IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

IPDAID/21/2024
NEC CORPORATION
VS
THE CONTROLLER OF PATENTS AND DESIGNS AND ANR.

IPDAID/22/2024
ERBE ELEKTROMEDIZIN GMBH
VS
THE CONTROLLER OF PATENTS AND DESIGNS

IPDAID/1/2025
IA NO: GA-COM/1/2025
ABIOMED INC
VS
THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS AND ANR

IPDAID/2/2025
IA NO: GA-COM/1/2025
ABIOMED INC
VS
THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS AND ANR

IPDAID/3/2025
IA NO: GA-COM/1/2025
TVS MOTOR COMPANY LIMITED
VS
THE ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

For the appellant in IPDAID/21/2024	: Mr. Sayantan Basu, Senior Advocate Mr. Tanmoy Roy, Advocate Ms. Aheriya Roy, Advocate
For the appellant in IPDAID/22/2024	: Ms. Vindhya S. Mani, Advocate Ms. Taniya Roy, Advocate
For the appellant in IPDAID/1/2025 and IPDAID/2/2025	: Mr. Sourojit Dasgupta, Advocate Mr. Sudhakar Prasad, Advocate Mr. S. Banerjee, Advocate Mr. Pratiksha Varshney, Advocate Mr. Pradipta Bose, Advocate

2026:CHC-OS:71

For the appellant in IPDAID/3/2025	: Mr. Ranjan Bachawat, Sr. Advocate Ms. Smriti Yadav, Advocate Mr. Shubrojyoti Mookherjee, Advocate Mr. Sagnik Bose, Advocate Mr. Shubham Shende, Advocate Mr. Vishwas Sethuraman, Advocate Ms. A. Sinha, Advocate
For the Controller in IPDAID/21/2024	: Ms. Sanjukta Gupta, Advocate Mr. Madhu Jana, Advocate Mr. Ujjal Rajak, Advocate
For the Controller in IPDAID/22/2024	: Mr. Indrajeet Dasgupta, Advocate
For the Controller in IPDAID/1/2025 and IPDAID/2/2025 and	: Mr. Brajesh Jha, Advocate Ms. Sumita Sarkar, Advocate
For the Controller in IPDAID/3/2025	: Mr. A. Banerjee, Advocate Ms. Sumita Sarkar, Advocate
Heard on	: 10.12.2025
Judgment on	: 09.03.2026

Ravi Krishan Kapur, J.:

1. All these statutory appeals have been filed under the Designs Act, 2000 (the Act) and raise a common question *"Whether Graphic User Interface (GUI) satisfies the criteria of a design making it eligible for registration under the Act?"*
2. GUI is a form of user interface which allows users to interact with electronic devices through graphical icons and visuals in indicators such as secondary notation. In computing, a GUI is a visual way for users to interact with devices using elements like icons, windows, menus and buttons instead of typing commands.

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The appellants:

3. The common thread in the arguments of all the appellants is that, there is misconceived notion in the Office of Designs that GUIs are not *per se* registrable under the Act. In construing the definitions of "article" under section 2(a) and "design" under section 2(d) of the Act, the respondent authorities have adopted an unduly strict and narrow interpretation. All the impugned orders proceed on the basis that the Locarno classification which had introduced GUI registration as a design is only of administrative assistance and in the absence of any amendment to the Act, does not aid in interpreting the definition of either "article" or "design". The impugned orders have also erroneously interpreted that GUIs are not "applied by any industrial means or process" and hence do not fall within the definition of "design". In addition, the impugned orders are flawed inasmuch as it has been held that since GUIs are neither sold nor manufactured separately they cannot be treated as an "article". The impugned orders have also proceeded on the misconception that all foreign decisions are inapplicable since the definitions of design, article and industrial processes in those jurisdictions are different from the Act. The fact that a GUI is visible only when the device is switched ON and remains ON is another factor which has weighed in rejecting registration of GUIs. There is also no element of permanence in a GUI which makes the same not registrable. The order dated 6 July, 2023 passed in *UST Global (Singapore) vs. Controller of Patents and Designs* by the Controller is based on a misinterpretation of the Act. An additional ground in some of the appeals is one of violation of the principles of natural justice

inasmuch as the orders are non speaking. In such circumstances, it is contended that the impugned orders are liable to be set aside and all the applications be remanded for rehearing.

