



**ORDRE DE VOTE**

sur le projet de recommandation pour deuxième lecture  
sur la brevetabilité des inventions mises en oeuvre par ordinateur

(11979/1/2004 – C6-0058/2005 – 2002/0047(COD))

Rapporteur: Michel Rocard

PE 257.775v01-00 + PE 357.845v01-00

**FFII voting recommendations for the core articles**

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
Computer-implemented/controlled/assisted/aided invention			
<p>Article 2, lettre (a)</p> <p><i>A computer-aided invention is a patentable innovation the performance of which involves the use of a programmable apparatus. A "computer-implemented invention" is nothing but a program for computers in the context of patent claims and therefore not an invention within the meaning of patent law. Yet, for transition purposes, the term "computer-implemented invention" should be redefined as a synonym of "computer-aided invention".</i></p>	24 rapporteur		+
	50 Kudrycka, Zwiefka	caduc si 24 adopté	+
	51 Bertinotti	identique à 50 caduc si 24 ou 50 adoptés	+
	52 Kauppi	caduc si 24, 50 ou 51 adoptés	+
	53 Szejna	caduc si 24, 50, 51, 52 adoptés	-
	54 Lichtenberger, Frassoni	caduc si 24, 50, 51, 52, 53 adoptés	+
	55 Medina	caduc si 24, 50, 51, 52, 54 adoptés	+
	56 Harbour	caduc si 24, 50, 51, 52, 54 ou 55 adoptés	o

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
"technical contribution"			
Article 2, lettre (b)  <i>The contribution is the set of features by which the claimed object is presumed to differ from the prior art. The contribution must fulfill the requirements of patentability</i>	25 rapporteur		+
	65 Gauzès	caduc si 25 adopté	-
	57 Mastenbroek, Lichtenberger	caduc si 25, 65 adoptés	+
	49 Mayer	caduc si 25,65 57 adoptés	-
	58 Szejna	caduc si 25, 65, 57, 49 adoptés	-
	59 Lichtenberger, Frassoni	caduc si 25, 65, 57, 49, 58 adoptés	+
	60 Medina	caduc si 25, 65, 57, 49, 58, 59 adoptés	+
	61 Kauppi	caduc si 25, 65, 57, 49, 58, 59, 60 adoptés	+
	62 Kudrycka, Zwiefka	caduc si 25, 65, 57, 49, 58, 59, 60, 61 adoptés	+
	63 Bertinotti	caduc si 25, 65, 57, 49, 58, 59, 60, 61, 62 adoptés	+
	64 McCarthy	caduc si 25, 65, 57, 49, 58, 59, 60, 61, 62, 63 adoptés	+
"technical"			

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
<p>Article 2, lettre (b) bis nouvelle</p> <p><i>The directive as proposed makes patentability depend on the TRIPs terms "technical" and "technical field" but fails to concretise these terms. Or worse, it concretises them by stating that data processing is a field of technology, thereby using TRIPs to lock Europe into a regime of software patentability. (see comments below for 2(b)(ter) for the rest of this text)</i></p>	<p>26 rapporteur</p>		+
	<p>67 Lehne</p>	caduc si 26 adopté	-
	<p>72 Lichtenberger, Frassoni</p>	caduc si 26, 67 adopté	+
"Field of technology"			

