

SOUTHERN CROSS

There has been a lot of intense public debate in recent years on whether and, if yes, to what extent patentability of IT- & software-related inventions should extend to computer programs. Inventors may wish to consider the following points in regard of patentability in Europe:

Advantages & disadvantages of patenting computer programs

- The main advantage of copyright lies in its flexibility. There is no need for registration. The mere creation of a computer program also constitutes the copyright of the author or owner of the program. There are no costs in regard of constitution of copyright.
- Copyright, however, does not afford protection against "independent creation", except in case of previous personal possession by an alleged infringer. A patent right does just that: according to patent legislation, it is not necessary to copy in order to infringe. Patenting takes time and money.
- To sum up in very broad terms, copyright protects original computer programs against unauthorised copying, while a patent protects the technical concepts and principles that underlie particular components of a computer program.

When is a computer program patentable

- When a computer program is incorporated in a machine or a process fulfilling the usual requirements of novelty, inventive step and industrial applicability, then the resulting system or process of operating a computer is protectable by patent **as long as the process solves a technical problem or produces a technical effect.**
- A technical effect is understood to encompass an effect that goes beyond simple interaction between a program and a computer. Internal electrical changes to the computer induced through the execution of the program as and of itself are not deemed to constitute a patentable technical effect.
- Two examples of a technical effect are: an increase in processing speed achieved by a new and non-obvious method; and providing a single user interface for entering data in relation to all the management functions to be performed and by providing processing modules which automatically transfer the data from the user interface into the various files in which it is needed.

Distinction vis-à-vis the situation in the United States

- In the US, novelty and usefulness of a computer program are adjudged without considering the presence of a mathematical algorithm. A mathematical algorithm is not à priori excluded from patentability **as long as it produces a useful, concrete and tangible result.**
- This requirement allows wider possibilities for patent protection in the US as compared with the situation in Europe.

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