4. For convenience, the respective appeals are summarized below:

IPDAID 21 OF 2024: NEC Corporation

This is an appeal against an order dated 1 October 2019 in application no 285453 whereby a design claimed on novelty residing in the shape and pattern of the display screen with the GUI has been rejected on the ground that GUI does not constitute an article within the meaning of section 2(a) of the Act. It is the display screen hosting the GUI which qualifies as an article and hence makes the GUI incapable of being registered. It has also been held that GUI is not applied through an industrial process to an article. In effect, the GUI fundamentally consists of mere software codes and has no element of permanence and is only seen when an associate device is switched on which does not justify registration.

IPDAID 22 of 2024: ERBE Elektromedizin GMBH

This is an appeal against an order dated 20 September 2019 rejecting application no 277243 titled 'A Display Unit for a High Frequency Generator' which was subsequently amended to "Display Screen for an Electrosurgical High Frequency Generator" claiming novelty in shape, pattern and ornamentation on the ground that GUI cannot be categorized as surface ornamentation or pattern as the same is only visible when connected to a computing system and turned ON. Hence, GUI is based solely as a software application and is merely functional lacking

consistent eye appeal which fails to satisfy the ingredients both under section 2(a) and 2(d) of the Act.

IPDAID 1 of 2025 and IPDAID 2 of 2025: Abiomed Inc

This is an appeal against the orders dated 17 February 2025 rejecting applications no 397600-001 and 397600-002 respectively for 'Display Panel or Portion thereof with Graphical User Interface. The GUI claimed is for a Vehicle Dashboard which is a pictogram displayed on a screen of an electronic device in order to help users navigate the device. The novelty statement resides in the shape and configuration of the Display Panel or Portion Thereof with Graphical User Interface which has been found to be incapable of registration.

IPDAID 3 of 2025: TVS Motor Company Limited

This is an appeal against an order dated 31 May 2024 rejecting application no 393339-001 on the ground that the design of a GUI cannot be considered as a finished article judged solely by the eye nor does the same have a sense of touch. The primary ground urged by the appellant is one of violation of natural justice on the ground that there are no reasons in the impugned order.

The Controller

5. On behalf of the Controller, it is contended that though the Design (Amendment) Rules 2021 had brought GUI as a category of industrial design capable of registration, there has been no corresponding amendment to the Act which permits such registration. There has been no amendment to the definition of article or design under the Act. A

design is an integral part of an article and such design cannot be separated nor does the same have any independent existence from the article to which it has been applied. Neither can the GUI be made or sold separately. GUI is visible only when an electronic device in the finished article is switched ON and hence it has no element of permanence. In any event, such display becomes non-existent as soon as the device is switched OFF. GUI is also not applied to an article manually, chemically or in any combination by way of an industrial process. It is also contended that GUI should not be protected under the Act since it is protected under the Copyright Act 1957 as an 'artistic work' and there can be no dual protection. There is also no judicial precedent in India with regard to allowing GUI or Graphical Icons or contents of screen display being accepted as an industrial design. In this context, any reliance on any foreign decision is misplaced and erroneous in view of the different definitions in those jurisdictions.

Amicus Curiae

6. In view of the importance of the issues raised and to assist the Court, Mr. Adarsh Ramanujan, Advocate had been appointed as *Amicus Curiae*. The Court acknowledges the immense assistance and painstaking efforts by the Amicus Curiae. He submitted that the Locarno Classification only provided clarificatory guidance which could assist in the filing and search for an application of a design but cannot *per se* be interpreted to create a grant or exclusion insofar as GUI design protection is concerned. The Act protects shape, configuration, pattern, ornament and composition of lines of colours. To this extent, a GUI inherently comprises of iconography,

