Design Protection for User Interfaces
Under European and US Law

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New developments in the field of graphical user interfaces (GUIs)

- Smartphones
- Tablet PCs
- Apps
- PC software
Design of GUIs matters!

- Market for consumer electronics competitive
- Product design can make the difference
- Design of GUIs plays important role
  - More user friendly
  - More intuitive
  - More fun
- Design of GUIs can be your unique selling position
What protection is available for GUIs?

- Utility patent protection?
- Trademark protection?
- Copyright protection?
- Design protection?
  - For static GUIs?
  - For non-static GUIs?
What about trademark protection?

Sound capable of being distinctive (regardless of goods)?
Art. 2 European Trademark Directive:
A trade mark may consist of any signs capable of being represented graphically, particularly... designs..., provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

Sound consisting exclusively of the shape of the product?
Art. 3 (1) (e) (iii) European Trademark Directive:
Signs which consist exclusively of... the shape which gives substantial value to the goods [shall not be registered]
What about trademark protection?

Distinctive for computer software?
ECJ, case C-24/05 P [2006] Storck v. OHIM par. 24 seqq.
Average consumers are not in the habit of making assumptions about the origin of products on the basis of their shape... in the absence of any graphic or word element... only a mark which departs significantly from the norm or customs of the sector... is not devoid of any distinctive character...

= Only for unusual features of GUIs
What about trademark protection?

= Non-static features could be claimed!
What about copyright protection?

Eligible for copyright protection?
Art. 1 (1), (2) Computer Program Directive:
...Member States shall protect computer programs, by copyright... Protection ... shall apply to the expression in any form of a computer program.

Standard for copyright protection?
Art. 2 (3) Computer Program Directive:
A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.
What about copyright protection?

GUI form of a computer program?
ECJ, case C-393/09 [2010] BSA v. Czech Ministry of Culture:
... the graphic user interface does not enable the reproduction of that computer program... It follows that that interface does not constitute a form of expression of a computer program within the meaning of [the Computer Program Directive]...
Nevertheless... the graphic user interface... can be protected by the [Information Directive]... which is original in the sense that it is its author’s own intellectual creation...

= Originality required
What about copyright protection?

When is GUI original?
ECJ, case C-393/09 [2010] BSA v. Czech Ministry of Culture:
...the national court must take account, inter alia, of the specific arrangement or configuration of all the components which form part of the graphic user interface in order to determine which meet the criterion of originality. In that regard, that criterion cannot be met by components of the graphic user interface which are differentiated only by their technical function.

Components not only differentiated by technical function? If design is particularly clear, understandable, user-friendly and simple?
Is design protection available for GUIs?

“Article of manufacture” requirement
Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent

Is a GUI an “article of manufacture”?
1504.01(a) Manual Of Patent Examining Procedure
The USPTO considers designs for computer-generated icons embodied in articles of manufacture to be statutory subject matter eligible for design patent protection... Thus, if an application claims a computer-generated icon shown on a computer screen... or a portion thereof, the claim complies with the “article of manufacture” requirement...
How do I fulfill the „article of manufacture“ requirement?

How is „embodiment in article of manufacture“ shown?

1504.01(a) Manual Of Patent Examining Procedure

If the drawing does not depict a computer-generated icon embodied in a computer screen... or a portion thereof, in either solid or broken lines, reject the claimed design... for failing to comply with the article of manufacture requirement.

= That’s why there is the broken line!
How can I broaden the scope of protection?

- Disclaim irrelevant parts of the GUI
What about non-static GUIs?

„Changeable computer generated icons“

1504.01(a) Manual Of Patent Examining Procedure

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...

Description

1504.01(a) Manual Of Patent Examining Procedure

A descriptive statement must be included in the specification describing the transitional nature of the design...
Example of changeable computer generated icon
Can I combine this?

- Disclaim irrelevant parts
- File several views
- File description
On-screen keyboard
On-screen keyboard
Slide to unlock
Slide to unlock
Speech bubble tweets

Kluy' kujhina giudg ih hiohoh

Ndeyb ege kiuy wg iuy iu  – L ajujwu diuigkl ujighiuouho guyuigoo - pijphig
Speech bubble tweets

Prswge Trafgwns – od rhbs ejkw .com – she n mojd hwjh

Ndeyb ege kiuy wg iuy iu  – L ajujwu dluigki ujighiouho guyuigoo - pjpphig
Speech bubble tweets

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Hgr wiuo Lujpj poiipj hoi jhgy g vggx xsuojn kdhje bjytrf ho hoho koij lihu pidu hgywrg fgsd liu oui poi.
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Cover Flow
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Thank you!