

CILs: what do the different versions of the Directive mean in practice?

Following its recent discussions with MEPs concerning the Directive on Computer-Implemented Inventions, PCG has compiled a few brief examples to illustrate the differences between the two broad approaches to the issue that have so far informed the debate. It remains PCG's belief - and fear - that the Common Position will make software patentable in the broadest sense if it is not amended, and that this will have tragic consequences for SMEs throughout the EU.

All of the examples below will be patentable under the Common Position. Under JURI's amendments, only the genuinely technical inventions in the left-hand column will be patentable. In cases where the EPO has granted software patents incorrectly, the patents are NOT currently enforceable under the national law of most member states, whose patent offices respect the TRIPs agreement and long-standing practice of not allowing patents for software. If the Common Position becomes law, these wrongly-granted patents will become enforceable in all member states.

Innovations that should be patentable: technical inventions

Loom with electronically controlled insertion brake

Granted by the EPO as EP01147250

- This device slows the loom by a combination of reducing power to the engine and the pull of the yarn.
- It achieves its effect by applying physical forces of nature; it just happens to be controlled by a piece of software rather than by a mechanism or person.

Mechanism for the automatic taking of medical samples

Granted by the EPO as EP1345533

- This device takes medical specimens from living or static subjects under computer control
- The software itself is claimed in the patent; while the amended directive would not allow this, the mechanisms involving the specimen collector, guiding device etc. would remain patentable.

Electronically controlled lock using levers and cams

- While levers and cams are not patentable in themselves, a novel and innovative arrangement of them could be.
- This would use controllable physical forces of nature to achieve its effect; if it happened to be controlled by a computer program in order to work quickly, this would not affect its patentability provided the program itself was not claimed as an innovative element.

Innovations that should not be patentable: computer programs

Doing business over the internet

Granted by the EPO as EP0803105

- This patent covers any means of selling products and taking payments by credit card via a website.
- This is clearly not technical in nature and, when granted in 1997, was clearly not non-obvious either.

Monitoring a computer network

Granted by the EPO as EP0860441

- This patent covers any means of instructing one computer in a network to check regularly whether or not all the other computers are still functioning correctly and to raise an alarm if not.
- As nothing more than a couple of simple instructions, this is obviously not technical.
- All companies running computer networks will operate a system such as this; it is entirely standard and running, for instance, credit card transactions would be a lot more difficult without it.

Selecting ingredients for a recipe

Granted by the EPO as EP0756731

- This patent covers any means of displaying on a screen the ingredients of a selected recipe and their price, location within a shop etc.
- As nothing more than a computer program for displaying a list and associated rudimentary information, this is obviously not technical and clearly ought to have failed a non-obviousness test.