layout, colours schemes, composition of lines and ornamentation which falls within the kind of visual features which the Act perceives as registrable. There is nothing in section 2(d) of the Act which expressly refers to a design being permanently visible. The criteria of permanence has been erroneously read into the definition of design in the impugned orders. There is also no statutory basis that the design element must be intrinsic or integral to the article to any particular degree. Section 2(d) contemplates features to be applied to an article. The definition of the term *applied* is generic and broad. The ingredient of whether GUI in the finished article is judged solely by eye is also complied with since the finished article encompasses the final product received by a consumer which can be analyzed to the complete computer device integrity in the display unit. In registering a GUI, there is no dual protection being granted under the Act and the Copyright Act 1957. In this background, there is no exclusion of GUI and the same ought to be decided on a case to case basis. In support of such contentions reliance was placed on *Cryogas Equipment Private Limited vs Inox India Ltd 2025 SCC Online SC 780, Samsung Electronics Co. Ltd. vs. Apple Inc 137 S.Ct.429, Microsoft Corporation vs. Corel Corporation 5:15-cv-05836-EJD, K.K.Suwa Seikosha's Design Application [1982] R.P.C. 166, In re: Hruby 54 C.C.P.A. 1196.*

Construing "article" and "design"

7. For convenience, the definition of article and design are set out below:

> 2. In this Act, unless there is anything repugnant in the subject or context.

> *(a)"**article**" means any article of manufacture and any substance, artificial, or partly artificial and partly natural and includes any part of an article capable of being made and sold separately;*
>
> *d)"**design**" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.*

8. Upon a reading of section 2(d) of the Act, the term *design* contains both a positive and a negative meaning. In the positive sense of the definition, it refers to the features of shape, configuration, pattern, ornament, or composition of lines or colours which are applied to any article, in either two dimensional or three dimensional forms, through any industrial process, whether manual, mechanical or chemical, either separately or in combination and that is further applied in the finished article that can appeal to or is judged solely by the eye. On the negative aspect, the definition does not include any mode or principle of construction or anything which is in substance a mere mechanical device. It also does not include any trade mark as defined in section 2(1)(v) of Trade and Merchandise Marks Act, 1958. It also does not include the definition of a property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in section 2(c) of the Copyright Act, 1957.

9. The focus in interpreting the above definitions is not on the novelty or originality of the designs but whether they qualify as a design in terms of

section 2(a) and 2(d) of the Act. It is also clear from the plain language of section 2(d) that a design be *applied* to an article by *any* industrial process. In this context, *article* as defined under section 2(a) means any (a) article of manufacture (b) any substance artificial or partly artificial and partly natural and (c) includes any part of an article capable of being made and sold separately. Section 2(d) of the Act requires that a design is to be *applied* to an article. This means that the design itself need *not* be the article. Thus, the design and the article are distinct, independent and separate. The relevant article for a GUI can vary from case to case. As an example, it could be the display unit (the screen or hardware component) or the finished product sold to consumers for example, a phone, tablet, or automobile dashboard. The expression "article of manufacture" in section 2(a) is broad and generic. The misconception of the respondent authorities is anchored in interpreting the word *design* to a physical or tangible article. This is premised on the notion that every article must have an element of physical embodiment. In following such a narrow approach, GUI, icons, animations and screen based designs would never be covered because they exist in a digital and virtual form. Thus, though an article may include any substance (artificial of partly natural) there is a pre-conceived mindset in tying it down to a physical embodiment of sorts and this is a fallacy in all the impugned orders. In *Samsung Electronics Co. Ltd. vs. Apple Inc.,* 137 S. Ct. 429 (2016) it has been found that the expression article is a broad term to cover "*a thing made by hand or machine."* The process of application of the GUI on the finished article is a mechanical and manual process which falls within the definition of

industrial process and there is no policy reason why registration should be refused. The expression is so broadly understood that in a subsequent judgment, the United States Court of Appeals in *Microsoft Corp. v. Corel Corp.,* Case No. 5:15-CV-06836-EJD (2018) held that even software is an "article of manufacture." Thus, the term 'article' requires a broad, liberal and purposive interpretation.

