

2017 AIPPI World Congress - Sydney
Adopted Resolution
October 17, 2017

Resolution

2017 – Study Question (General)

Protection of graphical user interfaces

Background:

- 1) This Resolution concerns the issue of whether and how graphical user interfaces (**GUIs**) may be protected by various intellectual property rights (**IP rights**).
- 2) For the purposes of this Resolution, the term **GUI** refers to an interface which allows users to interact with electronic devices through graphical elements (e.g. icons, menus, scroll bars, windows, transitional animations, dialogue boxes) instead of typing characters.
- 3) This Study Question is primarily concerned with the issue of whether GUIs should be protected by means of "traditional" IP rights, namely:
 - patents
 - design rights
 - copyright; and
 - trademarks.

Where jurisdictions permit intellectual property protection for GUIs by means of similar rights, such as trade dress protection, such rights are within the scope of this Study Question.

- 4) Broader forms of legal protection that may also have application to GUIs, such as laws relating to unfair competition, unfair business practices or general contractual principles are generally outside the scope of this Study Question, other than in those jurisdictions where unregistered trademarks and trade dress may be protected under general principles of unfair competition.
- 5) GUIs are directly connected to user experience, so can significantly impact consumers' choice of products. As a result, companies devote significant resources to the development of GUIs. This means that both appropriate IP rights protection of GUIs, and freedom to operate in the IP rights landscape, are very important economic issues for incumbent companies and new market entrants. GUIs may potentially be protected by IP rights including patents, design rights, copyright and trademarks.

- 6) By its nature, software is generally developed to have broad application. Computers, smartphones, tablets, gaming and other stationary and handheld machines are just some of the industries in which GUIs are relevant. These industries are highly competitive and their operations extend beyond national boundaries. Different types of IP rights protection may apply to different aspects of GUIs, leading to questions about what type, or combination of types, of protection is or should be available. Further, with variation between jurisdictions as to how and whether particular types of IP rights apply (or not) to GUIs, harmonization of the available IP rights protection in relation to GUIs is desirable.
- 7) 39 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General of AIPPI and distilled into a Summary Report (see below links).
- 8) At the AIPPI World Congress in Sydney in October 2017, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

Patents

- 1) GUIs should generally be capable of protection by patents.
- 2) Involvement of a user's mental activities in an interaction with a GUI should not preclude the patentability of the GUI.
- 3) It should not be a prerequisite that a claim to a GUI includes a physical feature.
- 4) No specific claim format should be required for patent protection of GUIs.

Designs

- 5) GUIs should generally be capable of protection by design rights.
- 6) Movements and transitions in a GUI should generally be capable of protection by design rights.
- 7) A GUI should generally be capable of protection by design rights without requiring any connection to a physical device.

Copyright

- 8) GUIs should generally be capable of protection by copyright.
- 9) The fact that GUIs are computer generated should not exclude their eligibility for copyright protection.
- 10) The threshold for copyright protection of GUIs should not be higher than for other works.

Trademarks

- 11) GUIs should generally be capable of protection by trademark rights.
- 12) Movements and transitions in a GUI should generally be capable of protection by trademark rights.
- 13) A GUI should not be required to acquire distinctiveness through use to be capable of protection as a trademark. Where a GUI is not inherently distinctive, acquired distinctiveness should be required.

Other forms of protection

- 14) Having regard to the IP rights that should be available for protection of GUIs as set out in paragraphs 1), 5), 8) and 11) above, *sui generis* protection for GUIs should not be necessary.

Authorities' procedures

- 15) Authorities for patent, design, copyright and trademark rights should adopt measures to accept and publish electronic data that can dynamically represent movements and transitions in a GUI.

Links:

- Study Guidelines
<http://aippi.org/wp-content/uploads/2017/01/FINAL-website-version-GUIs.pdf>
- Summary Report
http://aippi.org/wp-content/uploads/2017/08/SummarReport_General_GUIs_15August2017_final.pdf
- Reports of National and Regional Groups and Independent Members
<http://aippi.org/committee/protection-of-graphical-user-interfaces/>