Catalogue on the Practices on the Protection of New Technological Design

This catalogue contains information provided by the ID5 partners. The document is for educational and informational purposes only. It aims to reflect the practices of the participating offices in the area of industrial designs. The ID5 partners are not responsible for any use that may be made of the information contained in the catalogue. Readers looking for reference or additional material related to applications or practice before an ID5 partner are encouraged to consult the website of the respective ID5 partner.

Contents

    A.7.1   Is it possible to protect a design in a computer or virtual reality environment with an industrial design registration? Specifically, is it possible to protect the use of a design of an automobile in a computer or virtual reality environment, such as in a computer game, Second Life® (http://secondlife.com/) or Turbosquid (https://www.turbosquid.com/) virtual reality

INTRODUCTION

ID5 is an industrial design forum that studies and develops industrial design systems and industrial design office practices and brings together in a collaborative manner the European Union Intellectual Property Office (EUIPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), the National Intellectual Property Administration of the PRC (CNIPA), and the United States Patent and Trademark Office (USPTO), (hereinafter referred to as the "Partner Offices").

Over the past years, new and emerging industrial designs have gained prominence in the commercial market. Once a niche area of industrial design, graphical user interfaces (GUIs), icons, transitional images and animated images now constitute relevant business and are first level of user interaction that drive purchases and success of many consumer products today. Currently, all of the ID5 jurisdictions employ some level of protection for a variety of new and emerging industrial designs. However, the scope of protection and application requirements and presentation for these types of industrial designs varies from one jurisdiction to another.

By better understanding current policies and practices relating to the scope and treatment of cutting-edge industrial designs, the Partner Offices will better understand how practices converge and diverge, and how to better assist applicants in providing robust design protection for their new designs. The public will also better understand the requirements of the Partner Offices, and may better understand how to effectively file applications consistent with these practices. Finally, in understanding current practices used at counterpart Partner Offices, each of the Partner Offices can assess whether updated practices may prove to be advantageous for their own practices and for applicants seeking design protection.

Enclosed follows the results of the aforementioned study, a result of input directly from each of the Partner Offices to agreed areas and questions of focus on the topic of emerging designs. The EU IPO and USPTO were honored to serve as lead Offices in preparing this study and the attached catalogue of results from the study and thank the ID5 Partner Offices for their efforts and contributions in this project.

A. IDENTIFICATION OF INDUSTRIAL DESIGNS IN EMERGING TECHNOLOGIES

A.1 CNIPA

A.1.1 PROTECTABLE DESIGNS

Generally speaking, protection in China currently exists for:

- static (i.e., not moving) graphical user interfaces;
- dynamic (i.e., moving) graphical user interfaces;
- static(i.e., not moving) icons;
- dynamic (i.e., moving) icons;
- transitional images;
- animated characters;
- holographic designs; and
- projected image (e.g., projection onto a windshield, optical/laser projection keyboard).

However, China does not currently provide protection for:

- screen display designs that are displayed only when corresponding signals are sent from external environment (i.e., those displayed in a network environment e.g., the internet, website pages, server and client system, etc.);[1]
- screen savers;[2]
- computer related typeface type font[3]
- screen display designs that are merely displayed apart from practical/functional human interaction (e.g., ornamental patterns (including wallpapers), photo, a scene of computer games and/or movies, etc.);[4] and
- virtual three-dimensional designs.[5]

A.1.2 DESIGN IDENTIFICATIONS

Static graphical user interface is a static interface on a product display device which is displayed graphically and relates to man-machine interaction and product functionality.

Dynamic graphical user interface is a dynamic interface on a product display

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[1] The carrier of screen display designs is not a product and thus is not patentable subject matter.
[2] This type of design is not related to man-machine interaction is not a product and thus this type of design is not patentable subject matter.
[3] The carrier of screen display designs is not a product and thus is not patentable subject matter.
[4] The carrier of screen display designs is not a product and thus is not patentable subject matter.
[5] The carrier of three-dimensional designs is not a product and thus is not patentable subject matter.

device which is displayed graphically and relates to man-machine interaction and product functionality.

Screen display designs that are displayed only when corresponding signals are sent from external environment are designs in which there is no specific product. The graphical user interface is only displayed on the display screen.

Screen saver is a screen saver interface displayed on the product display device.

Static icon is a static icon on a product display device which is displayed graphically and relates to man-machine interaction and product functionality.

Dynamic icon is a dynamic icon on a product display device which is displayed graphically and relates to man-machine interaction and product functionality.

Transitional image is a transitional image on a product display device which is displayed graphically and relates to man-machine interaction and product functionality.

Animated character is an animated character on a product display device which is displayed graphically.

Computer related typeface type font is a design for which there is no specific product; the type font is only displayed on the product display device.

Screen display designs that are merely displayed apart from practical/functional human interaction are designs for which the interface displayed on the display screen does not have the function of man-machine interaction.

Holographic design is 3d image interface on display device related to man-machine interaction and product functionality and using virtual imaging technology.

Projected image is a projection image projected on a projection device related to human-machine interaction and product functionality.

Virtual three-dimensional design is a 3d virtual image generated by computer software.

A.1.3   CLASSIFICATION

Type of Design	**Locarno**
Static Graphical User Interfaces	14-04
Dynamic Graphical User Interfaces	14-04
Screen display designs that are displayed only when corresponding signals are sent from external environment	14-04

Screen Savers	14-04
Static Icons	14-04
Dynamic Icons	14-04
Transitional Images	14-04
Animated Characters	14-04
Computer Related Typeface Type Font	18-03
Screen display designs that are merely displayed apart from practical/functional human interaction	14-04
Other types electronic screen display designs	N/A
Holographic Designs	14-04, 16-02
Projected image	14-04, 16-02
Virtual three-dimensional designs	32-00

A.1.4 EXAMPLES

Static Graphical User Interfaces

Dynamic Graphical User Interfaces

Screen display designs that are displayed only when corresponding signals are sent from external environment

A graphical user interface for a screen

<u>Screen Savers</u>
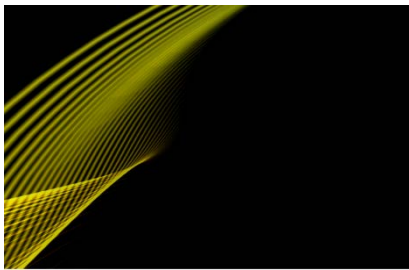
<u>Static Icons</u>

A cell phone with an icon interface

<u>Dynamic (i.e., moving) Icons</u>

None

<u>Transitional Images</u>
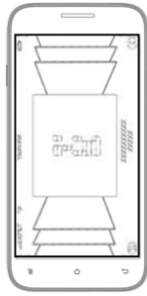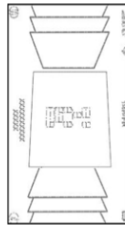
front view   Interface state diagram1   Interface state diagram2   Interface state diagram3
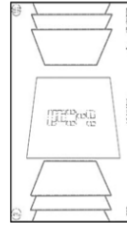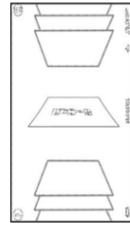
Animated Characters
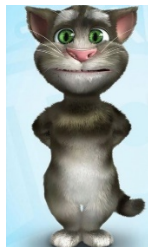
Computer Related Typeface Type Font

None

Screen display designs that are merely displayed apart from practical/functional human interaction

Holographic Designs
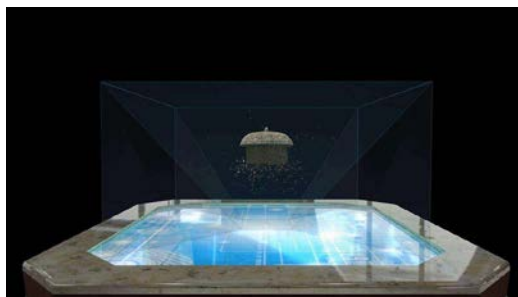
Projected image (e.g., projection onto a windshield, optical/laser projection keyboard)

Virtual three-dimensional designs
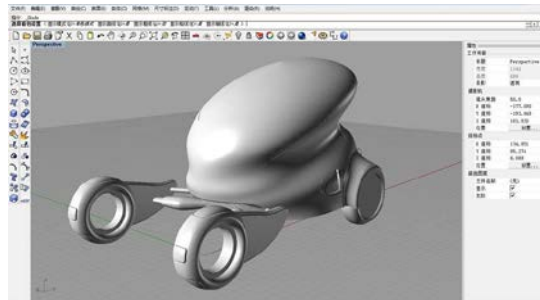
A.2 EUIPO

A.2.1 PROTECTABLE DESIGNS

Generally speaking, protection in the European Union currently exists for:

- static (i.e., not moving) graphical user interfaces;
- dynamic (i.e., moving) graphical user interfaces;
- screen display designs that are displayed only when corresponding signals are sent from external environment (i.e., those displayed in a network environment e.g., the internet, website pages, server and client system, etc.);
- screen savers; static (i.e., not moving) icons;
- static (i.e., not moving) icons;
- dynamic (i.e., moving) icons;
- transitional images;
- animated characters;
- computer related typeface type; and
- screen display designs that are merely displayed apart from practical/functional human interaction (e.g., ornamental patterns (including wallpapers), photo, a scene of computer games and/or movies, etc.).
- holographic designs;
- projected image designs (e.g., projection onto a windshield, optical/laser projection keyboard); and
- virtual three-dimensional designs.[6]

A.2.2 DESIGN IDENTIFICATIONS

<u>Static graphical user interface</u>: graphical user interfaces

<u>Dynamic graphical user interface</u>: animated graphical user interfaces or graphical user interfaces

<u>Screen display designs that are displayed only when corresponding signals are sent from external environment</u>: screen displays

<u>Screen saver</u>: screen savers

<u>Static icon</u>: icons

<u>Dynamic icon:</u> animated icons or just icons

<u>Transitional image</u>: transitional images for a portion of display screens

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[6] All 3D objects (of any Locarno class) can be depicted either by 2D graphic representations or 3D dynamic images.

Animated character: animated characters

Computer related typeface type font: typographic typefaces, typefaces, typefonts

Screen display designs that are merely displayed apart from practical/functional human interaction: screen displays

Holographic design: holograms

Projected image: No corresponding indication in Locarno for projections. It can be "ornamentation."

Virtual three-dimensional design: All 3D objects (of any Locarno class) can be depicted either by 2D graphic representations or 3D dynamic images.

A.2.3 CLASSIFICATION

Type of Design	Locarno
Static Graphical User Interfaces	14-04
Dynamic Graphical User Interfaces	14-04
Screen display designs that are displayed only when corresponding signals are sent from external environment	14-04
Screen Savers	14-04
Static Icons	14-04
Dynamic Icons	14-04
Transitional Images	14-04
Animated Characters	14-04
Computer Related Typeface Type Font	18-03
Screen display designs that are merely displayed apart from practical/functional human interaction	14-04
Other types electronic screen display designs	N/A
Holographic Designs	32-00
Projected image	32-00
Virtual three-dimensional designs[7]	

A.2.4 EXAMPLES

Static graphical user interface:

RCD 004603009-0001

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[7] All 3D objects (of any Locarno class) can be depicted either by 2D graphic representations or 3D dynamic images.

