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ASOCIACIÓN ESPAÑOLA DE EMPRESAS
DE TECNOLOGÍAS DE LA INFORMACIÓN



SVENSKT NÄRINGSLIV
CONFEDERATION OF SWEDISH ENTERPRISE

22 APRIL 2003

PROPOSAL FOR A DIRECTIVE ON THE PATENTABILITY OF COMPUTER- IMPLEMENTED INVENTIONS

JOINT STATEMENT OF THE INDUSTRY ON THE DRAFT REPORT OF THE EUROPEAN
PARLIAMENT'S LEGAL AFFAIRS COMMITTEE

Dear Member of the European Parliament,

A very broad platform of trade associations and industry groups, including ICC (International Chamber of Commerce), UNICE, EICTA, Growth Plus, ICRT, Open Forum Europe, BITKOM, AGORIA, INTELLECT, SEDISI and the Confederation of Swedish Enterprise welcomes the Draft Report of the Committee of Legal Affairs and the Internal Market, that stresses the need for a directive and for patent protection of computer-implemented inventions, and tables amendments that will help to clarify the legal situation in Europe. We highly appreciate the work done by the Rapporteur and

want to encourage all the members of the Legal Affairs Committee to adopt a clear framework that could contribute to the fulfilment of the promises of the Lisbon summit on the competitiveness of Europe. We believe the amendments proposed in the Draft Report are beneficial to the European industry, including the small and medium enterprises (see points 1 to 3), but we have a great concern with the issue of product claims (point 4).

1. The Directive should confirm the current scope of patentability and ensure that the European practice which has served Europe well is not disrupted. Legal certainty in patent protection is a precondition for the industry to invest in software development. Such certainty needs to build on the existing interpretations of the legal framework. By integrating the long-standing approach of the European Patent Office, the proposed amendments 2, 3, 4, 5, 6, 7, 12, 14, 15 will codify existing rules and preclude the patentability of “pure” business methods. The use of the precise definitions and conditions developed by the jurisprudence is the only way to prevent an evolution towards an overly liberal treatment, such as the one in effect in the United States. The EPO’s rigorous examination practices will be maintained by this directive and should prevent many of the problems seen in other parts of the world with so-called “trivial” patents.

2. The Directive should safeguard the possibility for software developers to develop interoperable systems. Amendment 10 and 16 of the Draft Report seek to maintain the existing possibilities of software developers to engage in studying and reverse engineering of computer programs by clarifying that acts falling within the relevant exceptions to the copyright protection of programs, are not affected by patent protection.

3. The Directive should provide for a mechanism that ensures that open source software development will not be negatively affected. Amendment 17 empowers the European Commission to monitor the impact of the Directive on innovation and competition, and in particular on small and medium businesses. This mechanism will guarantee against any adverse effect of the Directive on the community of independent developers, in particular on those that are contributing to the development of open source software products.

4. The Directive should permit to apply for product claims as it is now allowed by the case law. Article 5 should be amended to allow program product claims in line with the existing practice of the European Patent Office and of Member States’ national courts. Otherwise the Directive will hinder the enforcement of patent protection for computer- implemented inventions. The Commission’s proposal has indeed the effect that a product claim can only be enforced when a user implements the program with some hardware or apparatus. It is contradictory to provide for a right that is not easily enforceable against the suppliers (or distributors), which cause (or participate in) the infringement. Curiously, a patent owner would be able to stop the supplier of a software product if the supplier is in the same Member State where the software is used but not if the software product is exported for use in a different Member State. The Commission

proposal, if not amended, would have the serious drawback of introducing a cross-border anomaly and distortion in the internal market. It is also not consistent with the stated objective in that the Directive clearly diverges from the existing practice on this important issue.

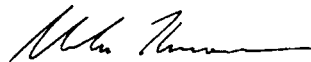
The associations below representing a broad cross section of Europe's most innovative industries seek Parliament's approval of the Directive on patentability of computer-implemented inventions with amendments outlined above.



Oliver Blank,
EICTA Director General



Philippe de Buck,
UNICE Secretary General



Urho Ilmonen,
Chair ICC Commission on
Intellectual Property



John Stephens,
ICRT Chairman



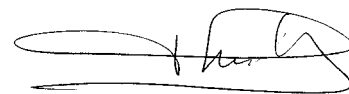
Graham Taylor,
Open Forum Europe Programme Director
"Initiative to accelerate the market take up
of Open Source Software (OSS)"



Christian Hunt,
President GrowthPlus
"Europe's 500 fastest growing
companies"



Dr. Bernhard Rohleder,
Hauptgeschäftsführer BITKOM



Christian Vanhuffel,
Director AGORIA



Anthony Parish,
INTELLECT rep. on the
EICTA Board



Göran Tunhammar,
Director General,
Confederation of Swedish Enterprise



Joaquin Oliveras
SEDISI Director General