



## Study Question

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### Protection of graphical user interfaces

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## I. Current law and practice

### Patents

#### 1 Can GUIs generally be protected by patents?

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

Yes

Please Explain

*A GUI is the graphical representation of computer software that allows the user to interact with the machine. Software by itself is not considered as patentable subject matter and is protected under the Copyrights Law. Under the Patents Law, patentable subject matter is any invention, whether a product or a process, in any field of technology that is novel, useful, capable of industrial use, and possesses an inventive step.*

*In addition to the above, the ILPTO Practice Guidelines interpret the statutory requirement that an invention be in a field of technology to require that carrying out an invention must involve a concrete technological process, the assessment of which particularly affecting computer and software implemented inventions. Please note that scientific discoveries, mathematic formulae, rules for playing games, and mental processes, methods of doing business and such have been excluded.*

*Therefore, in most cases, GUIs will not meet the basic requirements for obtaining a patent.*

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

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

*Since there are no provisions in the legislation or in the ILPTO Practice Guidelines that deal directly with GUIs and since no case law on this matter exists, it is hard to define which type or aspect of GUIs are protectable by patents. The patent application for GUIs must meet all the basic requirements of any other patent (novelty, inventive step) with emphasis on involving a concrete technological process. We can indicate for example that automation of accessibility of website GUIs may be subject matter eligible for a patent or GUI that can save system resources (computing power) may also be eligible*

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

No

Please Explain

*Since this matter not regulated by statutory provisions and case law does not exist in this regard, there are no specific claim formats for patent applications involving GUIs. It should be noted that the mere steps performed by the algorithm of the GUI software can't be protected by the patent claims, and are protected via the copyrights law.*

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

Yes

Please Explain

*As indicated above, the ILPTO Practice Guidelines interpret the statutory requirement that an invention be in a field of technology as requiring that carrying out an invention must involve a concrete technological process (for this matter, saving computing power, improving reliability of the data/GUI etc. might be considered as a concrete technological process).*

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

*There is no case law in this matter. It is submitted that insofar as the basic requirements for obtaining a patent are met, the user's mental activities should not affect the patentability of the GUI.*

## Design rights

**6** Can GUIs generally be protected by design rights?

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

Yes

Please Explain

According to the Israeli Patent Office Practice Guidelines, Appendix C, sec 1, there is no reason to prevent registration of GUI and digital icons as designs. However, it should be noted that, insofar, there are no court decisions that support or reject the eligibility for design protection of GUI and digital icons.

It should also be noted that a new Designs Law is currently pending before a parliamentary committee as part of the legislation process. Proposed Article 1 of the Designs Law defines "product" as "including set of articles, packaging, graphic symbol, screen display, and excluding typeface and computer software".

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

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

See below

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

No

Please Explain

*The Practice Guidelines do not refer to GUI that temporarily appears on a screen. However, it is possible to register a design for an animated screen display (sequence), which suggests that GUI does not necessarily have to be fixed GUI.*

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

Yes

Please Explain

*GUI is protected by design rights independently from the design of the electronic device itself. However, according to Practice Guidelines, Appendix C, sec 1, the GUI must be shown implemented on a screen (or other electronic device), while the screen itself is disclaimed by showing it in dashed lines. According to practice, digital icons can do not have to be shown implemented on a disclaimed screen (or other electronic device), but has to be encircled or framed with dashed lines.*

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

Yes

Please Explain

*Parts of a GUI may be protected by design rights. If the smaller elements are an integral part of the GUI, it is possible to show them in solid lines, while showing the unclaimed parts of the GUI in dashed lines. Also, digital icons may also be protected independently, although it is not clear whether the term, "icons" in the Practice Guidelines refer to independent icons (such as application icons) or to icons that are part of an overall user interface.*

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

Yes

Please Explain

*According to the Israeli Patent Office Practice Guidelines, Appendix D, sec 9.14, it is possible to register a design for an animated screen display (sequence). A design application for an animated screen display must include several images of the sequence at different stages, and the following statement of novelty – "The novelty lies in the entire sequence as shown in the pictures".*

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

No

Please Explain

No.

## Copyright

**8** Can GUIs generally be protected by copyright?

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

Yes

Please Explain

*GUIs are generally protected by copyright in Israel.*

*Protection can apply to the aesthetic elements as an artistic work, to the textual elements as literary work, and to combination of elements as an original compilation. Threshold of originality is not high. no special artistic quality is required.*

*There is a pending question as to the relation between copyright and design protection, due to div 7 of the copyright act which excludes "designs" which are industrially applied from copyright protection. One district court judge held, with respect to "fonts", that virtual objects are not subject to the exclusion rule of div 7. The matter is also pending before a parliamentary committee as part of legislation process of a new design law, and it is expected that two dimensional works will not be subject to the exclusion rule of div 7.*

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

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

No

Please Explain

The showing of GUI on a screen, for itself, does not differentiate it from any other artistic work which is shown on screens. Copyright refers to the artistic creation without reference to the technical means of its visual expression. As long as the relevant element of the GUI are designed by a person (graphically or textually) copyright subsists as in any other work. If a computer creates these elements automatically without human intervention, then the GUI is not an original work of authorship.