Dynamic graphical user interface:

RCD 4695312-0002
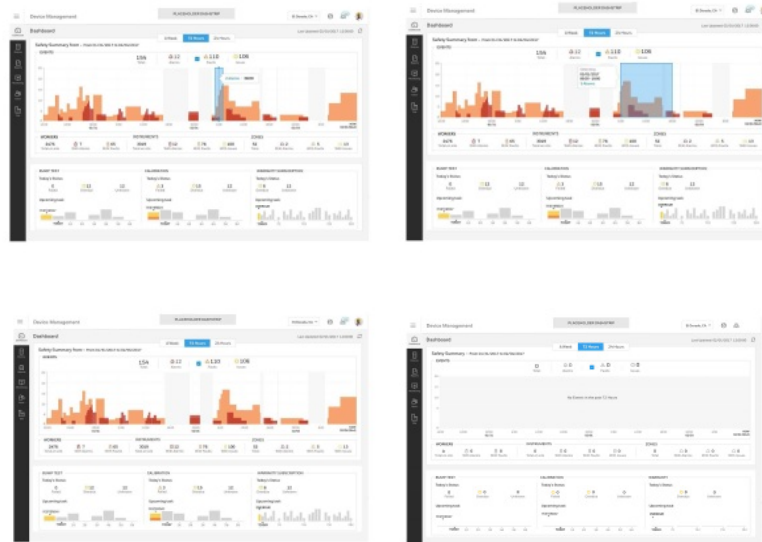
Screen display designs that are displayed only when corresponding signals are sent from external environment:

RCD 4730720-0002

Screen saver:

RCD00709944-0001

Static icon:

RCD0076187-0001

Dynamic icon:

RCD 1068001-0002
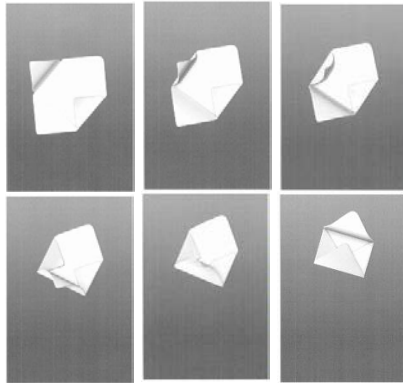
Transitional image:

RCD001088314-0013

Animated character:

RCD 2690867-0007

Computer related typeface type font:

RCD 40074433-0015

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789½⅓¾⁰ ¹ ² ³ ⁴ ⁵ ⁶ ⁷ ⁸ ⁹ ₀ ₁ ₂ ₃ ₄ ₅ ₆ ₇ ₈ ₉
!"#%&'()+/;?@[]{}¡«·»¿""„†‡…‰‹›
ĀāãĂăăĄąąĆćĈĉĊċČčĎďÐđĒēĔĕĖėĘęĚěĜĝ
ĞğĠġĢģĤĥĦħĨĩĪīĬĭĮįİıIJijĴĵĶķĸĹĺĻļ
ĽľĿŀŁłŃńŅņŇňʼnŊŋŌōŎŏŐőŒœŔŕŖŗŘřŚśŜŝŞş
ŠšŢţŤťŦŧŨũŪūŬŭŮůŰűŲųŴŵŶŷŸŹźŻżŽž
ƏƒƠơƯưÅåÆæØøŞŢţĮåąàáâãāâåàăă
+<=>|~¬±×÷/←↑→↓∂∆∏∑−√∞∫≈≠≤≥
$¢£¥₿¢₤₦₨₩₫₭€₮₱¢₴¢
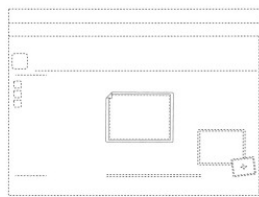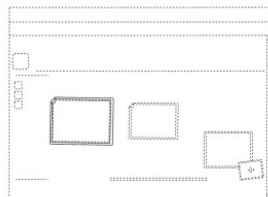
Big fjords vex quick waltz nymph. Quirky spud
boys can jam after zapping five worthy Polysixes.
Zelda might fix the job growth plans very quickly
on Monday. A quick movement of the enemy will
jeopardize six gunboats. Bobby Klun awarded Jayme
sixth place for her very high quiz. Jim quickly
realized that the beautiful gowns are expensive.

IBM Mono Bold

Screen display designs that are merely displayed apart from practical/functional human interaction:

RCD 4730720-0002

Holographic design:

RCD002164186-0001

Projected image:

Hypothetical example

Virtual three-dimensional design:

RCD 2806463-0001 (1st 3D dynamic image filed in 2015)

A.3 JPO

A.3.1   PROTECTABLE DESIGNS

Generally speaking, protection in Japan currently exists for:

- static (i.e., not moving) graphical user interfaces;[8]
- dynamic (i.e., moving) graphical user interfaces;[9]
- static (i.e., not moving) icons;[10]
- dynamic (i.e., moving) icons;[11]
- transitional images;[12]

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[8] "Static GUI" is eligible for industrial design protection provided that it constitutes a form (*) of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act). However, "Static GUI" cannot be protected as such (i.e. being as a design of a "GUI") since "GUI" is an intangible object and accordingly does not constitute an article.

* The expression of "form" is used in the same meaning as the "shape, patterns or colors, or any combination thereof" which is prescribed for in Article 2(1) of the Japanese Design Act (definition of design).

[9] "Dynamic GUI" is eligible for industrial design protection provided that it constitutes a form of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act). However, "Dynamic GUI" cannot be protected as such (i.e. being as a design of a "GUI") since "GUI" is an intangible object and accordingly does not constitute an article.

Any design in an application must comply with the "one application per design" principle (unity of design requirement). In order to satisfy this requirement, both of the following requirements must be satisfied.

i) All the graphic images (animated images) must be for the same function of the article.

ii) The graphic images before and after the change must have certain relevance in appearance to each other.

[10] "Static Icon" is eligible for industrial design protection provided that it constitutes a form of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act). However, "Static Icon" cannot be protected as such (i.e. being as a design of an "Icon") since "Icon" is an intangible object and accordingly does not constitute an article.

[11] "Dynamic Icon" is eligible for industrial design protection provided that it constitutes a form of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act). However, "Dynamic Icon" cannot be protected as such (i.e. being as a design of an "Icon") since "Icon" is an intangible object and accordingly does not constitute an article.

Any design in an application must comply with the "one application per design" principle (unity of design requirement). In order to satisfy this requirement, both of the following requirements must be satisfied.

i) All the graphic images (animated images) must be for the same function of the article.

ii) The graphic images before and after the change must have certain relevance in appearance to each other.

[12] *Following the past discussion as to the outline of this questionnaire, "Transitional Images" is understood as the term that represents "graphic images displayed across a plurality of screens/displays".

 "Transitional Image" is eligible for industrial design protection provided that it constitutes a form of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act).

However, "Transitional Image" cannot be protected as such (i.e. being as a design of a "Transitional Image") since "Transitional Image" is an intangible object and accordingly does not constitute an article.

Any design in an application must comply with the "one application per design" principle (unity of design requirement). In order to satisfy this requirement, both of the following requirements must be satisfied.

i) All the graphic images (animated images) must be for the same function of the article.

ii) The graphic images before and after the change must have certain relevance in appearance to each other.

- animated characters;[13]
- other types electronic screen display designs;[14]
- holographic designs;[15]
- projected image (e.g., projection onto a windshield, optical/laser projection keyboard).[16]

However, Japan does not currently provide protection for:

- screen display designs that are displayed only when corresponding signals are sent from external environment (i.e., those displayed in a network environment e.g., the internet, website pages, server and client system, etc.);[17]
- screen savers;[18]

In addition, where a graphic image consists of two or more physically separate parts (portions), either unity in form or unity in function must be found among those parts (portions) to fulfill the unity of design requirement.

[13] "Animated Character" is eligible for industrial design protection provided that it constitutes a form of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act).

However, "Animated Character" cannot be protected as such (i.e. being as a design of an "Animated Character") since "Animated Character" is an intangible object and accordingly does not constitute an article.

Any object which is displayed on the screen but independent from the article (e.g., a scene of a movie, a graphic image of a computer game, etc.) is not treated as a legitimate design either.

Any design in an application must comply with the "one application per design" principle (unity of design requirement). In order to satisfy this requirement, both of the following requirements must be satisfied.

i) All the graphic images (animated images) must be for the same function of the article.

ii) The graphic images before and after the change must have certain relevance in appearance to each other.

[14] Irrespective of the popularized types or categories, "electronic screen display design" is eligible for industrial design protection provided that it constitutes a form of a part of an article (e.g. digital camera, music player, etc.) and is either a necessary indication for the article to perform its function (Art. 2(1)) or one provided for the use in the operation of the article (Art. 2(2)) under the Japanese Design Act.

[15] "Design" under the Japanese design Act is a form of an entire/part of an article. Accordingly, "holographic design" that is projected in the air is not found to be a legitimate design of an article, while a hologram sticker that is used for e.g. paper-money or credit card for the prevention of forgery may be protectable as a design of an article.

[16] "Projected image" is eligible for industrial design protection provided that it constitutes a form of a part of a specific article by the fact that it is provided for the use in the operation of the article and is displayed on another article that is used with the article in an integrated manner (e.g., projector screen, but excluding open space, road surface, etc. that is not regarded as an article) (Art. 2(2) of the Design Act).

However, "projected image" cannot be protected as such (i.e. being as a design of a "projected image") since "projected image" is an intangible object and accordingly does not constitute an article.

[17] Since "design" under the Japanese design Act is a form of an entire/part of an article, a protectable graphic image needs to be one that has been adhesively recorded in the article and then displayed on the display screen which is a part of the article. Accordingly, a graphic image which is displayed based on a signal sent from outside of the article, such as a graphic image of a television program, a graphic image sent via the Internet (e.g. websites) or a graphic image displayed based on a signal sent from another article (e.g. a graphic image merely displayed on a "computer display") and a graphic image which is displayed based on the data recorded on a recording medium which is connected to or inserted in the article, is not found to be a graphic image constituting a "design" of the article.

[18] In order for a graphic image to be protected under the Japanese Design Act, it needs to constitute a form of a part of an article and be either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act). Since Screen Savers are not regarded as any of the above described graphic images, they may not be protected under the Japanese Design Act.

- computer related typeface type font;[19]
- screen display designs that are merely displayed apart from practical/functional human interaction (e.g., ornamental patterns (including wallpapers), photo, a scene of computer games and/or movies, etc.);[20]
- virtual three-dimensional designs.[21]

A.3.2 DESIGN IDENTIFICATIONS

Static graphical user interface:

"Static GUI" may be identified through a set of proper drawing and statements in the design application.

i) Drawing
Drawing must represent the entire form of the article* that contains the graphic image (GUI).
When design registration is requested for the part of the graphic image (GUI) as a partial design, the part must be specifically distinguished from the other part by using e.g. solid lines and broken lines.
*Omission of certain views may be allowed in the following cases.
For a graphic image that is displayed on the article itself, either front or back view, left or right-side view or top or bottom view may be omitted provided that the graphic image does not appear in the view concerned and a statement to that effect is made in the description.
For a graphic image that is displayed on another article (only applicable to a graphic image that is provided for the use in the operation of the article), six views representing the form of the "article to the design" may be omitted by stating to that effect in the description.

ii) Statement of "Article to the Design" (Indication of product)
In the application, specific article to which the graphic image (GUI) is incorporated must be stated (e.g. mobile phone, music player, etc.). Such

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[19] "Design" under the Japanese design Act is a form of an entire/part of an article. Since "Computer Related Typeface/Type Font" is an intangible object and accordingly does not constitute an article, it cannot be protected as a design of an article.

[20] In order for a graphic image to be protected under the Japanese Design Act, it needs to constitute a form of a part of an article and be either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act). Since Screen display designs that are merely displayed apart from practical/functional human interaction are not regarded as any of the above described graphic images, they may not be protected under the Japanese Design Act.

[21] "Three-dimensional design" is eligible for industrial design protection provided that it constitutes a form of a part of an article (i.e., a perspective looking form of the design concerned is displayed on the 2D screen of an article) and is either a necessary indication for the article to perform its function (Art. 2(1) of the Design Act) or one provided for the use in the operation of the article (Art. 2(2) of the Design Act).
However, "virtual three-dimensional deign" cannot be protected as such (i.e. being as a design of a "virtual three-dimensional design") since "virtual three-dimensional design" is an intangible object and accordingly does not constitute an article.

expressions as "Graphic image for XX" or "Graphical user interface for XX" are not admissible.
Where the graphic image (GUI) is generated based on an application software installed in an all-purpose computer (e.g., personal computer, smartphone, etc.), the statement should be "Computer with XX function". "XX" represents a specific function corresponding to the graphic image.

iii) Statement of "Description of Article to the Design"
In the application, an explanation as to the intended use and function corresponding to the graphic image must also be stated as a description.

Dynamic graphical user interface:

"Dynamic GUI" may be identified through a series of static images (proper drawing) and statements in the design application. There is no limitation in the number of views to be submitted.

The basic principle as to the presentation of drawing and application for a "Static GUI" is also applicable to a "Dynamic GUI". The particulars relating to "Dynamic GUI" are as follows.

i) Drawing
In order for a series of graphic images to be regarded as one design, relevance in form (commonality in figures, etc.) must be found in the graphic images appeared before and after the change. In the case of a design consisting of three or more graphic images, determination on relevance in form is made based on the assessment of every two images immediately before and after the change.

ii) Statement of "Description of the Design"
Where the changing order or the changing state is not sufficiently expressed by the drawing alone, an explanation to specify these matters should be stated in the application.

Screen display designs that are displayed only when corresponding signals are sent from external environment:

These designs are not registrable under the Japanese Design Act.

Screen saver:

These designs are not registrable under the Japanese Design Act.

Static icon:

"Static Icon" may be understood as a form of a part (only limited part of

the screen area) of an article.

The basic principle as to the presentation of drawing and application for a "Static GUI" is also applicable to a "Static Icon".

Dynamic icon:

"Dynamic Icon" may be identified through a series of static images (proper drawing) and statements in the design application. There is no limitation in the number of views to be submitted.

