

Software patents in Poland? YES!

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The Polish Supreme Administrative Court has recently recognized a contradiction between the decisions of the Polish Patent Office regarding computer-implemented inventions and the practice of the European Patent Office (EPO). However, it is too early to say for certain whether Polish administrative courts have definitely changed their approach to so-called software patents.

In a recent patent case, the Polish Supreme Administrative Court invalidated a decision issued in 2007 by the Polish Patent Office which refused to grant a patent for an invention related to digital electronics. Pursuant to its longstanding practice in the area of so-called software patents, the Polish Patent Office held that the invention was not of a technical character and therefore was not patentable, despite the fact that the European Patent Office had granted a European patent for the same invention. In other words, the Polish Patent Office refused to issue a patent to an applicant already approved by the EPO.

As previously posted on this blog, the Polish Supreme Administrative Court has already focused its attention on the issue of whether the granting of a European patent should have any binding effect on decisions made by the Polish Patent Office. In other words, the question is whether the Polish Patent Office has the authority to refuse a patent if the applicant has already been approved by the EPO. Nevertheless, the judgment of the Polish Supreme Administrative Court of 19 March 2012 is without precedent because it has changed the Polish Patent Office's usual approach in determining the technical character of inventions. Furthermore, in its ruling, the Court referred not only to the provisions of the EPC and the TRIPS Agreement, but also to the technological advances of humankind.

The Court clearly held that while examining patentability requirements, the Polish Patent Office should take into account the current state of the art, which is variable by its very nature. Furthermore, patentability requirements should be examined in the light of the statutory aims of Polish patent law. The court also noted that great technological advances across many industries have been made in recent years, which must have an effect on the practice of the Polish Patent Office. Thus, the Polish Patent Office, while conforming to the provisions of Polish patent law, should change its approach on the subject matter of the technology. In addition, in order to do so, the Polish Patent Office should use appropriate methods of interpreting legal rules in order to guarantee the fulfillment of their statutory aims.

The Polish Supreme Administrative Court also confirmed that Polish patent law does not provide a definition of what constitutes an invention. However, in order to be patentable, an invention must meet the patentability criteria: an invention should be new, involve an inventive step, and possess potential for industrial application. Furthermore, the Court held that, according to Polish patent law, patents are granted for inventions regardless of the field of technology. The Court also highlighted the similarity between Polish regulations and those expressed in Article 52.1 of the EPC. Thus, because Poland signed and ratified the requirements of patentability formulated in the EPC, the Polish Patent Office should adopt comparable requirements. Furthermore, the Polish Supreme Administrative Court held that as a signatory to the Convention, Polish national law should not only be adjusted to the Convention, but it should also use the broadest interpretation of patentability requirements expressed in the decisions of the EPO.

It can be argued that this judgment encourages a more liberal application of patent requirements for technical inventions and at the same time remains within the bounds of EPC customs in order to account for the technological advances of humankind. Therefore, it may be truly ground-breaking in nature. However, future decisions will show whether this was simply a one-off case or whether it signals the beginning of a new era in judicial decisions related to computer implemented inventions in Poland. Only time will tell if the Polish Patent Office will indeed follow the rules formulated by the Polish Supreme Administrative Court.