

Background note on the FFII questionnaire

Freedom of publication

Programmers mostly write code for programs, and the work they do in writing, testing and refining the code is where most of the value of software lies. We need a law which makes clear, that the right to publish your own work, be it software or not, can never be threatened by patent owners.

If patents allow patent owners to forbid the publication of computer programs, it would be like allowing the patent owner of a motor engine to forbid the publication of books which happen to describe such engine.

Freedom of interoperation

Computers must always interoperate, whether it be with printers, digital cameras, or other computers on a network. This interoperation is governed by strict rules called "protocols". To have the freedom to use these protocols for the purpose of making computers work together is very important (and actually what the Internet is all about).

It is in the best interests of all that the use of protocols, for the purpose of interoperability, be considered "fair use". Standards, communication, openness and interoperability are what creates free competition and wealth for society as a whole.

TRIPs and "technology"

The international treaty TRIPs says that patents must be available for inventions in "all fields of technology". That is a clear and straightforward rule which all countries benefit from following. However, since patents are not useful for promoting progress for everything, it is important that there are limits to what is considered to be a "field of technology".

"Data processing" is a very wide term which covers everything from accounting and billing to sorting the e-mail in your inbox - computers are data processing machines by their nature. It is not explicitly stated in the TRIPs treaty that data processing is not a "field of technology". It is up to laws to clarify this.

EPC and "technical"

Patent law is meant for a certain kind of achievement that needs a certain kind of protection. Patent law does not state explicitly what these are, because new achievements never envisaged before would then not be patentable. Instead, to be flexible, the law says what kind of achievements are not inventions (like, for example, mathematical methods).

Achievements which are not inventions have something in common. They don't have "technical character". Patent examiners usually look for this character when they examine patent applications, since if there is none, they don't have to start long and expensive assessments of novelty and inventiveness. As such, it also appears in the guidelines of the patent offices and is often mentioned in preparatory works about patent law.

Since the purpose of the patent system is to promote progress and not to hinder it, it is reasonable to stand by the old rule of the patent system: Only solutions which require the application of knowledge about applied natural science (or the forces of nature) should be patentable. This does not exclude that you may need a computer or computer program for a specific implementation, just the invention must lie somewhere else.