

## PTO Provides Guidance for Computer-Related Design Patent Applications

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The US Patent & Trademark Office (PTO) published a [notice](#) regarding supplemental guidance for PTO personnel examining design patent claims containing computer-generated images. 88 Fed. Reg. 80277 (Nov. 17, 2023).

The guidance clarifies how to satisfy the article of manufacture requirement under 35 U.S.C. 171 for ornamental designs relating to computer-generated icons shown on a display panel, as discussed in Section 1505.01(a)(I) of the Manual of Patent Examining Procedure (MPEP). According to the guidance, “the mere display of a computer-generated electronic image . . . on a display panel does not constitute statutory subject matter under [35 U.S.C. 171](#).” However, a computer icon or a graphical user interface (GUI) shown on a display panel (*e.g.*, a computer screen, monitor, computer display system, mobile phone screen or virtual/augmented reality goggles) is more than a mere display of a picture on a screen because it constitutes an integral and active component in the operation that is embodied in and/or applied to a programmed computer displaying the computer icon or the GUI. Thus, if a computer icon or GUI is properly presented and claimed (*e.g.*, the drawing fully discloses the design as embodied in the article of manufacture), it is eligible under [35 U.S.C. 171](#).

In addressing the foregoing distinctions, the guidance sets forth specific standards for PTO personnel, including consideration of the complete disclosure when evaluating whether a design claim containing a computer-generated electronic image complies with the article of manufacture requirement. For example, given that computer icons or GUIs are considered to be two-dimensional images, which standing alone are surface ornamentation (*i.e.*, an ornament, impression, print or picture), the guidance stipulates that the title and the claim should not be for a computer icon or a GUI alone, but rather an article of manufacture, such as a “display panel with a computer icon.” The guidance further provides examples of acceptable claim language and specific examination scenarios for evaluation.

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National Law Review, Volumess XIII, Number 334

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