

QUESTION 158

Patentability of Business Methods

Yearbook 2001/II, pages 243 - 244
38th Congress of Melbourne, March 23 - 30, 2001

Q158

Question Q158

Patentability of Business Methods

Resolution

AIPPI

Considering that:

- (a) The patent system is designed to compensate fairly research as well as the creation of new inventions.
- (b) The right to protect inventions arising out of economic activities is guaranteed by article 1 of the Paris Convention.
- (c) Pursuant to article 27 of the TRIPS treaty, a patent may be obtained for any invention in all fields of technology.
- (d) The question of protection of business methods has been raised due to the widespread use of computers and the development of software.
- (e) During the 1997 meeting of the Executive Committee held in Vienna, which considered Question 133 "The Patentability of Computer Software" the AIPPI formally declared it was in favour of patent protection of computer software.

And whereas:

- (f) Since its origins, patent law has progressively adapted to new subject matter,
- (g) Problems resulting from this expansion have nevertheless been resolved without the necessity of substantially modifying the criteria for the granting of patents,
- (h) Creations of a purely abstract nature are generally excluded from the scope of protection of patents,
- (i) In several legal systems, inventions, in order to be protected by patents, must not only be useful but must also possess a technical content,

- (j) The TRIPS treaty has not specified how it intends the term "fields of technology" appearing in article 27 to be defined with respect to the definition of patentable subject matter,
- (k) The expansion of patentable subject matter, which has not yet been considered by different national laws may raise practical problems, particularly with respect to procedures and rules of examination before patent offices.

Adopts the following resolution:

- 1 Inventions including methods used in all fields of industrial, commercial and financial activities, herein referred to for purposes of simplification as "business methods", should be entitled to patent protection provided that the invention as defined in the claims has a technical content.
- 2 If such an invention as a whole has a technical content, that should be sufficient for patentability even though the point of novelty and inventive step (non-obviousness) does not lie in the technical content.
- 3 Further, the protection of such inventions by patents should be assessed or based upon the same criteria as other inventions, and no new or special criteria should be applied.
- 4 The assessment of inventive step for such inventions should be made on a case-by-case basis and even known methods may, if their application to a new field is inventive, be granted patent protection.
- 5 Merely transforming a known method into software form does not give rise to a presumption that such an invention has an inventive step.
- 6 Patents for business methods should be treated in the same way as patents in other fields. In particular:
 - a. The scope of protection granted by patents with respect to business methods should be the same as the protection granted to other inventions.
 - b. Where evidentiary methods allow for a reversal of the burden of proof, this should be available for business method patents as well.
 - c. The term for such patents should be the same as for patents in other fields.
 - d. The remedies for infringement of such patents, such as damages and injunctions, should be the same as for patents in other fields.
- 7 In the granting of such patents, AIPPI encourages the improvement of search and examination procedures by patent offices, particularly by the creation of databases in connection with prior art.

* * * * *