



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

Mrs Mary Harney, T.D.
Council of the European Union
Rue Froissart 89-93
1040 Brussels

2 March 2004/JPH/nd

Dear Mrs Harney,

ICC has noted with great concern the amendments adopted by the European Parliament in its first reading to the draft Directive on the patentability of computer-implemented inventions.

In particular, these European Parliament amendments include provisions which would have the following effects:

- Inventions in the field of data processing and information handling would not be patentable.
- Patents on interfaces/standards between any type of computer systems (including consumer products and networks) would not be infringed; or generally, wherever the use of a patented technique is needed for a significant purpose, such use is not considered to be a patent infringement.
- Full listing of source code could be required for claimed inventions.

As a result, patent law would be drastically changed if these amendments were to become law and patents could no longer be obtained in Europe for inventions such as:

- Car navigation systems.
- Electronic controls in airplanes.
- Computer controlled motor management of cars.
- Image processing in medical equipment.
- Voice/data processing in telecom networks and phones.
- Data processing in chemical process technology.
- Compression of audio and video for new recording media or digital broadcast techniques.
- Image processing in TV's.
- Information and Data Processing for Drug Delivery.

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38, Cours Albert 1^{er}, 75008 Paris, France

Telephone +33 1 49 53 28 28 Fax +33 1 49 53 28 59

Web site www.iccwbo.org E-mail icc@iccwbo.org



In putting forth these amendments, it appears that the European Parliament is in the process of fully ignoring the Community's obligations under the WTO-TRIPs Agreement. It is especially striking in this respect that the European Parliament has deleted the reference to the WTO-TRIPs Agreement.

The European Parliament amendments will have a negative economic impact. For instance, they provide no incentive to invest in research and development (R&D) in Europe. Consequently, R&D will be moved to regions that do provide proper protection for new technologies and inventions. This would result in a significant loss of high quality jobs in Europe. Furthermore the pro-competitive R&D cooperation in EUREKA projects as well as in the EU Framework Programme will be seriously hurt because companies will find it necessary to rely -- when possible -- on trade secret protection for their innovative technologies and technology transfer will consequently suffer.

A final directive including amendments such as those put forward by the European Parliament would seriously damage European competitiveness. The Lisbon goal, as one example, will be endangered and the Barcelona 3% objective for R&D spending will not be met, as the provision of adequate protection of Intellectual Property is key for stimulating private spending on R&D. Taken as a whole, the Parliament's amendments would remove protection currently provided by the European patent system for European R&D and deprive industries in Europe of one of the key instruments for technology transfer in the information technology, telecommunications and consumer electronics sectors.

With these far-reaching impacts in mind, the amendments adopted by the European Parliament in its first reading are so harmful that it is clearly preferable to have no directive on this subject rather than a directive as amended by the European Parliament.

In view thereof, we urge you to continue with the general approach you endorsed in November 2002, and not to accept any deterioration with regard to that text. Article 5 of the general approach does, however, require additional improvements, such as incorporating Amendment 18 of the Parliament's 'McCarthy report' regarding programme product claims which, unfortunately, was not adopted by the Parliament in plenary session.

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In closing, the ICC notes the presidency compromise proposal put forward on 29 January 2004, and welcomes this action as a step in the right direction.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Cattau', is positioned above the printed name.

Maria Livanos Cattau

- c.c.: - Mr Frits Bolkestein, European Commissioner for the Internal Market, Taxation and Customs Union
- Mr Erkki Liikanen, European Commissioner for Enterprise and the Information Society
 - Mr Fabio Colasanti, Director General, Directorate General for Information Society, European Commission
 - Mr Klaus Gretschmann, Director General, Directorate General C, Council of the European Union