

PATENTABILITY OF COMPUTER-RELATED INVENTIONS

UNICE COMMENTS

The legal landscape surrounding patentability of software-related inventions has changed dramatically over the last several years. As we enter the third millennium, the protection of technology and technological advancements cannot be achieved by looking backwards.

The digital environment is one of the most promising in terms of innovation and economic developments and the ability for Europe to position itself on this market will impact substantially on its economy and wealth.

In this context, Europe needs to remove the current ambiguity and legal uncertainty which surrounds patentability of software-related inventions if it wants to support innovation in this field and not to bar European companies from access to those markets. If a rapid action is not undertaken, this market will be dominated by Europe's main trading partners, in particular Japan and the USA where there are no restrictions on patenting software-related inventions.

Article 52 EPC reads: "European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step". Nevertheless, computer programs as such are excluded from the list of patentable inventions under EPC. Some flexibility has been introduced by EPO practice, which allows for patentability of software-related inventions if the latter comply with very specific requirements. Yet, this situation is ambiguous and lacks legal certainty and UNICE encourages the Commission to adopt a broader approach in its proposal for a directive on this subject.

UNICE believes that present restrictions to patent software-related inventions are harmful for European companies and that any EU proposal on this subject should simply adopt the wording of Article 27 TRIPS which declares that patents shall be made available for any inventions, whether products or processes, in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application. In this context, inventions which relate to business methods and comply with the above requirements should also be patentable.

Nevertheless, the extension of patentability in the area of business methods beyond the basic definition in Article 27.1 of TRIPS should not be permitted. In allowing patentability of inventions in this field, the European institutions should be careful not to open the door to a lowering of the inventive step criteria and to ensure that patents granted in Europe for software-related inventions rely on solid bases.

In this context, UNICE supports swift action by the EU institutions to present a directive harmonising legislation and practices on this subject at European level, and is willing to work closely with the Commission services to ensure that the proposed instrument fully meets users' needs and does not jeopardise the quality of the patent system in Europe.