of graphical user interfaces

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I. Current law and practice

Patents

1 Can GUIs generally be protected by patents?

If no, please answer questions 1.1, if yes, please go to question 2

No

Please Explain

Graphic user interface alone usually does not meet the requirements that it is something that can be defined as "technical solution".

1.1 If GUIs cannot be protected by patents per se, are any types or aspects of GUIs protectable by patents?

No

Please Explain

Provided the Graphic user interface does not contain any software feature, but is represented by the image displayed on the screen/terminal resp. other photon emitting device, there is most probably no patentable feature.

2 If any type or aspect of GUIs are protectable by patents, under what conditions and to what extent are those types or aspects of GUIs considered to be within the scope of patentable subject matter?

Only technical solution can be patented, therefore only such features, that solve some technical problem and are not of desing nature only.

3 If yes, do the statutory provisions, case law or judicial or administrative practice require specific claim formats for any patent protection? If yes, what claim formats are available for protecting GUIs?

No

Please Explain

4 Is any physical feature required in a claim as a pre-requisite for patentability of a GUI?

No

Please Explain

The physical nature is not essential feature, but it has to be technical solution.

5 To what extent does involvement of the user's mental activities in a GUI process affect the patentability of the GUI?

Not relevant.

Design rights

6 Can GUIs generally be protected by design rights?

If no, please answer questions 6.1, if yes, please go to question 7

Yes

Please Explain

The nature of the GUI is to intermediate interaction between user and device. The appearance of the GUI is the way how the device present itself to the users and how it transfer information and feedback to the user. Its appearance it the key feature giving to the user the information necessary for making purchase choise and using it.

6.1 If not, are any types or aspects of GUIs protectable by design rights?

7 If any type or aspect of GUIs are protectable by design rights, under what conditions and to what extent are those types or aspects of GUIs protectable?

- a) the GUI must be perceived by the senses, the user must have the chance to identify it, learn its features and remember it and recognize it in the future
- b) definitely, to the extent it can be recognized as independent/separate entity
- c) definitely, to the extent it can be recognized as independent/separate entity
- d) theoretically yes, to the extent those can be identified as unique and different enough from already existing
- e) probably not

7.a In particular is a GUI that temporarily appears on a screen of an electronic device considered a "design" that is protectable by design rights?

Yes

Please Explain

The GUI must be perceived by the senses, the user must have the chance to identify it, learn its features and remember it and recognize it in the future

7.b In particular is a GUI protectable by design rights independently from the design of the electronic device itself?

Yes

Please Explain

Definitely, to the extent it can be recognized as independent/separate entity

7.c In particular are smaller elements included in a GUI (e.g. icons, slide buttons) protectable by design rights independently from the GUI as a whole?

Yes

Please Explain

c) definitely, to the extent it can be recognized as independent/separate entity

7.d In particular are movements or screen transitions in a GUI protectable by design rights?

Yes

Please Explain

d) theoretically yes, to the extent those can be identified as unique and different enough from already existing

7.e In particular are there any other types or aspects of GUIs protectable by design rights? If so, under what conditions and to what extent?

No

Please Explain

e) probably not

Copyright

8 Can GUIs generally be protected by copyright?

If no, please answer questions 8.1, if yes, please go to question 9

Yes

Please Explain

The GUI must be perceived by the senses, the user must have the chance to identify it, learn its features and remember it and recognize it in the future.

It can be protected to the extent it can be identified as unique and different enough from already existing

8.1 If not, are any types or aspects of GUIs protectable by copyright?

9 Does the fact that GUIs shown on screens are computer-generated affect the eligibility of GUIs for copyright protection?

No

Please Explain

Computer generated means, generated by the computer according to the instructions given by the program created by the human.

Unless the computer can be creative alone, any result created by the computer is in direct consequence to the program created by the person. The only difference can be mathematical randomization, resp. statistical or higher types of mathematical operations, but the computer does not have the ability to be creative at all.

10 If any type or aspect of GUIs can be protected by copyright, under what conditions and to what extent are those types or aspects of GUIs protectable?

The GUI must be perceived by the senses, the user must have the chance to identify it, learn its features and remember it and recognize it in the future.

It can be protected to the extent it can be identified as unique and different enough from already existing

11 Can the overall "look and feel" of GUIs be protected by copyright?

If no, please answer questions 11.1, if yes, please go to question 12

No

Please Explain

Graphical appearance can be precisely defined and protected.

"Look and feel" does not have precise definition, therefore the capability and the scope of protection is unclear and the enforcement would be fast impossible.

1.1

If not, can individual elements included in a GUI be protected?

Yes

Please Explain

Provided those meet the criterions cited above:

The elements must be percieve by the senses, the user must have the chance to identify it, learn its features and remember it and recognize it in the future.

It can be protected to the extend it can be identified as unique and different enough from already existing

Trademarks

12

Can GUIs generally be protected as trademarks?

