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The Court of Turin on the patentability of software

Daniela Ampollini (Trevisan & Cuonzo) · Thursday, May 8th, 2014

By ruling of 21 February 2014, the Court of Turin decided a case between the US corporation Rovi and a number of Italian consumers electronics manufacturers. These had produced / imported set-top-boxes equipped with Electronic Programme Guides (EPG) that allegedly made use of the Rovi EPG patents, although without being covered by the Rovi licensing scheme. The Turin Court ruling is interesting as it tackles – one of the very few in the Italian case law – the issue of software patentability, reaching conclusions opposite to those of the UK courts in the Rovi versus Virgin Media saga.

The case had commenced with the filing by the Italian manufacturers of a nullity action against patents EP 969662, EP 1377049, EP 1613066. In addition, the claimants had argued that Rovi had committed unfair competition, including an abuse of dominant position, in the management of the relevant licensing programme. The assumption of the latter claim was that the Rovi patents were Standard Essential Patents, needed to implement set-top-boxes suitable for the obligatory transition from analogue to digital terrestrial television.

Whilst no judgment was rendered on the first of the above listed three patents, as it had meanwhile been finally revoked by the EPO BoA, the Court of Turin clearly established, by following the finding of the Court Expert, that the other two patents relate to patentable subject matter. The Court in particular stated that *"as far as computer programmes are concerned, if a claimed element purports a technical effect which goes beyond the normal physical interaction generated by a programme operating on a computer, it has technical character and is therefore patentable; this is the case for the patents in suit, in which the claimed subject matter causes a modification in the modalities of functioning of concrete apparatus which show on a screen the EPG information and react to commands sent by the user to visualise other information and subsequently tune TV programmes; it implies the presence of hardware (for instance a device for programming control, a memory, a tuner and a monitor); therefore it has technical character and it does not result in computer programme as such. As far as the objection relating to presentation of information is concerned, the patents relate to a particular configuration, of a chart type or list type, of EPG information, and how this information is accessible and usable by the user. they do not only relate to which information is visualised; they concern the modality in which the EPG information, by a certain arrangement, may be visualised on screen based on the commands sent by the user"*.

Novelty and inventive step were also found and the two patents were therefore found valid. Infringement was also found, although not in respect of the devices produced by all of the claimants companies, which in fact showed that the patents in suit could not be considered

Standard Essential Patents, leading to the failure of the premise of the claim relating to the breach of competition rules, which was also dismissed.

The case should now continue on the quantification of the damages resulting from the infringement.

The most interesting part of this decision is no doubt that concerning the patentability of software. I have to say, however, that the Court was somewhat short in this respect and the reasoning could have been clearer. In any event, I think we can take note that the threshold for software patentability applied by this Italian court doesn't seem to be too high….

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