



January 12, 2001

The EU Committee's Response to the Commission's Consultation Paper on Patents for Computer Implemented Inventions Initial Discussion

The EU Committee of the American Chamber of Commerce in Belgium welcomes the opportunity to respond to the European Commission's Consultation Paper of 19 October 2000 regarding "The Patentability of Computer-Implemented Inventions"

The EU Committee supports the Commission's initiative to address the patentability of computer-implemented inventions. A clarification of European practice in this area, at both national and EPO levels, would be useful. Patents are recognized as a significant incentive for research and development and consequent innovation in industries worldwide. However, there remains some confusion in Europe, particularly among small and medium size enterprises, with respect to the ability to seek patent protection for inventions implemented in software. For this reason, the Commission's intention to issue a proposed EU directive in this area is welcomed.

The EU Committee generally endorses the "possible key elements for a harmonized approach to the patentability of computer-implemented inventions in the European Community" as outlined in the consultative document. We understand from the consultative document that the Commission recommends harmonization of national laws based on current European Patent Office practice. The EU Committee supports this approach.

We do not believe that EU action to incorporate existing EPO practice and case law into national legislation would result in an extension of the scope of patentable subject matter in Europe particularly with respect to business methods.

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Harmonization of Member State practice corresponding with current EPO practice and case law would be beneficial to industry in Europe, particularly small and medium size enterprises who often neglect to patent computer implemented inventions due to their misunderstanding of current European practice.

The purpose of this submission is to respond to concerns of those in Europe who would have the Commission further delay beneficial actions to harmonize national legislation

January 12, 2001
Software Patentability

regarding computer-implemented inventions on the grounds that such a harmonization would result in a repeat in Europe of recent US experience with respect to the filing and grant of business method patents.

We have noted that a number of parties who claim to oppose the granting of patents for computer implemented inventions – which granting is a longstanding European practice having resulted in over 20,000 such issued patents in Europe -- express fears that a harmonized approach according to principles (i) through (vii) in the consultation paper would necessarily result in the granting of patent protection covering business methods, similar to current practice in the United States. We take issue with this assertion. Existing European requirements for “technical effect” distinguish European practice from current US practice regarding business method patents and should prevent the issuance in Europe of the problematic business method patents that have been issued in the US.

Concern is sometimes expressed with respect to specific “questionable” business method patents granted in the United States and other jurisdictions. It is not the role of the EU Committee of the American Chamber of Commerce to take a position on individual patents granted in the United States, European Union or elsewhere. Appropriate measures are available in the US Patent and Trademark Office, the European Patent Office and national patent offices in Europe to address questions with respect to the validity of specific granted patents. Such measures include the possibility to file an opposition to the grant of the patent or to petition for the revocation of a patent after it is issued.

Recent public statements from the US Patent and Trademark Office recognize the desirability of continually improving its procedures to ensure that issued patents conform to strict requirements of patentability. This is particularly the case with respect to business methods where the number of patent applications has increased rapidly and practices in the United States and elsewhere continue to evolve.

Interested parties have advised the USPTO in this respect. Measures can be taken in the US to ensure that appropriate requirements are met in the examination process to maintain rigorous standards for patentability. Measures are also being undertaken in the US to improve the availability and use of prior art.

Moreover, proposed legislation (the “Boucher/Berman” bill) was introduced recently in the US House of Representatives. Similar legislation is likely to be introduced in the next Congress commencing in January 2001. The intent of this legislation is to further clarify and delimit US practice with respect to business method patents. We note that many of the proposed legislation’s recommendations for changes in US policy and procedure reflect existing European practice indicating that European practice as it stands is already well suited to deal with business method patents.

January 12, 2001
Software Patentability

The current European requirement for “technological contribution” has prevented the granting of business method patents similar to some of the most controversial patents granted in the US. Europe’s requirement provides a stronger prohibition against business method patents than currently exists in the US and will remain stronger even if the reforms currently being considered in the US take effect.

CONCLUSION

In summary, the EU Committee welcomes the acceptance of patents for computer implemented inventions as outlined in principles (i) through (vii) of the consultation document. We encourage the Commission to issue a proposed directive in this area. Concerns that the approach outlined in the paper would result in a replication in Europe of the current situation in the US with respect to the patentability of business methods are unfounded. Differences in European patent law and practice, in particular the “technological contribution” requirement, ensure that appropriate standards remain for patents issued in Europe, guarding against the granting of patent protection for business methods similar to current US practice.

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The EU Committee is the key organization in Europe representing the views of European companies of American parentage. Its member companies are drawn from a broad cross-section of the European business community and typically are present in most Member States of the European Union. As such, it represents some of the earliest and most committed business supporters of the European ideal and, in particular, of the Single Market concept.

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