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
<p>Article 2, lettre (b) ter nouvelle</p> <p><i>The directive as proposed makes patentability depend on the TRIPs terms "technical" and "technical field" but fails to concretise these terms. Or worse, it concretises them by stating that data processing is a field of technology, thereby using TRIPs to lock Europe into a regime of software patentability.</i></p> <p><i>There is a choice between two meanings for the term "technology" to be taken:</i></p> <p><i>1) applied natural science (advocated by the German Federal Court of Justice in decisions from 1976 to 2004.)</i></p> <p><i>2) applied exact science (advocated by EICTA in their comment on the JURI amendments and by EPO judge Mark Schar in an article of 1998.)</i></p> <p><i>Natural science is the subset of exact science in which knowledge is gained by experimentation with controllable forces of nature. The "four forces of nature" are a basic concept of physics, see e.g. the recent explanation by <a href="http://imagine.gsfc.nasa.gov/docs/ask_astr_o/answers/980127c.html">http://imagine.gsfc.nasa.gov/docs/ask_astr_o/answers/980127c.html</a>. Since we are dealing with "exact science", these four forces must be controllable. The formula of the Federal Court is thus very much to the point.</i></p>	73 Gauzès		-
	68 Kauppi	caduc si 73 adopté deuxième paragraphe caduc si 67 adopté	+
	70 Kudrycka, Zwiefka	caduc si 73, 68 adoptés deuxième paragraphe caduc si 67 adopté	+
	71 Bertinoti	caduc si 73, 68, 70 adoptés deuxième paragraphe caduc si 67 adopté	+
	74 Medina	caduc si 73, 68, 70, 71 adoptés deuxième paragraphe caduc si 67 adopté	+
	27 rapporteur	caduc si 73, 68, 70, 71, 74 adoptés	+
	76 Lichtenberger, Frassoni	caduc si 73, 68, 70, 71, 74, 27 adoptés	+
"interoperability"			

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
Article 2, lettre (b) quater nouvelle	66 Karas		+
	69 McCarthy	identique à 66 caduc si 66 adopté	+
	80 Kauppi	identique à 66 et 69 caduc si 66, 69 adopté	+
	84 Rocard	caduc si 66, 69, 80 adoptés	+
Article 3, paragraphe -1	29 rapporteur		+
Article 3  <i>The achievement that a patentee contributes to the art must be both "technical" and non-obvious. Advances in software are typically not "technical". In the course of diluting the patentability criteria, the European Patent Office has decided that non-obviousness is enough and that the "technical contribution" requirement is in some mysterious way a part of the non-obviousness. The Commission's proposal tries to impose this doctrine in various places. The Council's position on the issue is ambiguous. Many MEPs from all groups have tabled amendments that try to restore the independence of the subject matter test ("invention", "technical contribution") from the non-obviousness test.</i>	85 Medina	suppression si adopté, tous les amendements à l'article 3 caducs	+
	86 Lichtenberger, Frassoni		+
	30 rapporteur	caduc si 86 adopté	+
	87 Kauppi	caduc si 86, 30 adoptés	+
	88 Kudrycka, Zwiefka	caduc si 86, 30, 87, adoptés	+
	89 Bertinotti	caduc si 86, 30, 87, 88 adoptés	+
	90 Szejna	caduc si 86, 30, 87, 88, 89 adoptés	+
Article 3, paragraphe 1 bis nouveau	91 Lichtenberger, Frassoni	caduc si 86, 30, 87, 88, 89, 90 adoptés	+
Article 3, paragraphe 1 bis nouveau	92 Mastenbroek; Lichtenberger		+
Article 3, paragraphe 1 bis nouveau	93 Kudrycka Zwiefka	identique à 92	+

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
Article 3, paragraphe 1 bis nouveau	95 Bertinotti	identique à 93 caduc si 93 adopté	+
Article 4, paragraphe 1  <i>In the context of patent claims, "programs for computers" are achievements in data processing. This needs to be clarified, since it is a major source of confusion. Moreover, it would be a good idea to clarify what "data processing" and, by inference, "data processing program" or "computer program" comprises and what not.</i>	97 Medina	suppression si adopté tous les amendements à l'article 4 paragraphe 1 caducs	+
	99 Kudrycka, Zwiefka		+
	31 rapporteur	caduc si 99 adopté	o
	100 Bertinotti	identique à 99 caduc si 99,31 adoptés	+
	101 Kauppi	identique à 100 caduc si 99, 31, 100 adoptés	+
	102 Manders	caduc si 99, 31, 100, 101 adoptés	-
	103 Lichtenberger, Frassoni	caduc si 99, 31, 100, 101, 102 adoptés	o
Article 4, paragraphe 1 bis nouveau	104 Kayppi		+
entique à 104 caduc si 104 adopté			

