

Europarl 2003-09-24: Amended Software Patent Directive

<http://swpat.ffii.org/papers/eubsa-swpat0202/plen0309/resu/index.en.html>

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Consolidated version of the amended directive “on the patentability of computer-implemented inventions” for which the European Parliament voted on 2003-09-24.

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1 The Text

Directive on the patentability of computer-implemented inventions

1.1 Article 1: Purpose

This Directive lays down rules for the patentability of computer-implemented inventions.

1.2 Article 2: Definitions

2a. “computer-implemented invention” means any invention in the sense of the European Patent Convention the performance of which involves the use of a computer, computer network or other programmable apparatus and having in its implementations one or more non-technical features which are realised wholly or partly by a computer program or computer programs, besides the technical features that any invention must contribute;

2b. “technical contribution”, also called “invention”, means a contribution to the state of the art in technical field. The technical character of the contribution is one of the four requirements for patentability. Additionally, to deserve a patent, the technical contribution has to be new, non-obvious, and susceptible of industrial application.

2c. “technical field” means an industrial application domain requiring the use of controllable forces of nature to achieve predictable results. “Technical” means “belonging to a technical field”. The use of forces of nature to control physical effects beyond the digital representation of information belongs to a technical domain. The production, handling, processing, distribution and presentation of information do not belong to a technical field, even when technical devices are employed for such purposes.

2d. “industry” in the sense of patent law means “automated production of material goods”;

1.3 Article 3a: Fields of Technology

3a. Member states shall ensure that data processing is not considered to be a field of technology in the sense of patent law, and that innovations in the field of data processing are not considered to be inventions in the sense of patent law.

1.4 Article 4: Rules of Patentability

4.1. In order to be patentable, a computer-implemented invention must be susceptible of industrial application and new and involve an inventive step.

4.2. In order to involve an inventive step, a computer-implemented invention must make a technical contribution.

4.3. The significant extent of the technical contribution shall be assessed by consideration of the difference between the technical elements included in the scope of the patent claim considered as a whole and the state of the art.

4.3a. In determining whether a given computer-implemented invention makes a technical contribution, the following test shall be used: whether it constitutes a new teaching on cause-effect

relations in the use of controllable forces of natures and has an industrial application in the strict sense of the expression, in terms of both method and result.

1.5 Article 4a: Exclusions from patentability

4a.1. A computer-implemented invention shall not be regarded as making a technical contribution merely because it involves the use of a computer, network or other programmable apparatus. Accordingly, inventions involving computer programs which implement business, mathematical or other methods and do not produce any technical effects beyond the normal physical interactions between a program and the computer, network or other programmable apparatus in which it is run shall not be patentable.

4a.2. Member States shall ensure that computer-implemented solutions to technical problems are not considered to be patentable inventions merely because they improve efficiency in the use of resources within the data processing system.

1.6 Article 5: Form of Claims; and further provisions

5. Member States shall ensure that a computer-implemented invention may be claimed only as a product, that is a set of equipment comprising both programmable apparatus and devices which use forces of nature in an inventive way, or as a technical production process operated by such a computer, computer network or apparatus through the execution of software.

5a. Member States shall ensure that the production, handling, processing, distribution and publication of information, in whatever form, can never constitute direct or indirect infringement of a patent, even when a technical apparatus is used for that purpose.

5b. Member States shall ensure that patent claims granted in respect of computer-implemented inventions include only the technical contribution which justifies the patent claim.

5c. Member States shall ensure that the use of a computer program for purposes that do not belong to the scope of the patent cannot constitute a direct or indirect patent infringement.

5d. Member States shall ensure that whenever a patent claim names features that imply the use of a computer program, a well-functioning and well documented reference implementation of such a program is published as part of the patent description without any restricting licensing terms.

1.7 Article 6: Interoperability

6. The rights conferred by patents granted for inventions within the scope of this Directive shall not affect acts permitted under Articles 5 and 6 of Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular under the provisions thereof in respect of decompilation and interoperability.

6a. Member States shall ensure that, wherever the use of a patented technique is needed for a significant purpose such as ensuring conversion of the conventions used in two different computer systems or networks so as to allow communication and exchange of data content between them, such use is not considered to be a patent infringement.

2 Annotated Links

- **The amendments approved, from the EP.**¹

consolidated version by EP, changes were still being applied by the secretariat during the days after the vote.

¹<http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=DOCPV&APP=PV2&LANGUE=EN&SDOCTA=2&TXTLST=1&POS=>