Applied to an article by any industrial process:

10. The next aspect which requires consideration relates to the phrase "*applied to an article by any industrial process*". In *UST Global (Supra)*, the Controller had taken a view that the statute was restricted only to manual, mechanical or chemical processes. This is a glaring mistake in the order and ignores the term "*any*" which precedes industrial process. On a plain reading of the section, the word *any* indicates a broad interpretation of the term industrial process. The words manual, mechanical or chemical are not exhaustive and are only indicative as to what may constitute an industrial process. Any other interpretation would make the word *any* superfluous and redundant. There is nothing in the section which suggests that a restrictive interpretation is mandated under this section. On the contrary, the words used in section 2(a) and 2(d) of the Act must be construed liberally having regard to the use of inclusive language and the broad width of the expression used in the definitions. To this extent, any reliance on *Selvel Industries vs. Om Plast (India) 2016 SCC OnLine Bom 6495* is misplaced. In the said decision, the Court had not

placed any such restrictive meaning on the words *industrial process (Paras 21 to 23).*

Updating construction:

11. In interpreting the Act, one should apply the principles of *updating construction* which suggests a construction which takes into account relevant changes which have occurred since the enactment was made. This would require analyzing the nature of the particular Act and taking into account the relevant changes in modern day technology. In such cases, legislature intended that the Court's interpretation takes into account advancements which have occurred since the enactment of the legislation. In the light of the above, the term industrial process must be interpreted to take into account technical and scientific advancements. Moreso, while interpreting intellectual property legislation which are fundamentally linked to such developments. [*Bennion on Statutory Interpretation 7th Edition at paragraphs 409-424* and *State of Punjab vs. Amritsar Beverages Ltd. and Ors. (2006) 7 SCC 607* at paras 14 and 15].

12. In a recent decision of the Federal Court of Australia, in *Aristocrat Technologies Australia Pty. Ltd. vs. Commissioner of Patents [2025] FCAFC 131)* a question was raised which centered on whether innovation in a gaming machine specifically computer implemented game features constitute a manner of manufacture under section 18(1)(a) of the Patents Act 1990. In construing the relevant provision, the Federal Court applied the principle of *updating construction* which mandates interpreting legislation to account for technological advances. Any contrary

interpretation would be impractical and would fail to recognize the efficiencies and changes of technology. It is true that the above decision does not pertain to designs. Nevertheless, the analogy followed by the Federal Court of Australia is squarely applicable when interpreting similar legislation which accounts for technological advancement. From a different perspective, why amend the Rules to include GUI registration if the intent was not to permit GUI design registration in the first place? In such cases, legislation must be interpreted to encourage invention, innovation and technological advancement "where physical cogs, reels and motions are replaced by complex software and hardware that generate digital images." (*at para 134*)

13. Given the interplay of digital and physical processes, displaying or applying a GUI to a display surface undeniably fits within the evolving concept of an industrial process. The displaying process involves systematically manipulating electronic signals and precise rendering by advanced hardware. Such activities exemplify the modern industrial enterprise inherent in technology driven industries. Thus, there are strong reasons to contend that the process of displaying a GUI fulfills the definition of industrial process. In view of the above, the contention of the Controller that the expression *'industrial process'* is limited and restricted is also rejected.

Permanence:

14. Section 2(d) nowhere refers to a design being permanently visible. There is no statutory basis for the standard that the design element must be

intrinsic or integral to an article to any particular *degree*. The law only requires the features to be *applied* to an article. The term *applied* is generic and broad. The legislative intent does not require that the design features be "*permanently applied*" or "*permanently affixed*". The concept of permanence of the design is not to be found in section 2(d) of the Act and this facet has been wrongly included in all the impugned orders. Similarly, there is no requirement of *touch* under section 2(d) of the Act. All that the statute requires and contemplates is an association between the design and the article. The statutory intent is to prevent a design being registered in the abstract without association to the article. In *Re: Hruby 373 F.2d 997,* where the scope of an article of manufacture was interpreted to include the ornamental display of a fountain, it has been held that the "Permanence of the design is a function of the *materials* it employs". The Court further highlighted that many designs rely on external conditions to manifest their full appearance, which does not undermine their eligibility for protection. There are many designs which depend upon an outside factor for the production of the appearance which the beholder observes in the design. For example, a lampshade may not be apparent unless the lamp is lighted. It was further held that dependence of the existence of a design on something outside itself is not a reason for holding it is not a design or an article of manufacture. In *K.K. Suwa Seikosha's Design Application (1982) RPC 166*, where a watch display which became visible only when activated was held to be registrable. It was held that even though the features of the design may not be necessarily visible at the time of purchase, it becomes visible only

when the article while used as it is intended to be used that is to say as the display panel for electronic timepiece and when it is connected to the circuitry, including the battery on the timepiece.