If no, please answer questions 12.1, if yes, please go to question 13

Yes

Please Explain

Only to the extend it can be considered for denomination that is capable to distinguish products.

It would be probably practical for simple GUI that is so typical and so dominant on the product that the users uses it for identification, ie - simple welcome/idle gui appearance (usually in fact displays trademark of the manufacturer).

For more complex GUIs it probably does not make sense.

2.1

If not, are any types or aspects of GUIs protectable by trademarks?

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If any type or aspect of GUIs are protectable as trademarks, under what conditions and to what extent can those types or aspects of GUIs protectable?

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For more complex GUIs it probably does not make sense.

3.1

For example, is a screen movement or transition in a GUI protectable as a trademark?

No

Please Explain

Probably not, unless it is distinctive enough, different from existing and can distinguish products. This is probably not too likely.

14 Does a GUI need to acquire secondary meaning through use in order to be protected as a trademark?

No

Please Explain

For trademark registration distinctiveness is required, meaning is not important. Purely creative/meaningless denominations are usually preferred.

Other forms of protection

15 Does your Group's current law provide any other means for protecting GUIs that are similar in nature to traditional IP rights?

No

Please Explain

We have no other non traditional IP protection instruments suitable for GUI protection available.

16 If yes, what forms of protection are available, and under what conditions, and to what extent, are such other forms of protection available?

II. Policy considerations and proposals for improvements of your Group's current law

17 Does your law provide sufficient IP rights protection for GUIs? If yes, is that by means of any one or more types of IP rights protection (and if so, which), or by means of combination of those types of IP rights protection?

If no, please answer questions 18, if yes, please go to question 19

Yes

Please Explain

The protection via copyright and via trademark seems to us to be sufficient for the purposes of protection of designs/features that are unique enough to be monopolized for single competitor.

18 If no, how is your law deficient?

19 Is your law sufficiently clear on whether and to what extent GUIs are protected by various IP rights?

If no, please answer questions 20, if yes, please go to question 21

Yes

Please Explain

The nature of GUI seems to be clear .. graphic interface .. to be protected as graphic copyright artwork. The other aspects of GUI can be protected either as denominations suitable to distinguish or solutions of technical nature. We do not see any other aspects that GUI can contain, but there is no appropriate IP protection tool for that.

20 If no, how is your law deficient in this regard?

21 Are there any aspects of your law that could be improved (for example, by strengthening or reducing the extent to which GUIs may be protected)?

No

Please Explain

We are of the opinion that all features of GUI that can be protected are already protected.

III. Proposals for harmonisation

22 Does your Group consider that harmonisation in this area is desirable?
*If yes, please respond to the following questions without regard to your Group's current law.
Even if no, please address the following questions to the extent your Group considers your Group's laws could be improved.*

No

Please Explain

We are of the opinion that the harmonization of general IP regulation is sufficient, no special GUI harmonization seems to be necessary, the scope of protection seems to be broad enough.

Patents

23 Should GUIs generally be capable of protection by patents?
If no, please answer questions 23.1, if yes, please go to question 23.2

No

Please Explain

We do not see any new technical solution capable of Patent protection in the GUI.

23.1 If not, should at least some types or aspects of GUIs be protectable by patents?

Yes

If so, which?

If those will meet the inovative test and can be considered for technical solution. But this is not too likely.

23.2 Please explain your reasons.

We consider GUI for purely graphic feature. The way the interaction is transmited between human and device and reflected in the appearance of GUI is not part of the GUI but of the firmware that enjoys another type of protection.

24 Under what conditions, and to what extent, should GUIs fall within the scope of patentable subject matter?

If those will meet the inovative test and can be considered for technical solution. But this is not too likely.

24.1 For example, should involvement of user's mental activities in a GUI process affect the patentability of the GUI?

No

Please Explain

It does not seem to be technical solution embodied in the GUI. Either it is embodied in the firmware or it is embodied in the hardware of the device resp. of the display. It is therefore protected separately.

24.2 Please explain your reasons.

It does not seem to be technical solution embodied in the GUI. Either it is embodied in the firmware or it is embodied in the hardware of the device resp. of the display. It is therefore protected separately.

25 Should a physical feature be required in a claim as a pre-requisite for patentability of GUIs?

Yes

Please explain your reasons

Technical solution is always connected to harware resp. to material substrate. Technical solution of completely immaterial nature does not seem to by technical solution but method that is excluded from patentability.

26 What claim formats should be available for protecting GUIs?

We are of the opinion that the claims availabe to the copyright/IP protection are sufficient for the protection of GUI.

Design rights

27 Should GUIs generally be capable of protection by design rights?

If no, please answer questions 27.1, if yes, please go to question 27.2

Yes

Please Explain

The graphics appearance of GUI, resp. the shape and mutual relations of the features of GUI are very suitable for protection by the design rights.

27.1 If not, should at least some types or aspects of GUIs be protectable by design rights?

27.2 Please explain your reasons.

The graphics appearance of GUI, resp. the shape and mutual relations of the features of GUI are very suitable for protection by the design rights.

