

USPTO Has Eye On New Tech In Design Patent Guidance

By **Theresa Schliep**

Law360 (March 17, 2026, 7:20 PM EDT) -- The U.S. Patent and Trademark Office has significantly expanded design patent protections with its guidance for claiming computer-generated images shown using virtual reality, holograms and similar technologies, attorneys say, marking a big step forward from prior rules on the subject.

Holographic computer keyboards and virtual reality motorcycles are among the examples of potentially viable design patent claims that the USPTO identified in its March 12 guidance extending design patents to computer images — like icons and graphical user interfaces — shown in projections, holograms and virtual and augmented reality, or PHVAR.

The USPTO made two particularly notable moves in the document: It explicitly recognized images depicted using PHVAR as possibly design patent-eligible, and it eliminated the requirement that design patent application drawings include a display screen to satisfy the article of manufacture requirement, which refers to the physical object that the design applies to.

While the changes were made in relatively slim supplemental guidance that the USPTO said does not have the force of law, attorneys described the development as a meaningful expansion of design patent protections. They also called it a departure from guidance issued in 2023 that retained the display screen requirement and made no mention of PHVAR.

"There is now this explicit recognition of the projected and holographic [augmented reality] and [virtual reality] designs," Finnegan Henderson Farabow Garrett & Dunner LLP partner Elizabeth D. Ferrill said, adding, "It is definitely a swing in the complete opposite direction of where the 2023 guidance was going."

The 2023 guidance garnered some criticism from stakeholders like the International Trademark Association and the American Bar Association Section of Intellectual Property Law, which said in 2024 that the display screen drawing requirement was outdated.

The latest guidance said drawings with design patent applications for computer-generated images do not need to include a display screen as long as "the article of manufacture is properly identified in both the title and claim." A claim can do so by using language that "indicates that an icon or interface is 'for' a computer, computer system, or computer display panel," the guidance said.

This change in particular is a potential boon for software companies, according to Deirdre M. Wells, a director with Sterne Kessler Goldstein & Fox PLLC.

"If you think about software design, a lot of times the companies that are focused on software design don't necessarily have their own hardware systems," Wells said. "And so it could be difficult for them to come up with patent protection because they're designing half of it, but they're not ultimately deciding exactly what hardware is being used or what it's being applied to."

Still, the changes don't mean that attorneys will wholesale drop the dotted or solid lines that drawings use to denote the display screen in the application drawings. John L. Hemmer, a partner with Morgan Lewis & Bockius LLP, said it makes sense to keep using those lines in some cases.

"I think a lot of folks, including myself, will continue to use the display panel in broken lines around most [graphical user interfaces] where it makes sense to and where we had in the past, in case the rule changes again or for foreign filing purposes," Hemmer said.

That's because while the update brings the U.S. more in line with how design patents are approached in other countries, some still require the display screen be shown in the drawings, Hemmer said.

Craig Deutsch of Fish & Richardson PC said the revisions imbue the design patent application process with more certainty. Applicants weren't completely foreclosed from getting patents on some of these emerging technologies in the past, he said, but the display screen requirement made both the examination and the outcome unclear.

"There's just more certainty around it," he said. "And I think we'll see applicants taking advantage of that, both in the volume [of applications] and how they're presenting that subject matter in the applications."

Finnegan's Ferrill noted that the new guidance doesn't do away with any of the other requirements for patent-eligible subject matter.

"The design still has to go through the process. It still has to be shown to be novel and not obvious and [meet] all the other requirements. So it's not like we're giving up those requirements," Ferrill said. "We're just kind of cracking the door a little bit on and opening our minds a little bit to what could be protected."

Still, the new policy hasn't been roundly celebrated. Sarah Fackrell, a professor at Chicago-Kent College of Law and an expert on design patent law, said the guidance marks a major expansion of the Patent Act.

The governing statute says a design patent is available for a "new, original and ornamental design for an article of manufacture," and the USPTO has now interpreted the statute to allow projected designs to count as designs for an article of manufacture.

Fackrell — who signed on to comments in 2021 arguing that a projected design does not constitute a design for an article of manufacture — said she doesn't "think the statutory text can bear what they're doing here."

"It appears that the U.S. Patent and Trademark Office wants to expand design patentable subject

matter, and they have backfilled this effort with a not very convincing statutory interpretation," she contended.

The USPTO did not respond to a request for comment.

--Editing by Alanna Weissman.

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