The basic principle as to the presentation of drawing and application for a "Static GUI" is also applicable to a "Dynamic Icon". The particulars relating to "Dynamic Icon" are as follows.

i) Drawing
In order for a series of graphic images to be regarded as one design, relevance in form (commonality in figures, etc.) must be found in the graphic images appeared before and after the change. In the case of a design consisting of three or more graphic images, determination on relevance in form is made based on the assessment of every two images immediately before and after the change.

ii) Statement of "Description of the Design"
Where the changing order or the changing state is not sufficiently expressed by the drawing alone, an explanation to specify these matters should be stated in the application.

Transitional image:

"Transitional Image" may be identified through a series of static images (proper drawing) and statements in the design application. There is no limitation in the number of views to be submitted.

The basic principle as to the presentation of drawing and application for a "Static GUI" is also applicable to a "Transitional Image". The particulars relating to "Transitional Image" are as follows.

i) Drawing
In order for a series of graphic images to be regarded as one design, relevance in form (commonality in figures, etc.) must be found in the graphic images appeared before and after the change. In the case of a design consisting of three or more graphic images, determination on relevance in form is made based on the assessment of every two images immediately before and after the change.

ii) Statement of "Description of the Design"
Where the changing order or the changing state is not sufficiently expressed by the drawing alone, an explanation to specify these matters should be stated in the application.

Animated character:

"Animated Character" may be identified through a series of static images (proper drawing) and statements in the design application. There is no limitation in the number of views to be submitted.

The basic principle as to the presentation of drawing and application for a "Static GUI" is also applicable to a "Animated Character". The particulars relating to "Animated Character" are as follows.

i) Drawing
In order for a series of graphic images to be regarded as one design, relevance in form (commonality in figures, etc.) must be found in the graphic images appeared before and after the change. In the case of a design consisting of three or more graphic images, determination on relevance in form is made based on the assessment of every two images immediately before and after the change.

ii) Statement of "Description of the Design"
Where the changing order or the changing state is not sufficiently expressed by the drawing alone, an explanation to specify these matters should be stated in the application.

Computer related typeface type font:

These designs are not registrable under the Japanese Design Act.

Screen display designs that are merely displayed apart from practical/functional human interaction:

These designs are not registrable under the Japanese Design Act.

Holographic design:

These designs are not registrable under the Japanese Design Act.

Projected image:

The basic principle as to the presentation of drawing and application for a "Static GUI" is also applicable to a "projected image". The particulars relating to "projected image" are as follows.

i) Drawing
The drawing representing the projected image should be indicated as a [Graphic Image View].
The form of "another article" on which the graphic image is projected must not be depicted in the graphic image view.
Six views representing the form of the "article to the design" may be omitted by stating to that effect in the description.

ii) Statement of "Description of Article to the Design"
In the application, an explanation to the effect that the graphic image represented in the Graphic Image View is displayed on a display (projector screen) that is used with the article in an integrated manner.

Virtual three-dimensional design:

The basic principle as to the presentation of drawing and application for a "Static GUI" and/or "Dynamic GUI" is also applicable to a "three-dimensional design."

A.3.3 CLASSIFICATION

Static graphical user interface, dynamic graphical user interface, static icon, dynamic icon, transitional image, animated character: In Japan, a graphic image (GUI) is regarded as a form of a part of an article, and classification is assigned in accordance with the specified "article" in the framework of both the Locarno classification and the domestic classification. With regard to the domestic classification, a symbol of "W" is added at the end of respective classification terms as an indicator to show that the design contains a graphical image.

Screen display designs that are displayed only when corresponding signals are sent from external environment: In Japan, classification is generally assigned in accordance with the specified "article". However, this type of design is not based on a specific article and therefore not regarded as a design of an article.
Within the framework of the domestic classification, such a design is categorized under the special group of "N" which represents any object independent from an article. (In contrast, a design of an article is categorized under the group of "A" to "M" depending on its intended use.).
Under the Locarno classification, 14-04 may be assigned for these designs.

Screen saver: In Japan, classification is generally assigned in accordance with the specified "article". However, this type of design is not based on a specific article and therefore not regarded as a design of an article.
Within the framework of the domestic classification, such a design is categorized under the special group of "N" which represents any object independent from an article. (In contrast, a design of an article is categorized under the group of "A" to "M" depending on its intended use.)

Under the Locarno classification, 32-00 may be assigned for these designs.

Computer related typeface type font: In Japan, classification is generally assigned in accordance with the specified "article". However, this type of design is not based on a specific article and therefore not regarded as a design of an article. Within the framework of the domestic classification, such a design is categorized under the special group of "N" which represents any object independent from an article. (In contrast, a design of an article is categorized under the group of "A" to "M" depending on its intended use.)
Under the Locarno classification, 18-03 may be assigned for these designs.

Screen display designs that are merely displayed apart from practical/functional human interaction: In Japan, classification is generally assigned in accordance with the specified "article". However, this type of design is not based on a specific article and therefore not regarded as a design of an article.
Within the framework of the domestic classification, such a design is categorized under the special group of "N" which represents any object independent from an article. (In contrast, a design of an article is categorized under the group of "A" to "M" depending on its intended use.)
Under the Locarno classification, 14-04 may be assigned for these designs.

Holographic design: In Japan, classification is generally assigned in accordance with the specified "article". However, this type of design is not based on a specific article and therefore not regarded as a design of an article.
Within the framework of the domestic classification, such a design is categorized under the special group of "N" which represents any object independent from an article. (In contrast, a design of an article is categorized under the group of "A" to "M" depending on its intended use.)

Projected image: In Japan, a graphic image (GUI) is regarded as a form of a part of an article, and classification is assigned in accordance with the specified "article" in the framework of both the Locarno classification and the domestic classification. With regard to the domestic classification, a symbol of "W" is added at the end of respective classification terms as an indicator to show that the design contains a graphical image.

Virtual three-dimensional design: In Japan, a graphic image (GUI) is regarded as a form of a part of an article, and classification is assigned in accordance with the specified "article" in the framework of both the Locarno classification and the domestic classification. With regard to the domestic classification, a symbol of "W" is added at the end of respective classification terms as an indicator to show that the design contains a graphical image.

A.3.4 EXAMPLES
Static graphical user interface:

* Registration No.1601588 Noise meter
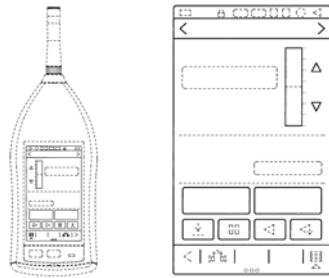
* Registration No.1563132 Operation information display
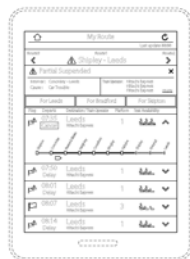
Dynamic graphical user interface:

* Registration No.1468468 Panel type television receiver

* Registration No.1602680 Mobile information terminal
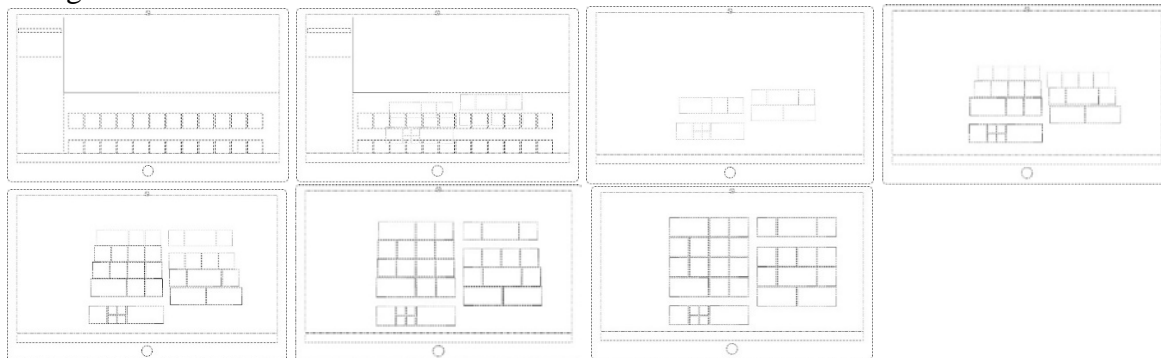
Screen display designs that are displayed only when corresponding signals are sent from external environment:

This type of design is not registrable under the Japanese Design Act.

➢ Graphic images that are merely displayed based on an external signal
(e.g. Internet websites, software used via the Internet (including cloud computing))

*An application that indicates general-purpose "display" (monitor) as the article to the design rarely fulfills the basic requirements for registration.

➢ Graphic images recorded on a recording medium

Screen saver:

This type of design is not registrable under the Japanese Design Act.

➢ Graphic images provided only for decorative purpose
(e.g. desktop wallpaper)
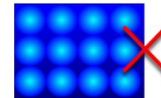
➢ Graphic images representing "contents" that are independent from the function of the article
(e.g. movies, TV programs, games)

Static icon:

* Registration No.1607587   Operation panel for rebar processing machine
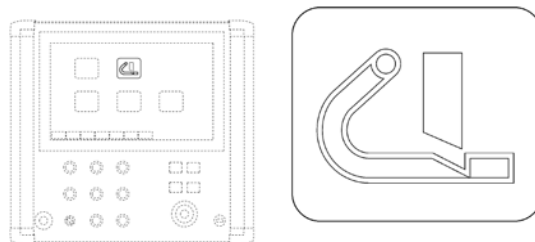
* Registration No.1599615   Computer with utterance analysis recognition function

Dynamic icon:

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* Registration No.1573180　Computer with news viewing function
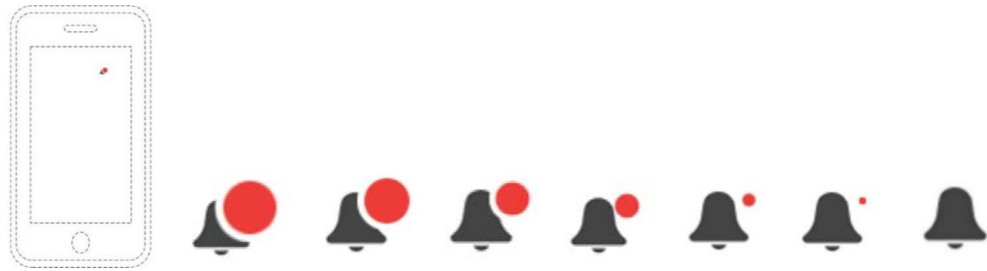
* Registration No.1573353　Mobile phone
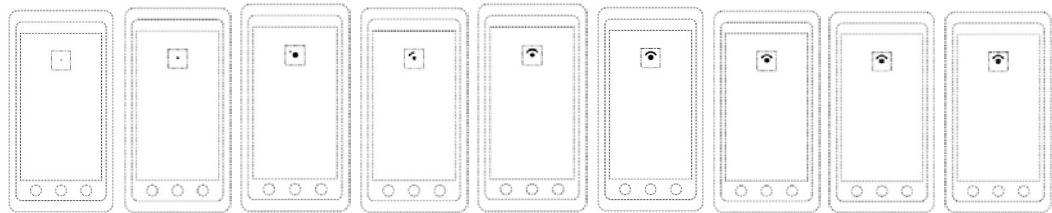
Transitional image:

* Hypothetical Example　Portable computer
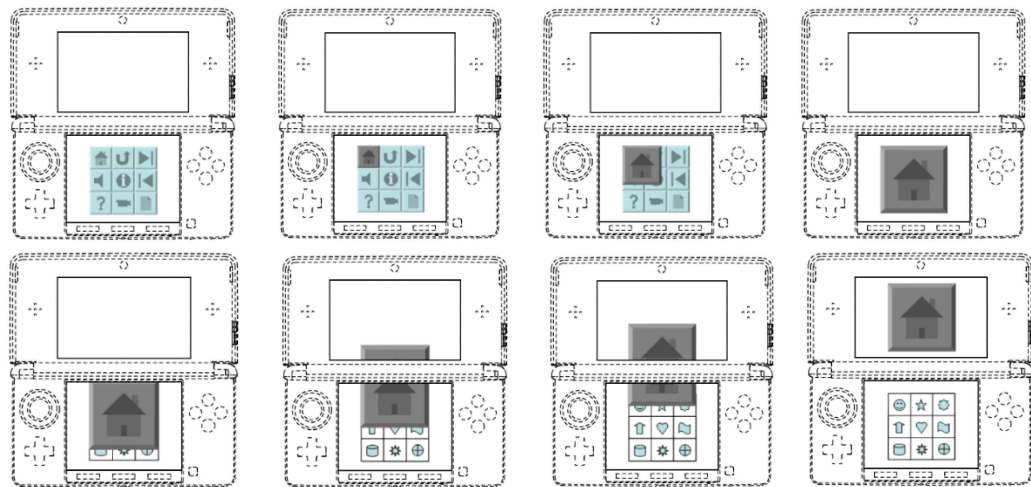
Animated character:

