



Computer-implemented inventions - the Commission's proposal for a Directive

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Software Patents: The current situation in Europe

Article 52 EPC (Munich 2000 text)

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.



Software Patents: The current situation in Europe

Article 52 EPC

- (2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:*
- (a) discoveries, scientific theories and mathematical methods;*
 - (b) aesthetic creations;*
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;*
 - (d) presentations of information.*



Software Patents: The current situation in Europe

Article 52 EPC

(3) The provisions of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.



Preparatory activities

- **1997 Commission Green Paper**
- **1999 Follow-up Communication**



1999 Communication conclusions

- Legal situation lacking clarity and certainty.
- Conditions for patent validity not uniform
- Direct and negative effects on the internal market
- Need for Directive



October 2000 Consultation

- **“Patents support innovation”**
- **“Patent stifle innovation”**
 - ***“30,000 illegal patents”***



The Commission's proposal

- no justification for major change in either direction
- no extension of patentability (e.g. business methods)
- Main benefit - increased legal certainty through harmonisation



Main characteristics (1)

- Limited to inventions implemented through the execution of software
- Not a *sui generis* right – rather an interpretation of general patent law principles
- Requirement for technical contribution



Main characteristics (2)

- Claims to programmed machines or processes running in machines only
- “Interoperability”
- Review after three years
- Relationship with European Patent Convention



Computer-implemented invention

“any invention the performance of which involves the use of a computer, computer network or other programmable apparatus and having one or more *prima facie* novel features which are realised wholly or partly by means of a computer program or computer programs”



Computer-implemented invention

- Defined as belonging to a field of technology
- Does not mean that all software is patentable
- Limits on patentability set by requirement for “technical contribution”



Technical contribution

“a contribution to the state of the art in a technical field which is not obvious to a person skilled in the art”



Technical contribution

- Assessed as part of inventive step
- Question of what is “a technical field”



Consequences for business methods

- New and inventive software implementations of business methods are protectable if meeting “technical contribution” test.
- Non-technical features, such as business features, not protectable.



Form of claims

A patentable computer-implemented invention may be claimed as a

- Process
- Product
 - *The question of claims to computer programs on their own*



Other features

- Relationship with copyright
 - Directive 91/250/EEC
- Review



What happens next?

- Co-decision process
 - Council
 - Parliament
- Transposition into national laws
- Action in EPC context



Thank you

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