15. The impugned orders also ignore the test of noticeability which expressly recognizes that internal features visible only during use may be registered as designs. (*See: Manual of Designs Practice and Procedure published by the office of the Controller General of Patents, Designs and Trade Marks, India.*) The Manual also mentions the decision in *Ferrero Cs.P.As application (1978) RPC 473* in providing guidance on section 2(d) in construing the expression '*judged solely by the eye*' to explain design features which are visible only during use may be the subject matter of registration. All this has been disregarded in the impugned orders. In this background, the correct legal test is whether the design is visible when the article is put to its intended or normal use. Dependency does not preclude a design from being considered an article of manufacture. A design which appears during normal operation of the article is nonetheless *applied* to that article if it is reproducible and manmade. To this extent, the objection of the Controller that GUI is only visible when the device is turned 'ON' is inherently flawed, hyper-technical and incorrect.

Judged solely by the eye :

16. An additional test to fulfil the criteria of being considered a design is whether GUI as a finished article appeals to or can be judged solely by the eye. The two limbs which require consideration are (a) What is the

finished article and (b) Whether GUIs being functional are excluded from protection. To this extent, all the impugned orders proceed on a misconception of what constitutes a finished article. The term "*finished article*" is not expressly defined in the Act. Moreover, the legislature has deliberately distinguished "finished article" from "any article" which is evident from the criteria in section 2(d) of the Act. The rationale behind employing these different terms become evident upon a contextual analysis of the definition. A specific shape, pattern, or ornamentation can be applied to an article which also serves as a component to an end product sold to consumers. For example, consider the front grill of a car: the pattern is applied to the grill (an article) while the grill itself is typically marketed as part of the overall vehicle (finished product). Similarly, a particular pattern or configuration may be applied during an intermediate stage of manufacturing, followed by additional processes to arrive at the finished article, such as the design of a smartphone that undergoes styling before it is ultimately assembled. These can vary from case to case and are protectable based on eye appeal. In this context, while a GUI may have functional elements there may also be design features which involve aesthetic considerations which are not solely dictated by function. To this extent, the respondent authorities have in the impugned orders confused the functional aspect of the GUI i.e. how it operates with its ornamental i.e. how it looks. A design is unregistrable only if its appearance is solely dictated by function with no room for eye appeal.

Locarno Classification

17. It is argued that mere inclusion of GUI in the Locarno Classification as a design does not automatically guarantee registration under the Act although the Locarno Classification has been adopted and incorporated in Rule 10(1) of the Design Rules 2003 which specifically mentions GUI as a category for registration. India had accepted the Locarno Agreement which subsequently resulted in amendments to the Designs Rules, 2008 in 2021. Significantly, Rule 10(1) was revised to stipulate to the adherence to the "current edition" of the Locarno Convention which includes the following classes:

> 14-04
> SCREEN DISPLAYS AND ICONS
> Note(s)
> Including those for goods belonging to other classes.
> 104993 Graphic symbols for screen display.
> 102529 Graphical user interface [computer screen layout]
> 102530 Icons [for computers]
> 104994 Web banners

