FACTSHEET - EU rules for patents for computer-implemented inventions

The Misinformation Campaign: Claims by the Free Software Alliance

The Myths - The Truth

Myth: **This is a proposal for a software patent directive**

Truth: The proposal is for a patent to cover computer-implemented inventions

In law, software, as such, is not patentable. Just as an invention in the physical world can enjoy patent rights so too can an invention relying on a computer application.

This is not new. The European Patent office and national patent offices have already granted patents for computer-implemented inventions. The proposal applies strictly to inventions which must satisfy the conditions of any invention; must be new, involve an inventive step and must make a technical contribution providing a technical solution to a problem.

Myth: **The proposal would impose US-style unlimited patentability of algorithms and business methods such as Amazon's 'one-click' shopping.**

Truth: In fact the Parliament's objective is to stop the drift by the EPO and national patent offices to patent business methods. The Parliament's proposal is stronger than current law and practice of the EPO and is explicitly excluding the patentability of business methods and algorithms with the introduction of a new article and recitals, specifically Article 4a and recitals 13a and 13c

Amazon's 'one-click' shopping would not be patentable under the terms of the parliament's proposals.

Article 4a

Exclusions from patentability:

A computer-implemented invention shall not be regarded as making a technical contribution merely because it involves the use of a computer, network or other programmable apparatus. Accordingly, inventions involving computer programs which implement business, mathematical or other methods and do not produce any technical effects beyond the normal physical interactions between a program and the computer, network or other programmable apparatus in which it is run shall not be patentable.

Recital 13a

(13a) However, the mere implementation of an otherwise unpatentable method on an apparatus such as a computer is not in itself sufficient to warrant a finding that a technical contribution is present. Accordingly, a computer-implemented business method or other method in which the only contribution to the state of the art is non-technical cannot constitute a patentable invention.

Recital 13c

(13c) Furthermore, an algorithm is inherently non-technical and therefore cannot constitute a technical invention. Nonetheless, a method involving the use of an algorithm might be patentable provided that the method is used to solve a technical problem. However, any patent granted for such a method would not monopolise the algorithm itself or its use in contexts not foreseen in the patent.

Myth: **Programmes and ISPs will be regularly sued for patent infringement.**

Truth: The Parliament's proposal reinforces the right of computer programmers and software developers to engage in reverse engineering practices or to achieve interoperability as currently permitted under exceptions to the Software Copyright Directive.

Myth: **Software patents kill efficient software development.**

Truth: Patents for computer-implemented inventions do not kill companies. Some 30,000 patents have already been handed out in this area by the European Patent Office, while at the same time Opensource software companies are flourishing with one company recently posting a 50% increase in world-wide shipment of its products. The Parliament's proposal welcomes the development and growth of open source software to ensure competition in the market place and prevent the dominance of any one player.

The Parliament's rapporteur is asking the Commission to monitor the impact of this law on both SMEs and Opensource software and prevent any abuse of the patent system as regards computer-implemented inventions. On the contrary, good patent law for computer-implemented inventions will protect software development companies and give them a return on their investment through license fees, enabling them to grow their company and provide alternatives to the dominance of global, multinational companies in the field of computer-implemented inventions.

Myth: **The proposal would legalise thousands of mathematical rules and business methods patents that have been granted by the European Patent Office against the letter and spirit of the law, making it impossible for national courts to revoke these patents.**

Truth: This is both confusing and wrong. Patents handed out by the EPO, for computer-implemented inventions have been granted on the basis of an interpretation of the European Patent Convention (EPC). They therefore already enjoy legal status and where appeals against them have been launched, far from seeking to revoke these patents, national courts have in the majority of cases slavishly followed the decision of the EPO.

The Parliament's amendments, in proposing a more restrictive and clearer interpretation of the law on the patentability of computer-implemented inventions is therefore "not legalising patents", but seeking to ensure that only genuine inventions enjoy patents in the future. An EU law also opens up the avenue of appeals to the European Court of Justice to challenge bad patent decisions in a transparent and accountable way. It therefore enables the creation of European case law enacting the Parliament's demands to ensure the exclusion of the patenting of the business methods.