28 Under what conditions, and to what extent, should GUIs be protectable by design rights?

Provided the GUI can be represented and described in graphical features, shapes, relations, colors, if those features or its relations can be considered unique, those can be recognized as capable of protection via the design rights.

28.1 For example, should screen movements or transitions in a GUI be protectable by design rights?

Yes

Please explain your reasons.

Only in the case those are really new, unique and typical enough to distinguish from other GUIs of other competitors.

29 Should a GUI be protectable by design rights independently from the design of the electronic device itself?

Yes

Please explain your reasons.

If it can be separately expressed resp. is not ultimately dependent on the one specific hardware, it should enjoy the separate protection.

Copyright

30 Should GUIs generally be capable of protection by copyright?

If no, please answer questions 30.1, if yes, please go to question 30.2

Yes

Please Explain

Provided the GUI can be represented and described in graphical features, shapes, relations, colors, if those features or its relations can be considered unique, those can be recognized as capable of protection via the copyright rights.

30.1 If not, should at least some types or aspects of GUIs be protectable by copyright?

30.2 Please explain your reasons.

Typical GUI consists of more or less creatively arranged graphical features, shapes, relations, colors, therefore if those features or its relations can be considered unique, those can be recognized as capable of protection via the copyright rights.

31 Should the fact that GUIs shown on screens are computer-generated affect the eligibility of GUIs for copyright protection?

No

Please explain your reasons.

Computer generated means, generated by the computer according to the instructions given by the program created by the human.

Unless the computer can be creative alone, any result created by the computer is in direct consequence to the program created by the person. The only difference can make mathematic randomization, resp. statistic or higher types of mathematic operations, but the computer does not the ability to be creative at all.

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Typical GUI consists of more or less creatively arranged graphical features, shapes, relations, colors, therefore if those features or its relations can be considered unique, those can be recognized as capable of protection via the copyright rights.

32.1 For example, should the overall "look and feel" of a GUI be protectable by copyright?

No

Please explain your reasons.

Graphical appearance can be precisely defined and protected.

If "Look and feel" is different from appearance resp. does not have precise definition if any, the capability and the scope of protection is unclear and the enforcement would be fast impossible.

Trademarks

33 Should GUIs generally be capable of protection as trademarks?

If no, please answer questions 33.1, if yes, please go to question 33.2

Yes

Please Explain

Only to the extent it can be considered for denomination that is capable to distinguish products.

It would be probably practical for simple GUI that is so typical and so dominant on the product that the users uses it for identification, ie - simple welcome/idle gui appearance (usually in fact displays trademark of the manufacturer).

For more complex GUIs it probably does not make sense.

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For more complex GUIs it probably does not make sense.

34.a For example should screen movements or transitions in a GUI be protectable as trademarks?

No

Please Explain

It is not capable to distinguish, cannot probably be attached/connected to the goods/services to identify the manufatirer.

34.b For example should a GUI be required to acquire secondary meaning through use, in order to be protected as a trademark?

No

Please Explain

For trademark registration distinctiveness is required, meaning is not important. Purely creative/meaningless denominations are usually preferred.

Other forms of protection

35 Should there be other forms of protection for GUIs? If so, what forms of protection should there be?

No

Please explain your reasons

We are of the opinion that the present protection is sufficient, there were no important disputes regarding GUI until the trial between Apple and Samsung (slide to unlock gesture) and it demonstrated the limits and disadvantages of possible broader protection.

36 Should there be a sui generis right for protection of GUIs? If so, what aspects of GUIs should be protected by such a right, to what extent, and under what conditions?

If yes, please answer questions 37, if no, please go to question 38

No

Please Explain

We are of the opinion that the GUI does not have any specific feature different from anything other on the market that would justify separate sui generis protection. From our point of view it has a lot of common with graphical artwork, maybe applied artwork, resp. industrial design, but there is nothing extra that would justify specific protection, the more when it can be always covered by the unfair competition protection.

37 Should there be any exceptions or limitations to a sui generis right in order to ensure an innovative and competitive market? If so, what exceptions and limitations should there be and why?

38 Please comment on any additional issues concerning protection of GUIs that your Group considers relevant to this Study Question

We believe that before considering existing resp. future de lege ferenda proposals, exact analysis and definition of gui from the point of view of its nature and appropriate existing IP rights scope would be useful. The unclear definition of GUI, resp. what exactly the umbrella term GUI consists of makes the de lege ferenda proposals hard to formulate.

Please indicate which industry sector views are included in part "III. Proposals of harmonization" on this form:

law, cell phones resp. microelectronic industry, gaming industry, TV industry

Please enter the name of your nominee for Study Committee representative for this Question (see Rule 12.8, Regulations of AIPPI). Study Committee leadership is chosen from amongst the nominated Study Committee representatives. Thus, persons not nominated as a Study Committee representative cannot be in the Study Committee leadership.
Anne Marie VERSCHUUR