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

There are general conditions to copyright protection in Israel:

**Originality** (this depends on the circumstances. Obviously GUI which is a copy of a pre-existing GUI of someone else, is not original. On the other hand originality does not require artistic nature or significant novelty);

**Fixation** (showing on a computer screen is sufficient);

**Connection to Israel or to a treaty member** (work is protected if its author is a national or habitual resident of Israel or of a country which is a member of Berne convention, TRIPS agreement, etc. This is a standard condition to all copyright works. If GUIs are not copyrightable in other countries, it may raise international law issues, as reflected in Berne Convention div 27). There is no clear case law in this respect in Israel and it is yet to be seen how modernizing the design law will affect the interpretation of copyright protection in this respect)

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

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

No

Please Explain

Overall look and feel is not for itself protected by copyright. It may be used as an assistance to determine whether a "significant part" of a work was copied, per copyright act div 11. The protection is granted to the "work" which is the GUI. The level of similarity that can substantiate copying of a "significant part" is a complex issue that is determined per the circumstances of the case.

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

Yes

Please Explain

Individual elements of a GUI may be protected, in appropriate cases, under this analysis: if an element can stand as an artistic work for itself, then the fact that it was combined with other elements does not diminish its individual protection as a work. The element will need to pass "originality" threshold, which may not be easy for simple shapes or very short texts.

In other cases, if the element itself is not "original", copying of some elements from GUI which is a compilation (the original assembly of non original elements) may substantiate copying of a "significant part" of the over all GUI.

## Trademarks

**12** Can GUIs generally be protected as trademarks?

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

Yes

Please Explain

*GUIs and their components, as any other graphic or textual representations, may be protected as trademarks if they fulfil the general conditions, mainly distinctive character. Distinctiveness can be inherent, for example an identifiable graphic figure which is a component of the GUI. Another example may be work mark, like the name of the company which may appear as part of the GUI.*

*Functional features of the GUI will normally be excluded from trademark protection. The overall design of the GUI will likely not be distinctive, and will likely be functional, thus will be eligible to trademark protection only in rare cases.*

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

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

*See above. It is likely that in most cases such elements in a GUI will not be considered distinctive, and will be considered functional. Nevertheless, in appropriate cases, a moving image may gain distinctive character. Just like in the traditional world of motion pictures, there may be cases of motion trademarks.*

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

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

No

Please Explain

*In Israel, use is not a necessary condition for trademark protection. Thus, if a GUI or a component is inherently distinctive, use is not a pre-condition for registration. Only in cases where there is no inherent distinctiveness secondary meaning through use may be required.*

## Other forms of protection

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

Yes

Please Explain

*Passing off may be available in appropriate cases*

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

*In special cases, when no specific IP right can be invoked but there is unfairness in the use of a competitor, or deception of the public, there can be legal regimes outside of traditional IP that can be used, such as consumer protection law, and unjust enrichment. A full analysis of these doctrines is outside the scope of this questionnaire.*

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

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

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

Yes

Please Explain

*Yes, by a combination of all relevant IP rights (subject to response to questions 19-20 below)*

**18** If no, how is your law deficient?

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

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

No

Please Explain

No.

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

*The law should be clarified with respect to the possible use of all IP measures. In particular, law should be clarified with respect to the copyright/design overlap.*

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

## III. Proposals for harmonisation

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

Yes

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Please Explain

Harmonization in IP law is always desirable, but often difficult to achieve because of differences in the legal traditions.

**The questions below involve policy consideration that fall far beyond the context of GUI protection, and it is not possible to present a coherent and consensual opinion for the Israeli branch of AIPPI, thus these questions were left for future discussions.**

## Patents

23

**Should GUIs generally be capable of protection by patents?**

*If no, please answer questions 23.1, if yes, please go to question 23.2*

Yes

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Please Explain

*In cases where inventions of GUIs meet the generally applicable requirements for patentability it should be clear that GUIs are not excluded.*

23.1

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

23.2

**Please explain your reasons.**

24

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

24.1

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

24.2

**Please explain your reasons.**

25

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

No

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Please explain your reasons

*GUIs should be treated equally as any other invention and should be no "physical feature" applicable for GUIs.*

26

**What claim formats should be available for protecting GUIs?**

## Design rights

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

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

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

**27.2** Please explain your reasons.

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

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

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

## Copyright

**30** Should GUIs generally be capable of protection by copyright?

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

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

**30.2** Please explain your reasons.

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

**32** Under what conditions, and to what extent, should GUIs protectable by copyright?

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

## Trademarks

33 Should GUIs generally be capable of protection as trademarks?  
*If no, please answer questions 33.1, if yes, please go to question 33.2*

33.1 If not, should at least some types or aspects of GUIs be protectable as trademarks?

33.2 Please explain your reasons

34 Under what conditions, and to what extent, should GUIs be protectable as trademarks?

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

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

## Other forms of protection

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

36 Should there be a sui generis right for protection of GUIs? If so, what aspects of GUIs should be protected by such a right, to what extent, and under what conditions?  
*If yes, please answer questions 37, if no, please go to question 38*

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

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

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

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