18. In this background, the Locarno Classification insofar as it includes GUIs is suggestive or indicative and does not automatically guarantee registration. The aim behind the Locarno classification was to establish an international classification for industrial designs. The agreement itself expressly stipulates that the same is solely of an administrative character. The proviso to Rule 10(1) clearly states that registration is the subject to the fulfillment of sections 2(a) read with section 2(d). Thus, the acknowledgement of GUIs as a design in the Locarno Classification does not imply automatic registrability unless the conditions in sections 2(a) and 2(d) of the Act are satisfied. Article 2(1) of the Locarno Classification

explicitly states that the “international classification shall be solely of an administrative character”, and that “each country may attribute to it the legal scope which it considers appropriate”. In conclusion, classification guidance may assist in filing and search, but it cannot be used to create, grant or exclude GUIs from design protection. Despite this, the legislative intent in adopting the Locarno classification and being bound by it evidence a clear legislative and administrative intent to recognize and protect digital designs and GUIs provided they meet the requirement of sections 2(a) and 2(d) of the Act. This is also in conformity with Article 25 of the TRIPS Agreement which emphasize the protection of independently created industrial designs which are new and original.

No dual protection

19. It has been contended that GUIs should not be protected under the Act since it can be protected as an artistic work under the Copyright Act, 1957 and dual protection is impermissible. The aspect of dual protection needs to be judged from two different perspectives (i) Whether a GUI is a computer program and therefore, can't be registered as a design? and (ii) Whether a GUI is an artistic work and therefore cannot be registered as a design? Both aspects bring about a common concern that dual protection must not be granted to the same subject matter. In view of this policy, section 2(d) itself excludes from design registration, any artistic work as defined in section 2(c) of the Copyright Act, 1957. Similarly, section 15 of the Copyright Act, 1957 states that copyright protection shall not subsist for any design registered under the Act and copyright protection shall also

cease as soon as any article to which the design has been applied has been reproduced more than 50 times. To this extent, dual protection is taken care in the statutory framework itself.

20. It is pertinent that while the impugned orders keep emphasizing that GUI is a computer program, there is no exclusion for computer programs in section 2(d) of the Act. Although a GUI is produced by a computer program, a GUI is not itself a computer program in the sense of a literary work under the Copyright Act. GUI is a visual configuration displayed on an article. Though the process of displaying the GUI involves the underlying computer programme, the visual effect displayed or produced is not protected as a computer programme. To obviate such concerns, in *Hulm Entertainment Pvt. Ltd. v. Fantasy Sports Myfab11 Pvt. Ltd. 2023 SCC Online Del 6591* (where no copyright had been pleaded), it was held as follows:

> *"17. As this matter also concerns the GUL, a little backdrop to this concept is also imperative, GUI is a digital interface in which a user interacts with graphical components such as icons, buttons and menus GUI is a visual component different from the underlying codes i.e. source code and object code and is a feature in various devices such as computers, smart phones etc. In other words, 'user interface' refers to the underlying non-graphic code of a software programme, while the term 'GUI or 'graphical user interface refers to the visual elements, le., the 'look' of the program. Upon interacting with a GUI i.e. the graphics on the screen, the GUI instantly communicates through the software's underlying code, which then performs the desired function and from the time the user interacts and executes a command to the moment the computer performs the function, there are multiple layers of interactions taking place within the software."*

21. Recently, in *Cryogas Equipment (P) Ltd.* (Supra), the Supreme Court had held as follows:

> ***63.*** *The expression "artistic work" under Section 2(c) of the Copyright Act has a very wide connotation and may also include abstract work(s) comprising a few lines or curves arbitrarily drawn, which could be either*

two or three-dimensional. It may be clarified that such a work may or may not have any visual appeal. Further, the holder of such an artistic work is entitled to draw protection under Section 14(c) of the Copyright Act, including the exclusive right to reproduce such work in any material form. Such a reproduction may also involve depicting a three-dimension work of a two-dimensional work or vice versa.

64. *However, if such reproduction is done by employing an industrial process, which may be manual, mechanical or chemical, and which results in a finished article that may appeal to the eye, then "the features of shape, configuration, pattern, ornament or composition of lines or colours applied to the article by such an industrial process", constitutes "design" within the meaning of Section 2(d) of the Designs Act.*

65. *It thus seems that the intent of producing an original artistic work is not determinative of its protection under the Copyright or Designs Regime. Rather, the legislative intent is to harmonise the two statutes so that while an "artistic work" qualifies for copyright protection, its commercial or industrial application—i.e. the "design" derived from the original work for industrial production—is subject to the limitations set out in Section 15(2) of the Copyright Act. Such a design gets protected only if it is registered under the Designs Act.*

