

From: Nicolas Pettiaux [nicolas.pettiaux@openbe.org]
Sent: vendredi 15 décembre 2000 10:41
To: consultation@eurolinux.org
Subject: Consultation about software patentability of computer program

Dear Sir, Madam,

As requested, I herewith agree that my comment be published with my name and coordinates. I also request that my comment be published, as well as I request that it is stated therein that I keep the copyright about the text, and that it must be published as a whole, without any selection. I also wish that all comments and answers to this consultation be officially published and summarized into a publically accessible document.

This consultation takes place during a period where a conflicting agenda (the agenda of the EPO, with a meeting at end of november about the very same subject) appeared. The conflict has been partly and temporarily resolved by the decision of the diplomatic conference to postpone its decision about the case to after the end of this consultation.

Nonetheless, in its press release, Dr Rolan Grossenbacher, chairman of the administrative council of the European patent office (published on 29 November 2000, 12.30) states:

"First, I should point out that the Conference agreed not to delete computer programs from the list of non-patentable inventions. For the meantime, the existing legal position therefore remains unchanged. The Conference's decision took account of the process of consultation on the future of legal protection in this field, and in no way challenges the existing practice of the Office and its boards of appeal, or that of national patent authorities and courts. As before, computer-implemented inventions can be patented if they involve a new and inventive technical contribution to the state of the art. Technical solutions for use in data processing or for carrying out methods of doing business therefore remain patentable.

This follows from the concept of invention itself, which draws a clear distinction between technical solutions and non-technical methods. On this basis, patents cannot be granted for computer programs or business methods which are not of a technical nature. In substantive European patent law, the Conference clarified and strengthened the extent of protection conferred by European patents by expressly including so-called "equivalents". "

(from
http://www.european-patent-office.org/news/pressrel/2000_11_29_e.htm.)

I read here:

1/ "As before computer-implemented inventions can be patented if they involve a new and inventive technical contribution to the state of the art. Technical solutions for use in data processing or for carrying out methods of doing business therefore remain patentable."

I understood from article 52.2 that "computer program as such cannot be patented".

I see here a contradiction that shows that EPO extended unilaterally its rights to allow patentability. If my reading is NOT right, and there is no contradiction, would you be so kind to let me know why and explain me ? If there is a contradiction, would you let me know which measures you shall take to resolve it ?

Isn't that in also contradiction with the texts that creates the EPO and that are defendable at the European Parliament ? Again, if my reading is NOT right, and there is no contradiction, would you be so kind to let me know why and explain me ? If there is a contradiction, would you let me know which measures you shall take to resolve it ?

2/ "This follows from the concept of invention itself, which draws a clear distinction between technical solutions and non-technical methods. On this basis, patents cannot be granted for computer programs or business methods which are not of a technical nature."

Could you show me a computer program or business method that has been implemented as a coputer program which are not of technical nature ? I understand from the above quoted sentence that all coputer program are patentable, but that a formal clause does try to state differently wihtou ground.

Again, if my reading is NOT right, and there is no contradiction, would you be so kind to let me know why and explain me ? If there is a contradiction, would you let me know which measures you shall take to resolve it ?

I am looking forward to hearing from you.

Yours sincerely,

Nicolas Pettiaux

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