* Registration No.1386243　Remote controller with light and heat consumption display function
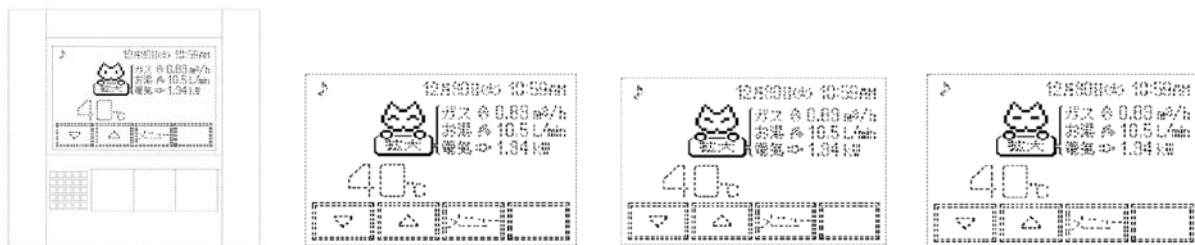
* Registration No.1587849 Computer with pet watching and remote control function
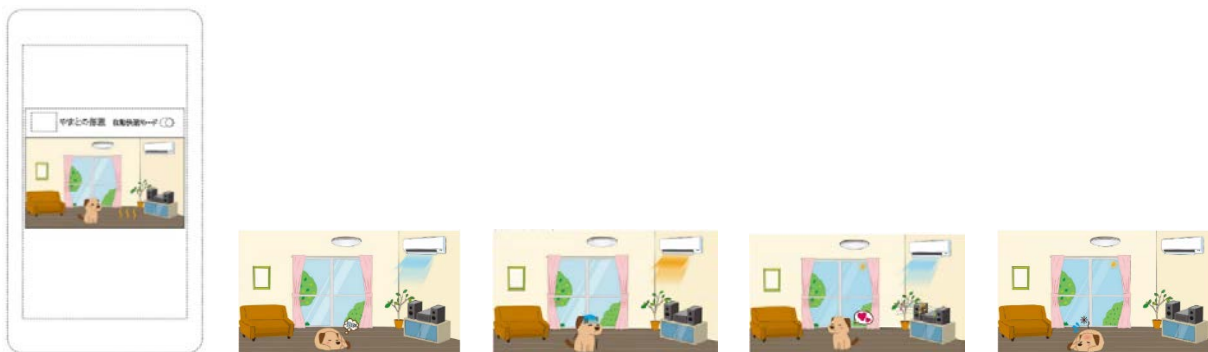
Computer related typeface type font:

This type of design is not registrable under the Japanese Design Act.

Screen display designs that are merely displayed apart from practical/functional human interaction:

This type of design is not registrable under the Japanese Design Act.

➤ Graphic images provided only for decorative purpose (e.g. desktop wallpaper)
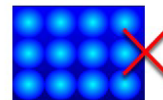
➤ Graphic images representing "contents" that are independent from the function of the article (e.g. movies, TV programs, games)

Holographic design:

This type of design is not registrable under the Japanese Design Act.

Projected image:

* Registration No.1350074 Projector
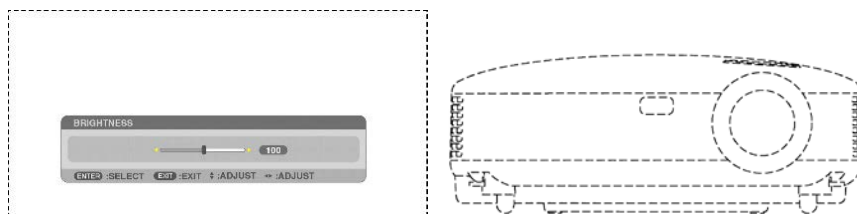
* Registration No.1490672 In-vehicle information projector
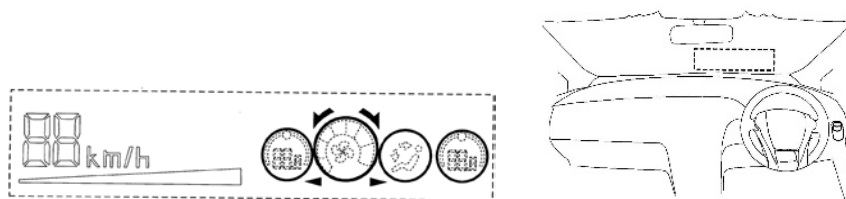
* Registration No.1607617 Translator
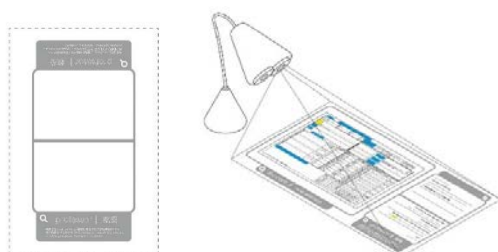
<u>Virtual three-dimensional design:</u>

* Registration No. 1605033 Wearable display
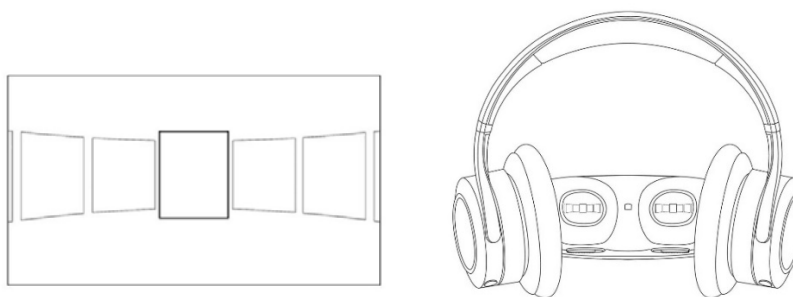
A.4 KIPO

A.4.1 PROTECTABLE DESIGNS

The following types of industrial designs do not qualify for industrial design protection per se. However, if these types of designs are temporarily displayed on a display screen, they can be protected as part of an article.

- static (i.e., not moving) graphical user interfaces;
- dynamic (i.e., moving) graphical user interfaces;
- screen display designs that are displayed only when corresponding signals are sent from external environment (i.e., those displayed in a network environment e.g., the internet, website pages, server and client system, etc.);
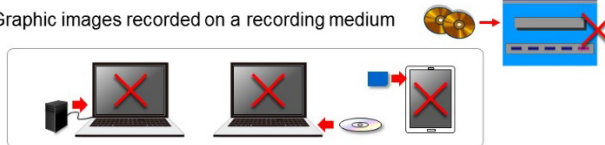- screen savers; static (i.e., not moving) icons;
- static (i.e., not moving) icons;
- dynamic (i.e., moving) icons;
- transitional images;
- animated characters;
- screen display designs that are merely displayed apart from practical/functional human interaction (e.g., ornamental patterns (including wallpapers), photo, a scene of computer games and/or movies, etc.).

Additionally, Korea does not currently provide protection for projected image designs, holographic designs, or virtual three-dimensional designs if there is no specific article on which the design is represented. However, if the projected image design, holographic design, or virtual three-dimensional design is displayed on the display part of an article and an application is filed with the design displayed on the article, it can be protected. For example, a projected image design encompassing an image projected onto a windshield is protectable only if the application is filed for the projected image along with the article on which the image is represented (e.g., the windshield). In contrast, a laser projection keyboard, absent the article on which the keyboard image is displayed, is not protectable.

Finally, computer related typeface/type font is protected under Article 2(1) of the Design Protection Act which protects designs consisting of "a shape, pattern, of color of an article including parts of an article and fonts."

A.4.2 DESIGN IDENTIFICATIONS

Static graphical user interface:

> GUI designs are defined as figures and colors or combination thereof displayed on a display part of an article (including dynamic GUIs). The display part of an article means a physical screen which is embodied in the article to visually present a letter or an image, etc. (Chapter 8 of the

Design Examination Guidelines) GUI designs must comply with the "article" requirement by being presented on a display part as well as the visualization requirement to be able to be identified by eyes through a display part.
(Note: Requirements for being an "article."
The term "article" under the Act means, in principle, tangible movables as a specific and independent article. Therefore, what falls under any of the following shall not be accepted for the design registration.)

Dynamic graphical user interface:

A dynamic GUI design is defined as a design in which figures in a GUI design are moved, reduced or rotated, or colors of the design are changed but there is relevance in shape and consistency throughout those changes.
(Chapter 8 of the Design Examination Standards)

Screen display designs that are displayed only when corresponding signals are sent from external environment:

KIPO does not distinguish the screen display design from GUI designs.

Screen saver:

KIPO does not distinguish the screen saver design from GUI designs.

Static icon:

KIPO does not distinguish the static icon from GUI designs.

Dynamic icon:

KIPO does not distinguish the dynamic icon from GUI designs.

Transitional image:

Transitional images do not qualify for industrial design protection per se but if transitional images are displayed on a display screen, they can be protected as part of an article. This is applied to the case where static GUIs are temporarily shown on a display screen.

Animated character:

KIPO does not distinguish animated characters from GUI designs.

Computer related typeface type font:

Typeface means a set of printable or displayable fonts that share common features (numbers, punctuation marks, and symbols).

Screen display designs that are merely displayed apart from practical/functional human interaction:

KIPO does not distinguish screen display designs that are merely displayed apart from the practical/functional human interaction from GUI designs.

Holographic design:

KIPO does not distinguish the holographic design from GUI designs.

Projected image:

N/A

Virtual three-dimensional design:

KIPO does not distinguish virtual three-dimensional designs from GUI designs.

A.4.3   CLASSIFICATION

Emerging designs will be classified in accordance with the Locarno Classification and the domestic classification system depending on the article on which the GUI design is represented. (Note: No design can be registered under Class 32 of the Locarno Classification)

A.4.4   EXAMPLES

Static graphical user interface:

Registered Design 30-0967286
A display panel on which a graphic design is displayed
Class 14 of the Locarno Classification
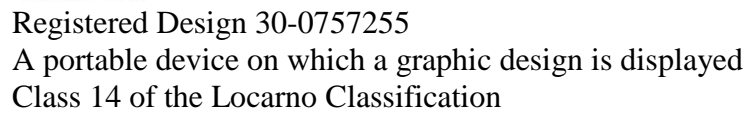
Registered Design 30-0757255
A portable device on which a graphic design is displayed
Class 14 of the Locarno Classification

Dynamic graphical user interface:

Registered Design 30-0679944
Air purifier in which GUI is indicated
Class 23 of the Locarno Classification

Screen display designs that are displayed only when corresponding signals are sent from external environment:

Registered Design 30-0848804
A display panel with image design
Class 14 of the Locarno Classification

Screen saver:
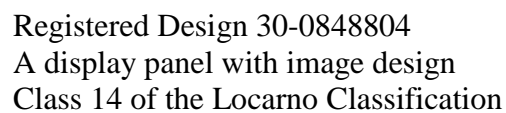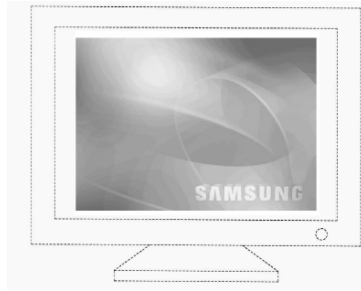
Registration No. 30-0352433
A computer monitor on which a GUI design is displayed.

