

22/10/04

High tech industry strongly supports the draft directive on Computer-Implemented Inventions (CII) as proposed by the Council

In our digital era, computer-implemented, or software-enabled, inventions are at the heart of all digital technology and are a very significant force behind innovation in Europe in so many industry sectors, covering healthcare, telecommunications, mobile phones, cars, aviation and consumer electronics. These software-enabled inventions will continue to boost Research and Development (R&D) and secure employment in Europe, as long as they can adequately be protected by patents. This protection currently exists and the political agreement achieved by the Council in May 2004 on the CII directive¹ continues to provide it.

On the other hand, some of the amendments proposed by the European Parliament in first reading would eliminate most patents on software-enabled inventions. A directive along these lines would seriously threaten R&D in Europe. European and non-European companies alike would shy away from investing in innovation in Europe. Thousands of jobs in Europe would be at risk

The political agreement adopted by the Council in May 2004 will help the European Union to fulfil the **Lisbon Agenda** for Europe to become the leading knowledge-based economy and is the best way forward for Europe because it:

- **secures Europe's position as a leading global innovator.** Europe is a prominent player in software-enabled inventions in many areas such as healthcare, telecommunication, mobile phones, cars, aviation and consumer electronics. Europe needs patents to maintain and strengthen its leadership. The European industry currently spends over 15 billion Euros a year on R&D and employs more than 100,000 inventors. Patents provide protection for inventions and are an important source for funding R&D. Venture capitalists only invest in innovative SMEs if present and future inventions can be protected through patents. There is no valid reason to exclude technical inventions from patentability just because they use software.
- **secures jobs.** Elimination of the patentability of software-enabled inventions in Europe would severely damage European industry, because these inventions cover more than 2/3 of the existing patent portfolio. Europe would become a haven for plagiarism. European industry, stripped of patent protection in its home-market, would lose considerable market share to those who do not invest in R&D and simply copy. Licensing of patents on software-enabled inventions would become impossible in Europe. As a consequence, the viability of European industry would be seriously affected. Europe risks losing thousands of jobs including many highly skilled sustainable R&D jobs. This is contrary to what was stated at the Lisbon European Council, namely that 'innovation and ideas must be adequately rewarded within the knowledge-based economy, particularly through patent protection'

¹ Proposal for a directive of the European Parliament and of the Council on the patentability of computer-implemented inventions (18 May 2004).

- **stimulates technology transfer and knowledge-sharing.** Patents stimulate technology transfer and knowledge-sharing between companies and accelerate innovation, because patent applications have to be made public after 18 months. Knowledge sharing between cooperating companies can even take place much earlier. Companies often license these patents to others. Without patent protection, on the other hand, companies would not disclose their software-enabled inventions to other parties, keeping them secret as long as possible. As a result European industry would cease to cooperate in publicly funded inter-company R&D programmes, including EU and Eureka programmes. Such secretive practices coupled with a withering of research-cooperation would jeopardize innovation in Europe and adversely affect standardisation.
- **prevents patents on pure software.** To be patentable, an invention must make a technical contribution. Pure software lacks such a contribution and hence is excluded by the political agreement. On the other hand, a software-enabled invention does make a technical contribution, i.e. for a TV or mobile phone. In this case, the invention is not in software 'as such'; the invention just uses software for its implementation.
- **does not allow for 'trivial' patents.** Patents may only be granted for software-enabled inventions that are new, non-obvious and make a technical contribution.
- **strengthens Europe's position in the global market.** Severely weakened patent laws would isolate Europe from the rest of the world, and force global players to refocus their attention on other regions. This would alienate the European industry from the US and Asia Pacific. The political agreement, on the other hand, supports Europe's position in the global market.
- **is compliant with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).** According to TRIPS, patents must be granted for any invention in all fields of technology, provided that they are new, non-obvious and industrially applicable. TRIPS does not allow for discriminating as to the field of technology and does not allow the exclusion of software enabled inventions.
- **allows for co-existence between software-enabled inventions and open source software.** Open source software and patents for software-enabled inventions have co-existed for many years without problems. Open source software is also used increasingly in our industry. Companies must be able to choose on a case-by-case basis whether to use an open source solution or a proprietary solution, or the combination of both.
- **confirms that copyright protection alone is not enough to protect inventions.** Copyright protects only the actual software i.e. the program code, as written, and nothing more. A competitor can freely use the underlying concept without infringing copyright and it is usually quite easy to work around the copyright-protected specific program. On the other hand, patents protect the underlying technical function and concept, provided they meet the patentability requirements. Most effort and money goes into the technical function and concept, not the specific expression, of a software-enabled invention.

**For all these reasons, we urge the new European Parliament to accept
the draft directive as proposed by the Council.**

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