

## Protecting Graphical User Interfaces

By: *Guangyu Zhang, Peksung Intellectual Property*

A graphical user interface (GUI) refers to an interface presented as a graph or image a display which links to an operating system. A user can perform an operation by clicking the graph or image in the interface. A GUI is protected under copyright and unfair competition law, and was acknowledged as a patentable design under the Chinese Patent Law in 2014 by notice No. 68 of the State Intellectual Property Office China.

After the notice was issued, Qihoo 360 obtained the first design patent for a GUI on August 14, 2014 and filed many design patent applications covering GUIs, leading a trend of protecting GUIs under patent law.

On April 22, 2016, Qihoo filed a complaint with the Beijing Intellectual Property against Beijing Jiangmin New Science & Technology, asserting that Jiangmin three design patents covering GUIs owned by Qihoo. According to the complaint, Qihoo developed GUIs related to computer security optimisation and obtained the patents.

Jiangmin, a company providing antivirus services for computer users, launched a new product called Jiangmin Optimizing Expert, which Qihoo said uses a GUI similar to that shown in its patents and that the company allegedly infringed the patents. This is the first litigation case related to GUIs in China since they were acknowledged as patentable subject matter in 2014.

According to the patent documents, the patents protect a computer with the shown and the GUI is only part of the protected computer. According to article 11 of the patent law, design patent proprietors have a right to prevent any entity or individual from manufacturing, offering for sale, selling, or importing a product incorporating a patented design without their consent.

However, according to the complaint, Jiangmin only uses a GUI similar to that shown in the patents in its software provided to end users, and does not provide a computer incorporating the patented design to the end users. The GUI is only shown in the computer of the end user. That is, Jiangmin may use the patented GUI, but it definitely does not manufacture, sell, offer to sell or import the computer incorporating the patented design, which are the actions that the patentee has a right to prevent others from doing. It is indeed arguable whether Jiangmin had infringed the design patents at all.

Qihoo asked for compensation of RMB 15 million (\$2.25 million) for the alleged infringement of the three design patents, in addition to a request to stop the allegedly

infringing action. According to article 65 of the patent law, the amount of compensation for the damage caused by patent infringement may be assessed on the basis of the actual losses suffered by the proprietor because of the infringement, the resulting profits earned by the infringer, or by reference to the appropriate multiple of the royalties under a contractual licence.

However, Qihoo and Jiangmin both provide free software using GUIs to the end users, so it seems that no actual losses or profits earned from the software can be determined. Also, there is no record of royalties under contractual licence for a GUI in China. Under such circumstances, even if Jiangmin is determined to infringe the design patents owned by Qihoo, it is difficult to determine the compensation for the damage caused by the infringement.

As a routine counter action, the defendant Jiangmin filed invalidation requests against the patents with the Patent Reexamination Board and requested the court to suspend the adjudication of the case based on the invalidation requests. According to the local practice, the court has the power to agree with or reject the request of the defendant on a case-by-case basis. The court noted that Qihoo had provided design patent evaluation reports for the involved patents, which concluded that the rights to the involved design patents were stable; it thus rejected the request of Jiangmin and will hear the case later.

As the first case related to GUIs, this has caught much attention from the intellectual property community of China and the judgment of the court will shed light on issues such as how to determine the infringement of a GUI and how to determine compensation.

Guangyu Zhang is a partner at Peksung Intellectual Property. He can be contacted at: [zguangyu@peksung.com](mailto:zguangyu@peksung.com).

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