Static icon:

Registration No. 30-0913114-00-01
Display panel with an icon

Dynamic icon:
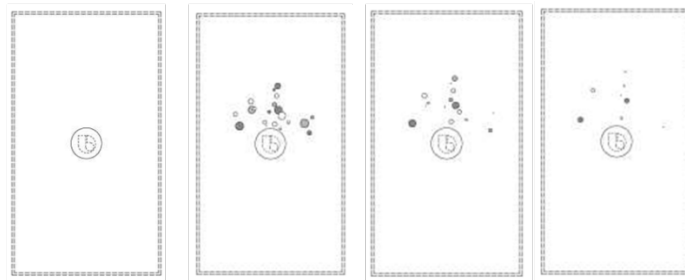
[View 1.1]　　[View 1.2]　　[View 1.3]　　[View 1.4]

Registration No. 30-0921087
Display panel on which GUI designs are displayed

Transitional image:
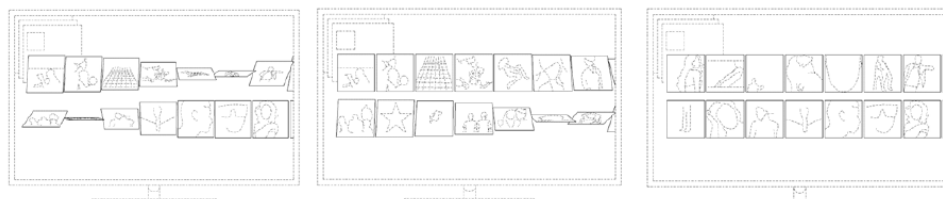
[View 1.1]　　　　　　　　[View 1.2]　　　　　　　　[View 1.3]

<A computer monitor on which GUI designs are displayed>

Animated character:

[View A 1.1]　　[View B 1.1]　　[View C 1.1]　　[View D 1.1]　　[View E 1.1]　　[View F 1.1]　　[View G 1.1]
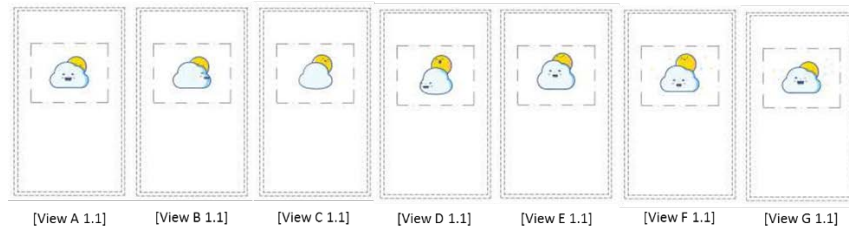
Registration No. 30-0944880
A display panel on which a GUI is displayed

Computer related typeface type font:
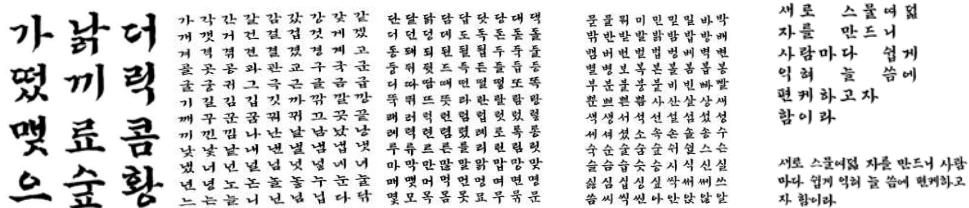
　　　Registration No. 30-0946290
　　　Korean typefaces

Screen display designs that are merely displayed apart from practical/functional human interaction:

Registration No. 30-0546772
An Internet phone on which a GUI design is displayed (background or wallpaper of the phone)

Holographic design:

N/A

Projected image:

N/A

Virtual three-dimensional design:

N/A

A.5 USPTO

A.5.1 PROTECTABLE DESIGNS

Generally speaking, protection in the U.S. currently exists for[22]:

- static (i.e., not moving) graphical user interfaces;
- dynamic (i.e., moving) graphical user interfaces;
- screen savers;
- static (i.e., not moving) computer-generated icons;
- dynamic (i.e., moving) computer-generated icons;
- transitional computer-generated graphical user interfaces and icons;
- animated characters[23]; and
- computer related typeface type font.

Depending on the particular facts and circumstances of an application, other types of designs, in addition to those listed above, might be eligible for U.S. design patent protection, provided that they requirements of 35 U.S.C. 171 are satisfied. See MPEP 1504.01 *et seq*.

The following types of designs are examples of areas of emerging designs for which the USPTO is currently evaluating and developing policy. To be eligible for design patent protection, such designs would need to comply with the requirements of 35 U.S.C. § 171:

- holographic designs[24];

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[22] To be eligible for design patent protection, designs for computer-generated icons and graphical user interfaces must comply with the requirements of 35 U.S.C. 171. Computer-generated icons, such as full screen displays and individual icons, are 2-dimensional images which alone are surface ornamentation. See, e.g., *Ex parte Strijland*, 26 USPQ2d 1259 (Bd. Pat. App. & Int. 1992) (computer-generated icon alone is merely surface ornamentation). The USPTO considers designs for computer-generated icons embodied in articles of manufacture to be statutory subject matter eligible for design patent protection under 35 U.S.C. 171. Thus, if an application claims a computer-generated icon shown on a computer screen, monitor, other display panel, or a portion thereof, the claim complies with the "article of manufacture" requirement of 35 U.S.C. 171. Since a patentable design is inseparable from the object to which it is applied and cannot exist alone merely as a scheme of surface ornamentation, a computer-generated icon must be embodied in a computer screen, monitor, other display panel, or portion thereof, to satisfy 35 U.S.C. 171. See MPEP 1504.01(a).

[23] Such designs must be transitional computer-generated icons or graphical user interfaces.

[24] One may expect that In re Hruby, 373 F.2d 997 (C.C.P.A.) is informative on designs of this type *In re Hruby*, 373 F.2d at 1001, "[T]he dependence of the existence of a design on something outside itself is [not] a reason for holding

- projected image designs (e.g., projection onto a windshield, optical/laser projection keyboard); and
- virtual three-dimensional designs.

However, the USPTO does not yet have any U.S. jurisprudence specifically addressing holographic designs, projected image designs, or virtual three-dimensional designs and the protection of these types of design in U.S. design patents.

A.5.2   DESIGN IDENTIFICATIONS

Static graphical user interface: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Dynamic graphical user interface: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Screen display designs that are displayed only when corresponding signals are sent from external environment: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Screen saver: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a). Additionally, as provided in MPEP 1504.01(a), subsection IV, computer generated icons including images that change in appearance during viewing may be the subject of a design claim. Under this definition, screen savers are treated as changeable computer generated icons. Therefore, both static and dynamic screensavers qualify for design protection.

Static icon: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Dynamic icon: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Transitional image: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Animated character: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Computer related typeface type font: The USPTO identifies this type of design as a type front. See MPEP 1504.01(a), subsection III.

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it is not a design "for an article of manufacture." Many such designs depend upon outside factors for the production of the appearance which the beholder observes. The design of a lampshade may not be apparent unless the lamp is lighted. The design of a woman's hosiery is not apparent unless it is in place on her legs. The designs of inflated articles such as toy balloons, water toys, air mattresses, and now even buildings are not apparent in the absence of the compressed air which gives them form, as the water pressure here gives shape to the fountain."

Screen display designs that are merely displayed apart from practical/functional human interaction: These types of designs would be broadly evaluated under computer-generated icons under MPEP 1504.01(a).

Holographic design: The USPTO is currently evaluating and developing policy regarding these types of designs.

Projected image: The USPTO is currently evaluating and developing policy regarding these types of designs.

Virtual three-dimensional design: The USPTO is currently evaluating and developing policy regarding these types of designs. These types of designs would likely be evaluated under computer-generated icons under MPEP 1504.1(a).

A.5.3 CLASSIFICATION

Type of Design	Locarno	USPC
Static Graphical User Interfaces	14-04	D14/486, D14/487, D14/488
Dynamic Graphical User Interfaces	14-04	D14/486, D14/487, D14/488
Screen display designs that are displayed only when corresponding signals are sent from external environment	14-04	D14/485-495
Screen Savers	14-04	D14/485, D14/486, D14/488[25]
Static Icons	14-04	D14/488, 489-495
Dynamic Icons	14-04	D14/488, 489-495
Transitional Images	14-04	D14/485-495
Animated Characters	14-04	D14/485
Computer Related Typeface Type Font	18-03	D18/24, D18/26
Screen display designs that are merely displayed apart from practical/functional human interaction	14-04	D14/485, D14/486, D14/489-495
Other types electronic screen display designs	14-04	N/A
Holographic Designs	14-04, 16-02	
Projected image	32-00	

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[25] USPC does not separately classify screen savers. Screensavers could be classified in a D14/486 because they are designs that fill the entire display area of a computer screen. Screensavers could also be classified in D14/488 if the application claims district, separate, plural images or symbols.

A.5.4 EXAMPLES

Static graphical user interface:
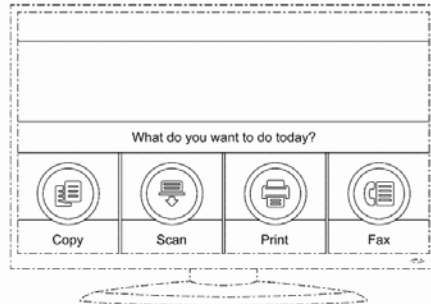
D804,528 titled "Display Screen with GUI Menu for a Multifunction Office Machine"

Dynamic graphical user interface:
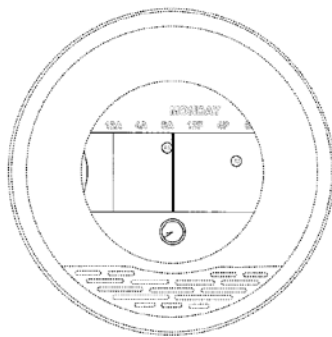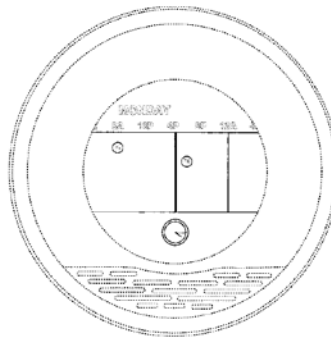
D687,047 titled "Display screen with an animated graphical user interface"
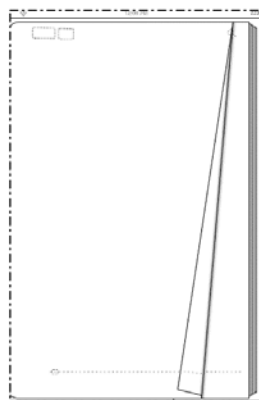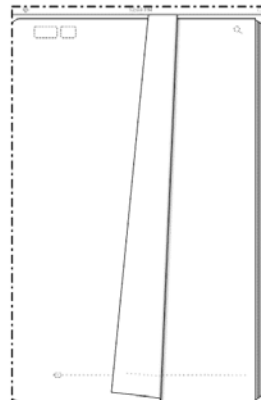
D670,713 Titled "Display Screen or Portion Therefor with Animated Graphical

User Interface"

Screen display designs that are displayed only when corresponding signals are sent from external environment:
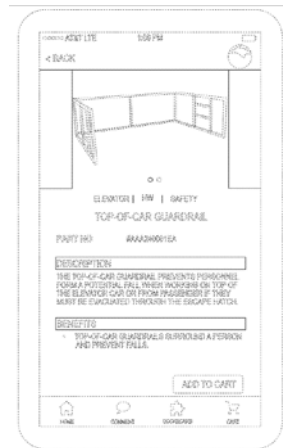
D822,038 Display screen or portion thereof with graphical user interface

Screen saver:
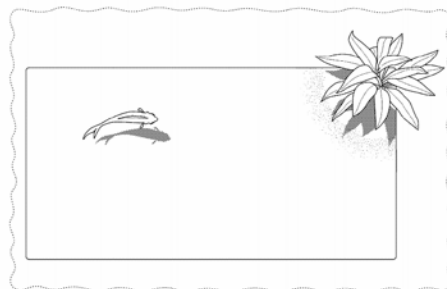
D629,006 titled "Graphical User Interface for a Portion of a Display Screen"

Static icon:
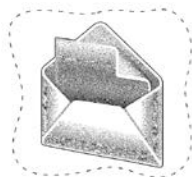
D586,822 titled "Portion of a display screen showing an icon"

Dynamic icon:
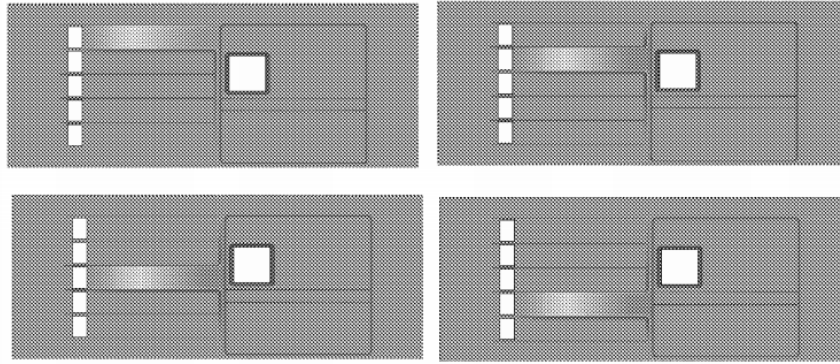
D565,584 titled "User Interface for a portion of a display screen"

Transitional image:
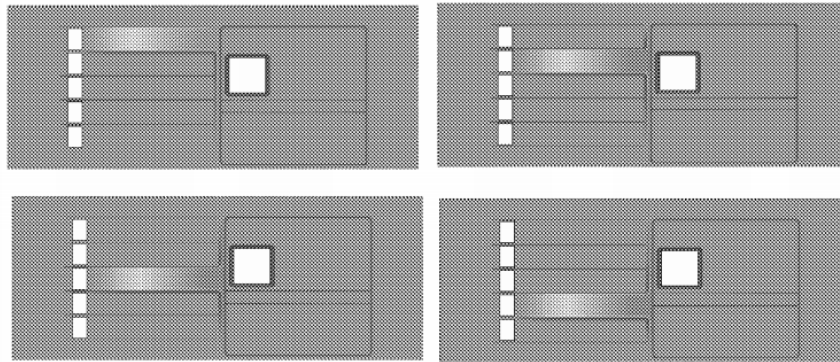
D565,584 titled "User Interface for a portion of a display screen"