66. *To further simplify, the original artistic work, which initially enjoys copyright protection, does not lose the same merely because a "design" derived from it has been industrially applied to create a product. While the expression "artistic work" has a broad spectrum, "design" is restricted to specific features such as shape, configuration, pattern, ornamentation, or composition of lines or colours, applied to an article through an industrial process, resulting in a finished product that appeals to the eye. These visually appealing features, when applied industrially, define a "design" under the Designs Act.*

67. *Our analysis further reveals that the inquiry cannot be concluded merely by assuming that what does not qualify as an "artistic work", within the meaning of the Copyright Act, would automatically receive protection under the Designs Act. While protection under the Designs Act is not as enduring as that under the Copyright Act, it is not granted by default and requires specific criteria to be met. In this regard, courts in India and globally consistently apply the test of "functional utility" to determine whether a work qualifies for protection under the Designs Act.*

68. *It would therefore be appropriate to espouse the approach already undertaken by the courts in India, as it not only emulates the best practices employed by US courts and the principles enshrined in International Conventions, but it also gives due consideration to contemporaneous laws and legislations. We have thus formulated a two-pronged approach in order to crack open the conundrum caused by Section 15(2) of the Copyright Act so as to ascertain whether a work is qualified to be protected by the Designs Act. This test shall consider:*

(i) whether the work in question is purely an "artistic work" entitled to protection under the Copyright Act or whether it is a "design" derived

> *from such original artistic work and subjected to an industrial process based upon the language in Section 15(2) of the Copyright Act;*
> *(ii) if such a work does not qualify for copyright protection, then the test of "functional utility" will have to be applied so as to determine its dominant purpose, and then ascertain whether it would qualify for design protection under the Designs Act.*
> ***69.*** *The courts, while applying this test, ought to undertake a case-specific inquiry guided by statutory provisions, judicial precedents, and comparative jurisprudence. It must be kept in mind that the overarching objective is to ensure that rights granted under either regime serve their intended purpose without unduly encroaching upon the domain of the other. With this approach, we have attempted to clarify the treatment of works at the intersection of "copyright" and "design" law(s), thereby ensuring coherence and consistency in the application of IP rights in India.*

22. For the above reasons, once the specific features, that is shape, configuration, pattern, ornamentation etc. are applied to an article and meant for industrial purposes it becomes a design and is no longer an artistic work. GUI as a design does not create dual protection because the legal character of a GUI when integrated and industrially applied to an article differs from a standard artistic work or a computer programme. This would require examination on a case to case basis.

UST Global (Singapore) vs. Controller of Patents and Designs

23. The order dated 6 July 2023 passed by the Controller on which great reliance was placed by the respondent authorities is also incorrect and based on a misconstruction of the Act. The findings in this case are largely in tune with what has been held in the impugned orders. In this decision, the Controller held that a design must be "integral with the article itself and this is not fulfilled in the case of a GUI since it is not visible with the touchscreen *per se*, requiring integration/association with an electronic device. It was also found that the article to which the design

is applied becomes the "finished article" only after the application of the design, and yet, the design in question (GUI) would not be available on the finished article itself in the absence of integration/association with an electronic device. It was also been held that the "industrial process under the Act is limited only to manual/mechanical/chemical processes and does not extend to any other type of processes. All these aspects have been individually dealt with above and require no further consideration. In such circumstances, the *UST Global Singapore* decision requires to be read and interpreted in the light of the above findings.

Foreign decisions

24. The blind refusal to consider foreign authorities in all the impugned orders by the Controller is also misplaced and based on an erroneous appreciation of the law. This approach is contrary and in violation of the well settled decisions of the Supreme Court that foreign decisions are of highly persuasive value. [*Forasol v. ONGC AIR 1984 SC 241 @ Para 1 (m)].* In fact, in the recent decision *Cryogas Equipment (P) Ltd. vs. Inox India Ltd. (Supra)* where the overlap between the Copyright Act 1957 and the Designs Act, 2000 was in issue, the Hon'ble Supreme Court has not only exhaustively gone into the interpretation of "design" by the English Courts and the US Courts but after going into a review of the authorities acknowledged that the term design has been extensively interpreted by English Courts, considering that the expression was *pari materia* with the definition consecrated in the Indian context and are of highly persuasive value. In this background, the outright rejection of foreign decisions in the

impugned orders as also in the *UST Global* decision is misconceived and erroneous.

