

2017 AIPPI World Congress - Sydney
Adopted Resolution
October 17, 2017

Resolution

2017 – Study Question (Patents)

Patentability of computer implemented inventions

Background:

- 1) This Resolution concerns the issue of patentability of computer implemented inventions (CIIs).
- 2) For the purpose of this Resolution:
 - The abbreviation CII refers to an invention which involves the use of a computer, computer network or other programmable apparatus, where one or more features are realised wholly or partly by means of a computer program and/or implemented in hardware;
 - The term patentability of CII refers to the question of whether CII may properly be the subject of a patent claim.
- 3) Patentability of CIIs has been hotly debated since the 1960s in many countries, and national/regional laws and practices have significantly evolved over time. However, the development of the various practices has not been at all linear. Rather, the patentability of CIIs is a dynamically changing and scattered landscape. This has created a high degree of confusion and frustration among users of the patent system and practitioners.
- 4) Practices even diverge on the question of how to name CIIs.
- 5) AIPPI has previously taken positions regarding the patentability of CIIs, in particular in the Resolutions on Q133 – "Patenting of computer software" (Vienna, 1997) and on Q158 – "Patentability of business methods" (Melbourne, 2001). Broadly speaking, these Resolutions generally represent a position that any computer software should be eligible for patent protection, irrespective whether or not the claimed invention makes a contribution to any specific fields of human endeavour or technology.

- 6) AIPPI wishes to update its position with the aim of improving harmonisation in national/regional laws.
- 7) 44 Reports were received from AIPPI's National and Regional Groups and Independent Members, providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (see links below). These Reports indicate a broad consensus that harmonisation is desirable.
- 8) At the AIPPI World Congress in Sydney in October 2017, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

- 1) As a question of principle clearly reflected in the TRIPS Agreement, and taking into account other reasons of a legal, economic and practical nature, patents should be available, and patent rights enjoyable, without discrimination for inventions in all fields of technology, including CIIIs.
- 2) There should be no general exclusion from patentability of CIIIs, including computer programs.
- 3) A claim directed to a CII should be eligible for patent protection if it defines an invention in at least one field of technology. A claim directed to a CII should be examined using the same criteria as applied to other kinds of inventions.
- 4) Eligibility of a CII for patent protection should not depend on the prior art or any assessment of novelty or inventive step.
- 5) The assessment, including examination, of whether one or more claims directed to a CII define an invention in at least one field of technology should be made on a claim by claim basis, and in relation to each claim as a whole.
- 6) A claim directed to a CII can be a claim directed to, inter alia:
 - a) a system or apparatus;
 - b) a method or process executed by at least one processor;
 - c) instructions that can be executed or interpreted by at least one processor to execute steps of a method or process, whether stored in or on at least one storage medium or in the form of at least one signal or data carrier, whether in the form of a computer program or otherwise; or
 - d) a data structure generated by a computer-implemented method or process, whether stored in or on a storage medium, or in the form of at least one signal or data carrier.

Links

- Study Guidelines <http://aippi.org/wp-content/uploads/2017/01/FINAL-website-version-Patentability-of-CII.pdf>
- Summary Report http://aippi.org/wp-content/uploads/2017/08/Summary-Report_Patents_CII_160817_final.pdf
- Reports of National and Regional Groups and Independent Members <http://aippi.org/committee/patentability-of-computer-implemented-inventions/>