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
<p>Article 4, paragraphe 2 bis nouveau</p> <p><i>An improvements in data processing efficiency, i.e. economisation of time or memory space, should not constitute a "technical contribution". If it does, all new data processing and business methods become patentable. This codifies both German and UK case law. Various amendments have been submitted relating to this.</i></p> <p><i>TRIPs turns the concepts of "field of technology" into the main key for limiting patentability. Concretisation of this concept is therefore required at the national level. The first step to concretisation is a negative definition: list examples of what is not "technical" and what is not a "field of technology".</i></p>	106 Bertinotti	identique à 104 caduc si 104, 105 adoptés	+
	32 rapporteur	caduc si 104, 105, 106 adoptés	+
	98 Medina	caduc si 104, 105, 106, 32 adoptés	+
	107 Szejna	caduc si 104, 105, 106, 32, 98 adoptés	-
	108 Lichtenberger, Frassoni	caduc si 104, 105, 106, 32, 98, 107 adoptés	+
	109 Manders	caduc si 104, 105, 106, 32, 98, 107, 108 adoptés	-
	110 Lichtenberger, Frassoni		+
Article 4 bis nouveau	114 Medina	identique à 110 caduc si 110 adopté	+
Article 4, paragraphe 2 bis nouveau	111 Kudrycka, Zwiefka	caduc si 110, 114 adoptés	+
Article 4 ter nouveau	112 Bertinotti	caduc si 110, 114, 111 adoptés	+
	113 Kauppi	caduc si 110, 114, 111, 112 adoptés	+
	115 Medina	caduc si 110, 114, 111, 112, 113 adoptés	+
Article 5, paragraphe 1	116 Szejna		+

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
<p>Article 5, paragraphe 1 bis nouveau</p> <p><i>Computer-aided inventions can be claimed as products, i.e. apparatuses, and as processes executed on such apparatuses. This provision of the draft software patents directive should concretise the TRIPs terms "products and processes" in the context of computer-aided inventions. It should make as few assumptions as possible about other matters, such as patentability criteria.</i></p>	117 Lichtenberger, Frassoni	caduc si 116 adopté	+
	118 Medina	caduc si 116, 117 adoptés identique à 117	+
	119 Kudrycka, Zwiefka	caduc si 116, 117, 118 adoptés	+
	120 Bertinotti	identique à 119 caduc si 116,117, 118, 119 adoptés	+
	121 Kauppi	identique à 119, 120 caduc si 116,117, 118, 119, 120 adoptés	+
	33 rapporteur	caduc si 116, 117, 118, 119, 120, 121 adoptés	+
	122 Kudrycka, Zwiefka		+
<p>Article 5, paragraphe 1 bis nouveau</p> <p><i>Publication and distribution of information should never be a patent infringement. Freedom of publication, as stipulated in Art 10 of the European Convention for Human Rights (ECHR), can be limited by copyright but not by patents.</i></p>	123 Bertinotti (related :134, 135, 141, 143)	identique à 122 caduc si 122 adopté	+

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
<p>Article 5, paragraphe 2</p> <p><i>The Council's article 5(2) that program claims can not be allowed "unless [opaque condition, which upon closer examination turns out to be always true]". The only correct response is to state clearly that program claims are not allowed. Lehne and others are proposing to allow program claims while adorning them with some declaratory amendments which pretend that program claims do not have the meaning and effect that program claims necessarily have, thereby creating unclear and murky legislation that only serves temporary purposes of political persuasion.</i></p>	<p>34</p> <p>rapporteur</p>		+
<p>Article 5, paragraphe 2 bis nouveau (<i>program claims, same as above amendment</i>)</p>	<p>126</p> <p>Szejna</p>	caduc si 34 adopté	-
	<p>127</p> <p>Harbour</p>	caduc si 34, 126 adopté	-
	<p>128</p> <p>Kucrycka, Zwiefka</p>	caduc si 34, 126, 127 adoptés	+
	<p>129</p> <p>Bertinotti</p>	caduc si 34, 126, 127 128 adoptés	+
	<p>130</p> <p>Kauppi</p>	caduc si 34, 126, 127 128, 129 adoptés	+
	<p>131</p> <p>Lichtenberger, Frassoni</p>	caduc si 34, 126, 127, 128, 129, 130 adoptés	+
	<p>132</p> <p>Medina</p>	caduc si 34, 126, 127 128, 129, 130, 131 adoptés	+
	<p>133</p> <p>Lehne</p>	caduc si 34, 126, 127, 128, 129, 130, 131, 132 adoptés	-
	<p>134</p> <p>Szejna</p>		+

