



EISA (European IT Services Association) Response to the European Commission Consultation on the Patentability of Software and Business Processes

Introduction

The European IT Services Association is the European Federation representing the computing services and software sector. We have 16 member associations who in turn represent over 2500 companies accounting for around € 100 Billion in turnover.

In developing this response EISA has promoted the consultation widely, has held discussions with members and received written responses with their national viewpoints. This document is a collation of that input and we put forward the following recommendations:

- **Remove the current exclusion of software from article 52(2) of the European Patents Convention, and support the granting of patent protection for software, provided the software concerned is a new and non-obvious idea which produces a technical effect.**

Patenting is an effective way to protect an invention within a given technical field and help companies to develop and add value to the invention. European companies sometimes invest time and resources by first trying to get a US-patent, hoping that the granting of a US-patent will be an appropriate and better basis afterwards for getting an European patent. This impractical approach being adopted by some companies as well as the benefits afforded by software patenting provides the basis for the above clarification of the law.

- **Introduce a firm and strict European patentability system which should be inexpensive and simple enough to allow access to SME's. To support this we believe that significant additional resources need to be allocated to patent offices to recruit and train examiners with appropriate skills, and to support an extensive industry education programme.**

As part of this programme the advantages and possibilities of patent law need to be effectively communicated to the industry as although a number of software patents have already been granted, many companies are not aware of the possibility.

- **Monitor closely the interpretations of the EPC at the national level.**

There has been much disparity between the member states interpretation of the EPC to date and therefore the types of software which have been granted patents. While the introduction of an education programme as outlined above will help, it is important that national patent offices are monitored to ensure harmonization.

- **Develop EU policy aimed at diminishing anti-competitive effects linked to patentability**

Much of the argument against software patents centers around the anti-competitive monopoly granted to the holder. Patents granted should, where possible, be closely monitored especially the behaviour of those awarded patents to avoid any “bad” patent processes arising. This monitoring can lead to the development of a strong EU policy to combat the problem.

- **We offer qualified support for granting of patents for business methods that have, as their basis, software with a technical effect.**

We believe extreme care needs to be exercised in relation to such applications. It is very important that patents for business methods are granted only for non-obvious ideas

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