Conclusions

25. The Act protects shape, configuration, pattern, ornament and composition of lines or colours. A GUI inherently comprises iconography, layout, colour schemes, composition of lines and ornamentation, and therefore falls within the kind of visual features the Act contemplates. GUIs typically reflect creative choices in arrangement, proportion, spacing, colour palette and icon design. These choices are aesthetic decisions that produce a visual impression capable of being judged by the eye and therefore meet the qualitative requirements for design protection. In summary, there is no *per se* exclusion for GUIs under section 2(d) of the Act. In view of the above, the contention of the Controller that there is no explicit provision under the Act entailing protection of GUI within the scope of section 2(a) and 2(d) of the Act is incorrect and legally untenable.

26. Nevertheless, there is undoubtedly a lack of clarity in the Designs Office with regard to the registrability of GUIs. This would appear from the different approaches adopted by the Designs Office. It is a matter of record that GUIs have been granted registration in the following cases:

(a) No. 274917-Siemens; Class 14-02- Monitor with GUI,
(b) No. 2749178-Siemens: Class 14-02- Monitor with GUI,
(c) No. 274925-Simens, Class 14-02- Monitor with GUI,
(d) No. 284680-Kneevoice; Class- 14-04 Mobile (GUI Shown),
(e) No. 276736-LG: Class 14-04-Navigation Device for vehicle with GUI.

The importance of registering GUIs is also significant from a business perspective. GUIs are a critical asset in modern day technology, commerce

and digital services. There would also be legal certainty more explicit protection reduction in litigation and this approach would align India with international practice. A recent survey conducted by would Intellectual Property Organization (WIPO) has found that 92% of jurisdictions already protect GUIs under designs laws. A similar study conducted by the International Chamber of Commerce also reported that GUI protection is granted in most jurisdictions. This is also based on an expansive definition of 'product' and 'designs' in the European jurisdiction which covers animation, movement, transition and intangible products. Similarly, in the United Kingdom there have been clarifications which cover GUIs in animation and transitions as products eligible for design protection. Similar changes have been made both in Australia, Hong-Kong and United States of America. To this extent, the definitions of design, article, industrial process require clarification and elaboration so that GUIs are recognized as products of industrial design activity. This would also ensure technological neutrality and lead to global integration which is necessary for conformity in terms of the Hague Agreement and The Riyadh Design Law Treaty both of which recognize virtual designs. This would also help Indian designers knowing that they have enforceable legal rights. The existing practice in the Manual published by the Controller contemplates the possibility of using dotted lines dashed lines to differentiate between protectable design elements from portions which are disclaimed. In this background, it is necessary for clarificatory guidance either by Legislature or by the Controller issuing appropriate directions expanding the scope of protectable designs. During the interregnum,

there is nothing which prevents GUIs being registrable on a case to case basis after satisfying the requirements under sections 2(a) and 2(d) of the Act when properly identified with an article and keeping in mind that the design elements are not purely function driven.

27. For the above reasons, all these appeals succeed. The respondent authorities have failed to apply the correct legal tests in determining design registration in cases concerning GUIs. The orders dated 1 October, 2019 in IPDAID 21 of 2024, 21 January, 2024 in IPDAID 22 of 2024, 17 February, 2025 in IPDAID 1 of 2025 and IPDAID 2 of 2025 respectively and 31 May, 2024 in IPDAID 3 of 2025 are set aside. All these matters are remanded to the Controller for hearing afresh and after giving an opportunity of hearing to each of the appellants. With the above directions, IPDAID/21/2024, IPDAID/22/2024, IPDAID/1/2025, IPDAID/2/2025, IPDAID/3/2025 and all connected applications stand disposed of.

(Ravi Krishan Kapur, J.)