

# Europarl 2003-09-24: Amended Software Patent Directive

<http://swpat.ffii.org/papri/eubsa-swpat0202/plen0309/resu/index.es.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. “invención implementada en ordenador”, toda invención en el sentido del Convenio sobre la Patente Europea para cuya ejecución se requiera la utilización de un ordenador, una red informática u otro aparato programable y que tenga en sus aplicaciones una o más características no técnicas que se realicen total o parcialmente mediante un programa o programas de ordenador, sin perjuicio de las características técnicas que debe presentar toda invención;

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. “industria” en el sentido del Derecho de patentes, “producción automática de bienes materiales”;

## 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. Para ser patentable, una invención implementada en ordenador deberá ser susceptible de aplicación industrial, nueva y suponer una actividad inventiva. Para entrañar una actividad inventiva, la invención implementada en ordenador deberá aportar una contribución técnica.

4.2. Los Estados miembros garantizarán que constituya una condición necesaria de la actividad inventiva el hecho de que una invención implementada en ordenador aporte una contribución técnica.

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: Causas de exclusión de la patentabilidad**

4a.1. No se considerará que una invención implementada en ordenador aporta una contribución técnica meramente porque implique el uso de un ordenador, red u otro aparato programable. En consecuencia, no serán patentables las invenciones que utilizan programas informáticos que aplican métodos comerciales, matemáticos o de otro tipo y no producen efectos técnicos, aparte de la normal interacción física entre un programa y el ordenador, red o aparato programable de otro tipo en que se ejecute.

4a.2. Los Estados miembros garantizarán que las soluciones a problemas técnicos implementadas en ordenador no se consideren como invenciones patentables simplemente por el hecho de que mejoran la eficiencia en la utilización de los recursos dentro del sistema de tratamiento de datos.

## **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. Los Estados miembros garantizarán que, en cualquier caso en que sea necesaria la utilización de una técnica patentada con un propósito significativo, como es asegurar la conversión de las convenciones utilizadas en dos sistemas de ordenadores o redes diferentes a fin de hacer posible la comunicación y el intercambio recíproco del contenido de datos, esta utilización no se considere una violación de la patente.

## 2 Annotated Links

- The amendments approved, from the EP. <sup>1</sup>

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

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