

## **ECIS patent consultation contribution**

The European Committee for Interoperable Systems, or ECIS for short, is an international association devoted to promoting interoperability, competition and consumer choice in the information technology sector.

ECIS' members include important patent holders (including the number one patent owner in the world) and all of its members rely on intellectual property protection.

As part of its contribution today, ECIS would like to make three brief points.

**First**, while not taking a position on the desirability of a Community patent system as such for reasons already mentioned by others which I will not repeat, ECIS firmly rejects the political agreement on the Community patent.

**Second**, any proposal on the Community patent should have as its driving aim the promotion of innovation in the public interest.

It should set patent-ability thresholds high enough to *exclude* so-called "trivial patents" from patent protection.

It *should* award effective protection for real inventions that have withstood *thorough* examination, while providing for appropriate exceptions and limitations to safeguard the interest of users and competing innovator, ... recognizing, that a patent system ultimately exists to benefit society *as a whole* and not merely to serve individual interests.

In this context, any proposal should take into account the importance of interoperability of information and communications technology in today's -- and even more so tomorrow's -- world.

In the information technology sector, products and technologies do not stand on their own like a mousetrap or a new drug, but are elements in an increasingly networked whole that need to work together, interact and understand each other.

Interoperability in this networked world empowers the consumer by giving him freedom of choice based on the merits of the various available alternative technologies.

Overbroad patent protection that *frustrates interoperability* in the ICT sector diminishes the incentives to engage in R&D and prevents consumers from benefiting from innovation and true choice.

Appropriate limits to the patent system should therefore ensure that patents cannot be used as a means of *confining* users to a particular

technology by *closing off* full interoperability and preventing competition on the merits and choice between alternative technologies.

It is important to recall that the innovation unleashed by software developers in the 1980s and early 1990, which led to the boom of the modern software industry, occurred at a time when patents were not generally available for software, and the scope of the copy right protection that software enjoyed was still uncertain.

ECIS notes that the Commission as well as the Parliament and the Council recognized the importance of interoperability in the context of the Computer Implemented Inventions Directive Proposal.

Although that directive failed, a consensus emerged during the legislative process that the issue of patents and interoperability is one that needs to be addressed, consistent with the EU's historical support for interoperability as a policy objective.

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**Third and finally**, the aims of innovation, interoperability and choice are also promoted strongly by open and transparent multilateral standard-setting processes.

In this context, ECIS encourages the Commission to *revisit* and *revise* the 1992 communication on intellectual property rights and standardization.

In particular, the Commission should facilitate the creation of standards and the avoidance of patent "ambushes" by affirming its policy of legality of ex ante discussions of licensing terms among the standard setting participants.

A detailed policy statement on this issue would remove legal uncertainty, and enable open debates on the merits of the various potential solutions available for the standard.

Thank you for this opportunity to contribute.

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