

Design protection for graphical user interfaces

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“It is still not possible to protect the GUI itself, independent of the product that includes such a GUI.”

On March 12, 2014, the State Intellectual Property Office of China (SIPO) announced amendments to the *Guidelines for Examination*, which give design protection to graphical user interfaces (GUIs). The amendments will take effect on May 1, 2014.

With the fast growth of the IT industry, SIPO recognised that there is a need to protect the creative work involved in designing GUIs for products such as mobile phones, computers and digital cameras. However, Section 7.4(11) Chapter 3 of Part I of the guidelines specifically prescribes that “the patterns shown when the product is electrified, such as the pattern on an electronic watch dial, the pattern on the screen of a mobile phone, software interface, and so on” are not the subject matter of a design patent.

Section 7.2 Chapter 3 of Part I prescribes that “the pattern of a product shall be permanent and visible, and not flickering and visible only under specific conditions”. These sections exclude the possibility of protecting GUIs with design patents. In order to allow GUIs to be protected by design patents, these sections have been deleted.

However, this does not mean that any pattern displayed when a device is switched on can be protected with a design patent. The new guidelines exclude “game interfaces, and patterns displayed by the displaying device of a product, which patterns are not relevant to human-computer interaction or to the realisation of the function of this product, such as wallpaper on an electronic screen, patterns shown during the start or shutdown of the device, or the layout of drawings and texts on web pages of websites” from the subject matter protected by design.

Although the amendments are aimed at giving GUIs design protection, theoretically the changes may open the door for the protection of designs that are not GUIs but can only be seen when a product is in a power-on state, such as a pattern of lights shown in a head light or tail light of a car, which has not been possible previously. It is arguable that such a pattern of lights does not fall into the excluded subject matter as it may be relevant to human-computer interaction or to the realisation of the function of the product, such as a car head light. However, from recent seminars held by SIPO regarding design protection of GUI, it seems more likely than not that examiners will reject design applications for the patterns of light in a car head light seen only in its power-on state.

Amendments

The amendments add a paragraph to Section 4.2 Chapter 3 of Part I, which prescribes the requirements for drawings in a design application for a GUI. It reads “So far as a product that includes a GUI is concerned, views of the complete product should be submitted. Where the GUI is dynamic, the applicant should submit views of the complete product with at least one state of the GUI and may submit views of the key frames only for the other states and the views should be able to exclusively determine the trend of change of the animation in the dynamic patterns.” It is to be noted that the subject of a design still needs to be a product with a GUI. It is still not possible to protect the GUI itself, independent of the product that includes such a GUI.

The amendments also add a paragraph to Section 4.3(7) Chapter 3 of Part I, which prescribes the requirement for a brief explanation for a design application for a GUI. It reads “So far as a product that includes a GUI is concerned, when necessary, a brief explanation specifies the use of the GUI, the location of the GUI on the product, ways of human-computer interaction and different states, etc.”

The amendments also add a paragraph to Section 6.1(5) Chapter 5 of Part IV, which prescribes the principles for comparing a design patent for a product that includes a GUI, with prior designs of products of the same or approximate category, in invalidation proceedings. It reads, in determining whether a design patent for a product with a GUI is significantly different from prior designs: “So far as a product that includes a GUI is concerned, if the other parts of the design are common designs, the GUI has a notable influence on the overall visual effects.”

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