Animated character:
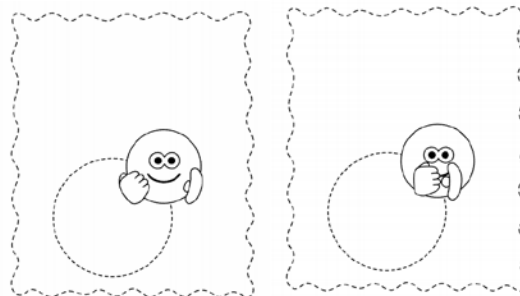
FIG. 1   FIG. 2

D803,889 titled "Display Screen with Animated Graphical User Interface"

FIG. 4   FIG. 8
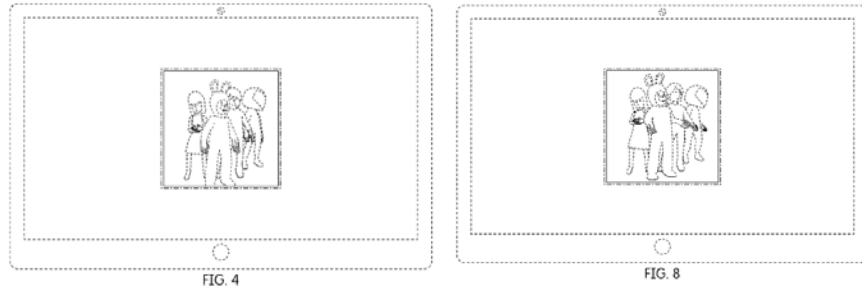
D768,722 titled "Display Screen with Animated Graphical User Interface"

Computer related typeface type font:

D737,372 titled "Typeface"

Screen display designs that are merely displayed apart from practical/functional human interaction:

N/A

Holographic design:

N/A
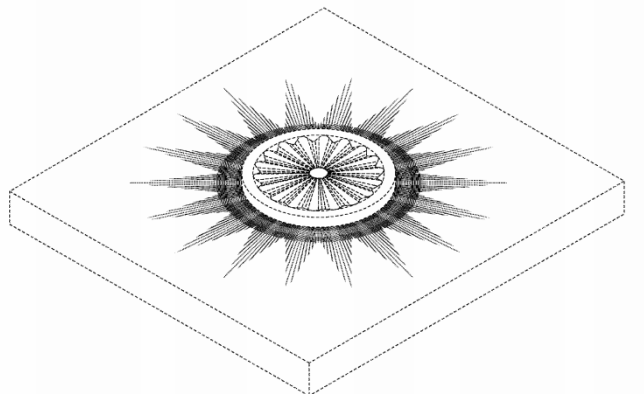
Projected image:

D609,947 titled "Tabletop with an applied pattern of projected light"

Virtual three-dimensional design:

43
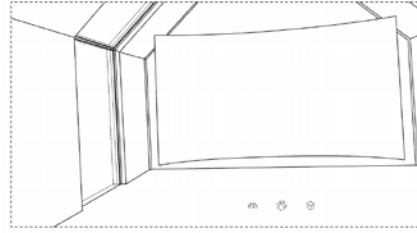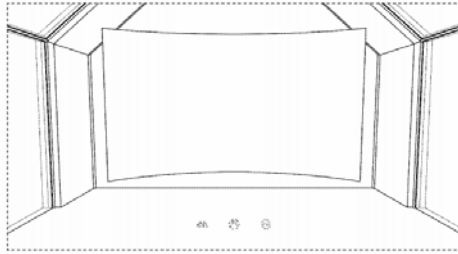
FIG. 2

D797,767 titled "Display system with a virtual three-dimensional graphical user interface"

A.6 INDUSTRIAL DESIGNS FILINGS IN EMERGING TECHNOLOGIES

	CINPA	EUIPO	JPO	KIPO	USPTO
Static Graphical User Interfaces	Quite Common	14281 filings from the beginning of the Community design (01/04/2003) for both static and dynamic GUIs	Total numbers of applications filed for designs containing graphic images are as follows. 2010: 575 2011: 633 2012: 976 2013: 1,002 2014: 865 2015: 992 2016: 941 2017: 818 JPO does not collect the detailed statistics on the number of applications filed in relation to categories of emerging designs herein.	KIPO does not produce statistics for these types of graphic interfaces.	USPTO does not produce statistics for these individual types of graphic interfaces.
Dynamic Graphical User Interfaces	Quite Common	14281 filings from the beginning of the Community design (01/04/2003) for both static and dynamic GUIs			
Screen display designs that are displayed only when corresponding signals are sent from external environment	Almost None	6685 filings			
Screen Savers	None	9 filings			
Static Icons	Not Many	10090 filings in total for both static and animated icons			
Dynamic Icons	Very Few	10090 filings together with static icons			
Transitional Images	Not Many	18 in total			
Animated Characters	None	180 filings			
Computer Related Typeface Type Font	None	584 in total		138 filings in 2017	

				KIPO does not produce statistics for these types of graphic interfaces.	
Screen display designs that are merely displayed apart from practical/functional human interaction	Almost None	6685 filings			
Other types electronic screen display designs	None	N/A			
Holographic Designs	None	1			
Projected image	Very Few	None			
Virtual three-dimensional designs	None	All 3D objects (of any Locarno class) can be depicted either by 2D graphic representations or 3D dynamic images			

A.7 DESIGNS OF TANGIBLE PRODUCTS IN THE ELECTRONIC SCREEN DISPLAY ENVIRONMENT

A.7.1   Is it possible to protect a design in a computer or virtual reality environment with an industrial design registration? Specifically, is it possible to protect the use of a design of an automobile in a computer or virtual reality environment, such as in a computer game, Second Life® (http://secondlife.com/) or Turbosquid (https://www.turbosquid.com/) virtual reality environment?) If not, why does it not qualify for protection?

CNIPA

No, it can't be protected. The carrier of this type of designs is not a product, it is not a patentable subject matter.

EUIPO

Yes, pursuant to Art 3 a, b CDR.

JPO

It is not possible to clearly answer to this question because no judicial decision has been made as to whether the use of a registered design of a certain article (e.g. an automobile) in a computer or virtual reality environment is admitted as an act which constitutes the work of a design prescribed for in the Design Act.

The Japanese Design Act provides that a holder of a design right shall have the exclusive right to work the registered design and designs similar thereto as a business (Art. 23) and that "work" of a design shall mean the manufacturing, using, assigning, leasing, exporting or importing, or offering for assignment or lease (including displaying for the purpose of assignment or lease) of an article to the design (Art. 2(3)).

There is a possibility that a design of an automobile used in a computer or virtual reality environment may not be a "design" prescribed for in the Design Act. Even if the design in question is admitted as a legitimate "design", there will also be a possibility that the use of a design of an automobile in a computer or virtual reality environment does not constitute the work of a design (manufacturing, using or displaying for the purpose of assignment or lease etc. of an article to the design).

KIPO

Since there is no physical object in the virtual reality environment on which a design is displayed, such design cannot be protected. Meanwhile, if a design in the virtual reality environment is displayed on the display part of an article in general and an application on the design displaying on the article is filed, it can be protected.

USPTO

The United States currently lacks jurisprudence in relation to whether design patents can be successfully enforced in relation to use in virtual spaces.[26]

A.7.2   Is it possible for an applicant obtain a single design registration that would cover use of the design in a physical product environment and as represented in a virtual or computer environment? (For example, could an applicant obtain a single design right that could effectively protect both the design for an automobile and the automobile as used in a computer game or other virtual environment?)

If not, what prevents the applicant from being able to protect the same design in two different environments? (e.g., requirement for application to be tied to a certain product classification, requirement for tie to a physical product rather than virtual reality etc.)

CNIPA

According to regulations, an application should be protected by the same or approximate category of physical products.

EUIPO

Indeed, what is protected is the appearance of the product regardless of the indication and classification of the product.

JPO

As stated in A.7.1, it is not possible to answer to this question because no judicial decision has been made as to whether the use of a registered design of a certain article (e.g. an automobile) in a computer or virtual reality environment is admitted as an act which constitutes the work of a design prescribed for in the Design Act.

KIPO

No. A single design right cannot cover both the design for an automobile and the automobile represented in a computer environment. An individual application for each design needs to be filed to seek protection.

The scope of a design right extends to the products which fall into the same or similar product category to that of the registered design. Thus, the GUI design is represented on the product which fall into the same or similar kind of the product of the registered design, the design right can cover both designs. If the products do not fall into the same product category, an individual application for each design needs to be filed: one for a

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[26] Complaints based on accused infringement of design rights in the virtual space have already been initiated in federal district court, however, known cases have concluded without resolution of this issue. See e.g., Bayerishce Motoren Wrke AG (BMW) et al. v. Turbosquid, Inc. , New Jersey District Court (2016). (Case filed May 3, 2016 and terminated on August 11, 2016).

physical product design and the other for a GUI design.

USPTO

It is not clear whether a single design patent could successfully provide protection for a design in both the tangible environment as well as in virtual environments. The United States currently lacks jurisprudence in relation to whether design patents can be successfully enforced in relation to use in virtual spaces

A.7.3   Is there a distinction in your law or practice depending on which virtual specific electronic environment – computer game, virtual reality world, internet application, etc. - the design is utilized? Would a single design registration for the design be capable of protecting the design in each of these varied environments?

CNIPA

Currently there is no protection for virtual electronic environments.

EUIPO

No distinction in law.
A single design registration for the design is capable of protecting the design in each of these varied environments.

JPO

As regards the enforceability of a design right, please see the A.7.1 and A.7.2.
As regards the registrability of a design, an object which does not constitute a form of an entire/part of an article is not admitted as a legitimate "design" and thus does not become the subject of design registration. Even if a graphic image is displayed on a screen of an article, those displayed based on a signal sent from outside of the article (e.g., television program, Internet websites, etc.) are not found to be legitimate "design" of the article either.

KIPO

No. There are no separate regulations for designs utilized in the virtual specific electronic environment. If a design utilized in the virtual specific electronic environment is displayed on a display screen, it can be protected as a GUI design but it is protected as part of an article on which the GUI design is represented rather than the design itself.

USPTO

No distinction has been identified at this point, however, there is no U.S. jurisprudence on this issue.

A.8 MISCELLANEOUS

A.8.1 Are there any other "types of designs" now being contemplated or pursued at your Office that have not been otherwise identified in this questionnaire? If yes, please describe this type(s) of designs and associated environment in which they occur.

Do these other types of designs not previously identified qualify for protection through an industrial design filing at your office? If not, why does it not qualify for protection?

EUIPO

JPO

The JPO is now studying whether to protect GUI designs as such, i.e. to protect as a design of a GUI apart from the concept of a part of a specific article, taking into account the possibility of revising the current Design Act.

KIPO

A bicycle wheel whose display part is not specified when a switch is off as the configuration and colors are displayed by using LED lamps embodied in the wheel when the switch is on.

This design does not qualify for protection as no physical display part is specified.

CNIPA

None

USPTO

None

B. CURRENT OFFICE PRACTICES RELATED TO FILING, EXAMINATION, PUBLICATION, GRANT AND PROVISION FOR LEGAL PROTECTION OF DESIGNS IN EMERGING TECHNOLOGIES

B.1 FILING TECHNOLOGIES

B.1.1 What forms of images are allowed by your Office for the representation of a design in an application? (Static and dynamic images/transitional images; images of tangible products in the electronic screen display environment, other)?

CNIPA

It is displayed graphically on a product display device and relates to man-machine interaction and product functionality (e.g., Static and dynamic images/transitional images/icons/projections, etc).

EUIPO

Static images (max 7 per design) and dynamic images (one 3D model from which the 7 static views are derived)

JPO

Two dimensional drawings (including such images as line drawings and those made by means of computer graphics and screen capture, etc.) and photographs. Changeable images may be represented by a series of plural static images. Submission of a three dimensional file and a movie file cannot be allowed.

KIPO

For ordinary designs, drawing lines, pictures and 3D modeling files are allowed to be submitted while only 2D images are available for GUI designs (Drawings and pictures are available both in black and white or colorized version). If necessary, video files or a combination of a 2D image and video file can be submitted as references to facilitate understanding of a GUI design.