Partie du texte en considération	Amendement n°	Commentaires	Avis FFII
Article 5, paragraphe 2 bis nouveau <i>(freedom of publication)</i>	135 Lichtenberger, Frassoni	caduc si 134 adopté identique à 134	+
Article 5 bis nouveau <i>(freedom of publication)</i>	141 Kauppi		+
Article 5 bis nouveau <i>(freedom of publication)</i>	143 Medina	identique à 141 caduc si 141 adopté	+
Article 6, paragraphe 1 bis nouveau  <i>Many groups have tabled amendments that exempt or pretend to exempt interoperation between two systems from patent enforcement. Given that the primary purpose of the directive is to clarify the rules for granting rather than enforcement, this is really a side issue, and the time constraints on the 2nd reading do not allow the Parliament to study it in depth. There is no good reason not to stick to the version from the 1st reading. Several of the variants are equally acceptable. An separate interoperability definition is worthwhile. However many of the submitted variants serve to make the interoperability exemption toothless, e.g. by making it dependent on vague notions such as "dominant player", whose application depends on costly competition proceedings, or by excluding free/opensource software (under the guise of "reasonable and non-discriminatory" licensing terms), or by introducing the abstract terms of Art 30 TRIPs directly into European law as a limiting condition.</i>  <i>All amendments below are about interoperability as well.</i>	145 Rocard		+
Article 6, paragraphe 1 bis nouveau	35 rapporteur	caduc si 145 adopté	+

<b>Partie du texte en considération</b>	<b>Amendement n°</b>	<b>Commentaires</b>	<b>Avis FFII</b>
Article 6, paragraphe 1 bis nouveau	146 Lichtenberger, Frassoni	caduc si 145, 35 adoptés	+
Article 6, bis nouveau	149 Karas	identique à 146 caduc si 35, 146 adoptés	+
Article 6, deuxième alinéa	147 Szejna	caduc si 145 35, 146, 149 adoptés	+
Article 6, paragraphe 1 bis nouveau	148 Manders	caduc si 145, 35, 146, 149, 147 adoptés	-
Article 6, bis nouveau	150 Lehne	caduc si 145, 35, 146, 149, 147, 148 adoptés	-
Article 6, bis nouveau	151 Lehne	caduc si 45, 35, 146, 149, 147, 148, 150 adoptés	-
Article 6, bis nouveau	152 Lehne	caduc si 45, 35, 146, 149, 147, 148, 150, 151 adoptés	-
Article 6, bis nouveau	153 Lehne	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152 adoptés	-
Article 6, bis nouveau	154 Kauppi	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152, 153 adoptés	+/- split
Article 6, bis nouveau	155 McCarthy	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152, 153, 154 adoptés	-
Article 6, bis nouveau	156 Kudrycka, Zwiefka	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152, 153, 154, 155 adoptés	+
Article 6, bis nouveau	157 Bertinotti	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152, 153, 154, 151, 156 adoptés	+
Article 6, ter nouveau	160 Medina	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152, 153, 154, 151, 156, 157 adoptés	-

<b>Partie du texte en considération</b>	<b>Amendement n°</b>	<b>Commentaires</b>	<b>Avis FFII</b>
Article 6, bis nouveau	159 Medina	caduc si 45, 35, 146, 149, 147, 148, 150, 151, 152, 153, 154, 151, 156, 157, 160 adoptés	+