USPTO

Designs must be represented by a drawing that complies with the requirements of 37 CFR 1.84 and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the design. Appropriate and adequate surface shading should be used to show the character or contour of the surfaces represented. Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces that cannot be seen through opaque materials. Alternate positions of a design component, illustrated by full and broken lines in the same view are

not permitted in a design drawing. Photographs and ink drawings are not permitted to be combined as formal drawings in one application. Photographs submitted in lieu of ink drawings in design patent applications must not disclose environmental structure but must be limited to the design claimed for the article.

Every design patent application must include either a drawing or a photograph of the claimed design. As the drawing or photograph constitutes the entire visual disclosure of the claim, it is of utmost importance that the drawing or photograph be clear and complete, and that nothing regarding the design sought to be patented is left to conjecture. See MPEP 1503.02.

Additionally, computer generated icons including images that change in appearance during viewing may be the subject of a design claim. Such a claim may be shown in two or more views. The images are understood as viewed sequentially, no ornamental aspects are attributed to the process or period in which one image changes into another. A descriptive statement must be included in the specification describing the transitional nature of the design and making it clear that the scope of the claim does not include anything that is not shown. See MPEP 1504.01(a)(IV).

B.1.2 What file formats are available for representations? (i.e., moving picture files, pdf, tif, wav, etc?) Is there a max size for files? If so what?

CNIPA

You can apply only with JPG and TIFF. The size shall not exceed 150mmx220mm.

EUIPO

Static representation:
JPEG format
Max of 2Mb per view (max. 7 views)

3D dynamic representation:
OBJ, STL, X3D format
Max. 20Mb

JPO

[File format]
Drawing in black and white (two-value drawing, i.e. line drawing): either PNG, GIF or BMP
Drawing/photograph with color (including gray scale half tone): JPEG
[Maximum size of each representation]
PNG, GIF, BMP: 400 dpi, horizontal 2,362 dots * vertical 1,779 dots (converted dimensions: 150 mm * 113 mm)

JPEG: 200 dpi, horizontal 1,181 dots * vertical 889 dots (converted dimensions: 150 mm * 113 mm)
(In case of paper filing: 150 mm * 113 mm)
Maximum volume per application: 200 MB

KIPO

2D images (such as drawing lines or photographs): TIFF, JPEG
3D modeling: 3DS, DWG, DWF, IGES, 3DM
Video: SWF, MPEG, WMV, Animated GIF
Combination of a 2D image and video: TIFF, JPEG, SWF, MPEG, WMV, Animated GIF
Note: As for SWF(Small Web Format), MPEG(Moving Picture Experts Group), WMV(Window Media Video) and Animated GIF(Graphics Interchange Format), these files shall be in the medium resolution ((640× 480), lower than 600~700K/sec in speed and smaller than 200MB in size.

USPTO

For domestic filings, images or representations may be filed electronic in .pdf format or filed in traditional paper filing format. The maximum file size is 25 MB. For international design applications filed under the Hague Agreement, the USPTO accepts as an office of indirect filing .pdf and .jpeg files as well as paper filings.

B.1.3 Are there any special features allowed for identification and claims of color? Other special traits as aspects of the design?

CNIPA

None

EUIPO

No, the claimed colours must be shown in the representation.
No additional identification of colours is allowed.

JPO

Where design registration is requested for a design with colors, the colors must be shown as such in the representation. Exceptionally, application of either black or white in the representation may be omitted by stating to that effect as a description in the application.

KIPO

Both black and white or colorized drawings are available to represent a design when filing an design application. As for the colorized drawings, if there is any portion

uncolorized in a drawing, it should be indicated whether it is the color of the product or the transparent part or hole of the product in the design description column.

USPTO

Color drawings are permitted in design applications when filed in accordance with the requirements of 37 CFR 1.84(a)(2). Color photographs will also be accepted if the conditions for accepting color drawings have been satisfied. See 37 CFR 1.84(b)(2). See also MPEP 1503.02, subsection V.

Color may also be shown in pen and ink drawings by lining the surfaces of the design for color in accordance with the symbols in MPEP 608.02.

If the drawing in an application is lined for color, the following statement should be inserted in the specification for clarity and to avoid possible confusion that the lining may be surface treatment --The drawing is lined for color.-- However, lining entire surfaces of a design to show color(s) may interfere with a clear showing of the design as required by 35 U.S.C. 112(a) (or for applications filed prior to September 16, 2012, 35 U.S.C. 112, first paragraph), as surface shading cannot be used simultaneously to define the contours of those surfaces. See MPEP 1503.02, subsection V.

B.1.4 What special requirements (e.g., special descriptions, demonstration of transitional images) apply to designs for emerging technologies?

CNIPA

If the graphical user interface is dynamic, the applicant shall submit at least one of the above-mentioned overall product design views of the state; for the rest of the state, the applicant can only submit views of key frames, and the submitted views shall be able to determine the animation trend of dynamic pattern.

EUIPO

All views of an animated icon and graphical user interface need to be visually related, which means that they must have features in common. It is the applicant's responsibility to order the views in such a way as to give a clear perception of the movement/progression.

JPO

There is no special requirement for filing a design application with respect to designs for emerging technologies. Basically, the requirements for traditional products equally apply to these designs.

KIPO

When filing an application on a dynamic GUI, applicants are required to describe the movements of the design as well as static and dynamic states of the motion in the design description column.

Example 1) This design shows how a spoiler installed on the back of the car rear is transformed. Drawing A1.1 to A1.5 show how the spoiler is open wide and Drawing B1.1 to B1.5 show how it is folded.

Example 2) This design shows a movable robot toy. Drawing 1.1 to 1.7 shows a series of movements of the product.

USPTO

Because of the nature of the designs used in emerging technologies, care should be taken to ensure the design application complies with the article of manufacture requirement of 35 U.S.C. 171.

The USPTO considers designs for computer-generated icons embodied in articles of manufacture to be statutory subject matter eligible for design patent protection under 35 U.S.C. 171. Thus, if an application claims a computer-generated icon shown on a computer screen, monitor, other display panel, or a portion thereof, the claim complies with the "article of manufacture" requirement of 35 U.S.C. 171. Since a patentable design is inseparable from the object to which it is applied and cannot exist alone merely as a scheme of surface ornamentation, a computer-generated icon must be embodied in a computer screen, monitor, other display panel, or portion thereof, to satisfy 35 U.S.C. 171. See MPEP 1504.01(a).

Additionally, computer generated icons including images that change in appearance during viewing may be the subject of a design claim. Such a claim may be shown in two or more views. The images are understood as viewed sequentially, no ornamental aspects are attributed to the process or period in which one image changes into another. A descriptive statement must be included in the specification describing the transitional nature of the design and making it clear that the scope of the claim does not include anything that is not shown. Examples of such a descriptive statement are as follows:

"The subject matter in this patent includes a process or period in which an image changes into another image. This process or period forms no part of the claimed design;" or

"The appearance of the transitional image sequentially transitions between the images shown in Figs. 1-8. The process or period in which one image transitions to another image forms no part of the claimed design;" or

"The appearance of the transitional image sequentially transitions between the images shown in Figs. 1-8. No ornamental aspects are associated with the process or period in which one image transitions to another image."

See MPEP 1504.01(a)(IV).

B.1.5 What, if any, special filing options or technologies exist for designs related to emerging technologies?

CNIPA

None

EUIPO

No special filing options

JPO

At present, there exist no special options.

KIPO

3D modeling formats such as 3DS(3D Studio), DWG(Drawing), DWF(Design Web Format), IGES(Initial Graphic Exchange Specification) or 3DM(3 Dimensional Modeling) are available. In addition, for GUI designs, video clips can be submitted as reference drawings.

USPTO

There are no special filing options or technologies available for emerging technologies.

B.2 SEARCHING AND EXAMINATION PROCESS

B.2.1 What are the searching practices for substantive examinations of designs in emerging technologies (including computerized image searching, use of image recognition software, artificial intelligence, etc.)? Please identify any special searching practices that are utilized in relation to designs in emerging technologies.

CNIPA

Currently there is only static image recognition searching practice.

EUIPO

No substantive examination is carried out by EUIPO.

JPO

The Japan Patent Office (JPO) conducts prior design searches as to previously filed national applications, design gazettes published in and out of Japan, and other published materials including brochures, magazines and information on the Internet websites.

At present, such new technologies as computerized image searching, image recognition software, artificial intelligence are not utilized in the practice of the substantive examination. However, these matters are recognized as issues for study and consideration.

KIPO

A computerized searching system is utilized when determining the domestic classification based on the information indicated in the application such as the class number of the Locarno Classification and the product identification. This will be a draft classification.

USPTO

Novelty and nonobviousness of a design claim must generally be determined by a search in the pertinent design classes. It is also mandatory that the search be extended to the mechanical classes encompassing inventions of the same general type. Catalogs and trade journals as well as available foreign patent databases are also to be consulted. See MPEP 1504.

Examiners as experts in the technology and art fields in which they are examining frequently develop understanding as to where to frequently locate art of relevance and have flexibility to search in locations in addition to aforementioned requisite patent databases. For example, examiners may search on internet web locations and other non-patent literature as sources of relevant references.

B.2.2 **What are the available tools for the examiners for the use and manipulation of images of filed application to facilitate examination (e.g., examiners´ ability for manipulation and rotation of imagery such as 3D imagery)?**

CNIPA

We use image view tools, it support view zoom/ contrast/ editing and other functions.

EUIPO

Images remain as filed by the applicants.

JPO

The JPO provides no special tools for the examiners other than those for the operation of static images since the JPO does not currently accept e.g., 3D files and movie files for the filing of design applications.

KIPO

Tools for 3D images: Cadian viewer, Rhino viewer

Tools for video clips: Window media player, GOM player

USPTO

Examiners have the ability to change the orientation and zoom in/out on the two dimensional electronic .tiff and original .pdf images stored in the electronic file wrapper of the application.

B.2.3 Are there any distinctions in examination procedures or processes for designs in emerging technologies (Special requirements; Varied handling or processes; etc.)?

CNIPA

In the case of Graphical User Interfaces, the applicant shall submit at least one of the above-mentioned overall product design views of the state; for the rest of the state, the applicant can only submit views of key frames, and the submitted views shall be able to determine the animation trend of dynamic pattern.

And if it is necessary, the applicant shall explain the purpose of the graphical user interface, the area of the graphical user interface in the product, the way of man-machine interaction and the state of change.

EUIPO

The examination process is the same.

The only requirement for animated designs is the one described above in B.1.4.

JPO

For the purposes of efficiency and stability of the substantive examination practice, design applications that contain graphic images (GUIs) are allotted to limited number of examiners who are designated as being in charge of the cases.

As for designs that contain graphic images (GUIs), a transverse prior design search i.e. a thorough search beyond the commonality (similarity) of the corresponding article fields is conducted in order to check the fulfillment of the requirements for design registration.

KIPO

(1) Between dynamic a GUI design and a static GUI design
  ① If the posture of the main figure of a dynamic GUI design in the static and dynamic states is similar to that of a static GUI is; and there is no peculiarity in

motion, they shall be deemed to be similar designs. In other words, if there are peculiarities in changes of the configuration or motion, they shall be deemed to be different designs.

② If the posture of the main figure of a static GUI is similar with that of a dynamic GUI design in the static and dynamic states; and there is no peculiarity in motion, they shall be deemed to be similar designs.

(2) Between dynamic GUI designs
Similarity between dynamic GUI designs is determined by comparing the posture of the main figure of a dynamic GUI designs in the static and dynamic states of the motion.

USPTO

The examination process is the same.

B.3 PUBLICATION/GRANT

B.3.1 What is the format in which design rights are granted and published by your Office? (e.g., paper registration/patent; e-grant)?

CNIPA

There are two forms, paper publication and electronic publication.

EUIPO

e-publication in the Community Design Bulletin

e-certificate downloaded by the users

JPO

The certificate of design registration is issued in paper while the Design Bulletin is published electronically.

KIPO

Both paper registration and e-grant are available. A registration certificate is available both in Korean and English.

USPTO

The Official Gazette for Patents is published each Tuesday in electronic form only, and contains bibliographic text and a representative drawing from each patent issued that week. Full text of each patent can be retrieved electronically from the USPTO Full Text Database. See https://www.uspto.gov/learning-and-resources/official-gazette/official-gazette-patents.

A bond paper copy of the patent grant is also mailed to the applicant upon issuance. See MPEP 1309.

B.3.2 What are the tools provided by your Office for search purposes in the publication databases?

CNIPA

The documents of authorized design patent are searched through the retrieval system.

EUIPO

eSearchPlus (only for Registered Community designs)

DesignView (publications of 59 Offices)

JPO

The Japan Platform for Patent Information (J-PlatPat) operated by the National Center for Industrial Property Information and Training provides an on-line search facility of published Design Bulletins.
https://www.j-platpat.inpit.go.jp/web/all/top/BTmTopEnglishPage

KIPO

Website: kipris.or.kr, designmap.or.kr

USPTO

Patents may be searched in the USPTO Patent Full-Text and Image Database (PatFT). The USPTO houses full text for patents issued from 1976 to the present and PDF images for all patents from 1790 to the present. Other resources available to the public for searching patents are identified on the USPTO Web site at
https://www.uspto.gov/patents-application-process/search-patents.

B.3.3 What types of documents/copies are *provided* by your Office to the users for priority claim purposes in another Office? (Please explain both paper and electronic format as applicable)

CNIPA

Previous application documents or electronic copy of previous application documents are provided.

EUIPO

e-documents (PDF) downloaded directly by the users

Certified paper copies issued by EUIPO through Inspection of files

JPO

Currently, the JPO issues paper based priority documents only.
The JPO is going to participate in the WIPO DAS framework for the electronic exchange of priority documents in the field of designs (as depositing office) as soon as necessary preparation is completed.

KIPO

The paper format is available.
The electronic exchange of priority document has been available through WIPO DAS framework only in case of exchange between KIPO-CNIPA since July 20 2018.

USPTO

Certified copies of an application as originally filed are provided by the USPTO. The copies may be ordered in paper or CDROM via the mail or as PDFs via the internet. See http://ebiz1.uspto.gov/vision-service/Product_Services_P/msgShowProductSets?category=P.

On October 1, 2018, the USPTO will begin depositing U.S. design applications via the WIPO Digital Access Service (DAS), providing design priority documents in black and white, color, and grayscale depending on what format was received from the applicant.

Note: For international design applications (applications for international registration), users will be unable to order a certified copy of the application from the USPTO. Accordingly, the "Order Certified Application As Filed" hyperlink will be inactive. Users are instructed to contact the International Bureau (IB) of the World Intellectual Property Organization (WIPO) to obtain a certified copy of international design applications. See https://www.uspto.gov/patents-application-process/checking-application-status/order-certified-copies.

See https://www.uspto.gov/patents-getting-started/international-protection/electronic-priority-document-exchange-pdx for more information.

B.3.4 What types of documents/copies are required by your Office to the users for priority claim purposes from another Office? (Please explain both paper and electronic format as applicable)

CNIPA

Previous application documents or electronic copy of previous application documents are required. If the application is electronic, the applicant shall submit a copy of the paper which is scanned.

EUIPO

Decision n. EX-17-5 of the Executive Director

The required priority document must consist of a copy of the previous application or registration, emanating from the authority that received it, stating the filing date of that application. The priority document may be filed in the form of an original or as an accurate photocopy.

JPO

Under the provision of the current Design Act, the JPO only requires/accepts original copies of certified priority documents in paper format. Where the office of the first filing only issues electronic certified priority documents, submission of a fine printout of the original document is needed in order to fulfill the formal requirement of the Act.
The JPO is going to participate in the WIPO DAS framework for the electronic exchange of priority documents in the field of designs (as accessing office) as soon as necessary preparation is completed.

KIPO

Priority documents authenticated by the first Office with which the application was filed need to be submitted and both paper and electronic format are allowed.
Declaration of claiming priority and the name of county in which the first application was filed as well as the filing date (day, month, year) must be indicated in the application.
Supportive documents for the declaration of claiming priority should be submitted within 3 months from the filing date. For an international design application, those documents should be attached to the application or submitted within 3 months from the international disclosure.

USPTO

35 U.S.C. 119(b)(3) authorizes the Office to require the applicant to furnish a certified copy of the foreign priority application, and the Office requires such a copy pursuant to 37 CFR 1.55. The filing of the foreign priority papers under 35 U.S.C. 119(a)-(d) makes the record of the file of the United States patent complete. See MPEP 215.

The certified copy which must be filed is a copy of the original foreign application with a certification by the patent office of the foreign country in which it was filed. Certified copies ordinarily consist of a copy of the specification and drawings of the applications as filed with a certificate of the foreign patent office giving certain information. Certified

copies include those retrieved by the Office in accordance with a priority document exchange program (e.g., via WIPO DAS). See MPEP 215.01. A copy of the certified copy filed by applicant, including a copy filed via EFS Web, will not satisfy the requirement in 37 CFR 1.55(g) for a certified copy. See MPEP 502.02, subsection V. A copy of the foreign patent as issued does not comply since the application as filed is required; however, a copy of the printed specification and drawing of the foreign patent is sufficient if the certification indicates that it corresponds to the application as filed. See MPEP 215, subsection II.

B.4 LEGAL PROVISIONS AND SCOPE OF PROTECTION FOR DESIGN RIGHTS

B.4.1 According to your national/regional law/regulations what is the extent of legal connection between the design and the product in which the design is embodied (e.g., for infringement, is the design required to be embodied in or applied to the product identified in the registration)?

CNIPA

In China, industrial design is the industrial design of products, its carrier should be products.

EUIPO

According to Articles 36.2, 36.3, 36.6 CDR the indication of product as well as the description
shall not affect the scope of protection of the design as such.

JPO

Art. 2(1) of the Japanese Design Act defines a "design" as "the shape, patterns or colors, or any combination thereof, of an article (including a part of an article,) which creates an aesthetic impression through the eye". Therefore, protectable design under the Design Act must be the form of an article (product) itself, and a graphic image displayed on a screen (e.g., GUI) is treated as the form of a part of an article.

The Design Act also provides that a holder of a design right shall have the exclusive right to work the registered design and designs similar thereto as a business (Art. 23) and that "work" of a design shall mean the manufacturing, using, assigning, leasing, exporting or importing, or offering for assignment or lease (including displaying for the purpose of assignment or lease) of an article to the design (Art. 2(3)).

Accordingly, the expected subject of an injunction in the case of a direct infringement is the article specified in the design registration and similar thereto (Art. 37(1)), while that in the case of an indirect infringement may be any product to be used exclusively for the producing of the article (including a computer program) (Art. 38(1)(i)).

The amount of damages may also be presumed to be the amount of profit per each unit of article (Art. 39(1)).

KIPO

When filing a design application, the purpose and function of the design should be clearly specified in order to obtain a registration. If a registered design is embodied in a product which has the same purpose or can be used for the same function as the product of the registered design and the dominant features of the both products are determined to be similar, infringement will be sanctioned.

USPTO

The USPTO does not comment on what would constitute infringement of a particular design patent because infringement is a question that is evaluated by the courts. However, the well-established test for infringement of a design patent was set forth in *Gorham Manufacturing Co. v. White*, 81 U.S. (14 Wall) 511 (1871). In *Gorham* the U.S. Supreme Court set out the ordinary observer test to determine infringement stating, "that if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other." Id at 528. Therefore, the focus of the determination of the scope of the rights including whether an accused design or product infringes is focused on whether the two designs are substantially the same in appearance.

B.4.2 According to your national/regional law/regulations how do you determine if designs in new or emerging technologies are something that is eligible for protection (compliance with the definition of design)? How do you determine if the design meets the registrability criteria?

CNIPA
Examination According to Article 2.4
In accordance with the provisions of Article 2.4, "design" in the Patent Law means any new design of the shape, the pattern or their combination, and the combination of the color with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

EUIPO

Definition of design according to Art 3.a,b CDR:
(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;
(b) "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;

JPO

As repeatedly discussed above, protectable "design" must constitute a form of an entire/part of an intangible article. In considering the treatment of GUI designs, for example, protectable graphic image must be of the nature that has been recorded in the article and displayed on the screen.

In addition to the requirement for a legitimate "design", designs in new or emerging technologies must fulfill the same requirements for design registration as designs of other traditional products indicated below.

Conditions for design registration (Article 3 of the Design Act)
 - **Industrial applicability** (Whether the design is specific in both "article" and "appearance".)
 - **Novelty*** (Whether the design is identical with or similar to a publicly known design.)
 - **Creativity**** (Whether the design is one that could be easily created by a person ordinarily skilled in the art of the design.)

Conditions for design registration (Article 3bis)
(Whether the design is identical with or similar to a part of a design in a prior application.)

Unregistrable designs (Article 5)
(Whether the design is eligible for protection in consideration of public interest, etc.)

One application per design (Article 7)
(Whether only one design based on an appropriate article is claimed in one application.)

Prior application (First-to-file rule) (Article 9)
(Whether the design application was filed at the earliest among those containing same or similar designs.)

Related designs (Exception to the first-to-file rule) (Article 10)
(Whether the design is similar to only the other design (principal design) which was selected from the applicant's own designs filed on the same date or earlier.)

* Judgement on similarity of designs is made based on the aesthetic impression of the "consumers" within the scope of articles that have similar intended use and function to the article of the filed design.

** Judgement on creativity may be made even beyond the scope of articles that have similar intended use and function. "A person ordinarily skilled in the art of the design" is the person who has knowledge on the designs in the industry where the article is manufactured or sold. In the case of a design containing a graphic image on the screen (GUI), general knowledge on graphic image designs irrespective of the fields of industry is also taken into account.

KIPO

Designs in new or emerging technologies must comply with the article in order to be eligible for protection under the Design Protection Act just as other designs do.

USPTO

New and Emerging designs are subject to the same laws and examination practices as all other designs. Eligibility is determined under 35 U.S.C. 171(a), providing that whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefor.

B.4.3 Are there any specific national/regional law/regulations that have been drafted/passed to specifically update your design law to provide protection for designs in new or emerging technologies?

CNIPA

CNIPA amended the guidelines for patent examination through bureau no. 68 , to protect the graphic user interface design, which has been implemented since May 1, 2014.

EUIPO

No.

JPO

Although the drafting has not yet been completed, a possible new legislative and operational scheme for protecting designs in new or emerging technologies is currently under consideration.

KIPO

At this moment, there is no specific plan.

USPTO

No.

B.4.4 What is the connection between contents of grant/ registration and rights conferred to the design holder?

CNIPA

The extent of protection of the patent right for design shall be determined by the design of the product as shown in the drawings or photographs. The brief explanation may be used to interpret the design of the product as shown in the drawings or photographs.

EUIPO

Art. 19.1 CDR: A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market,

importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.
Art 10.1 CDR:
The scope of the protection conferred by a Community design shall include any design which does not produce on the informed user a different overall impression.
Art. 10.2 CDR:
In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration

JPO

The Design Act provides that a holder of a design right shall have the exclusive right to work the registered design and designs similar thereto as a business (Art. 23) and that "work" of a design shall mean the manufacturing, using, assigning, leasing, exporting or importing, or offering for assignment or lease (including displaying for the purpose of assignment or lease) of an article to the design (Art. 2(3)).

KIPO

The owner of a design right shall have the exclusive right to work the registered design or any similar design commercially. (Article 92 of the Design Protection Act)

USPTO

The patent laws provide for the granting of design patents to any person who has invented any new and non-obvious ornamental design for an article of manufacture. The design patent protects only the appearance of an article, but not its structural or functional features.   Infringement of a patent consists of the unauthorized making, using, offering for sale, or selling any patented invention within the United States or U.S. Territories, or importing into the United States of any patented invention during the term of the patent.

B.4.5 Please identify legal provisions and regulations relating to acquisition, examination, publication/issuance, or enforcement of designs in emerging technology environments. Please indicate if these same legal provisions or regulations relate only to emerging or technological designs (i.e., certain types of designs) or to all types of industrial designs.

CNIPA

None

EUIPO

Council Regulation (EC) No 6/2002 of 12/12/2001 on Community designs

Commission Regulation (EC) No 2245/2002 of 21/10/2002 implementing Council

Regulation (EC) No 6/2002 on Community Designs

Same legal provisions for all types of designs.

JPO

Followings are the relevant provisions of the Japanese Design Act. These provisions apply to all types of designs. For details (English translation), see the following URL. (http://www.japaneselawtranslation.go.jp/law/detail/?id=2846&vm=04&re=2&new=1)

[Acquisition] and [Publication]
Article 20 (Registration of establishment of a design right)
[Examination]
Article 16 (Examination by examiner)
Article 17 (Examiner's decision of refusal)
Article 17-2 (Dismissal of amendments)
Article 18 (Examiner's decision to the effect that a design registration is to be granted)
[Enforcement]
Article 23 (Effect of design right)
Article 24 (Scope of registered design, etc.)
Article 37 (Right to seek injunction)
Article 38 (Acts Deemed to constitute infringement)
Article 39 (Presumption of Amount of Damage, etc.)
Article 40 (Presumption of negligence)

KIPO

Design Examination Standards including examination standards for graphic designs

USPTO

Emerging designs are subject to the same laws and regulations as all other industrial designs 35 U.S.C. 171; 35 U.S.C. 112; 35 U.S.C. 102; 35 U.S.C. 103.

Similarly, infringement of design patents are all subject to the same laws and regulations. 35 U.S.C. 271, 35 U.S.C. 283, 35 U.S.C. 284, 35 U.S.C. 289.