

Abstract

The purpose of the thesis is to analyse exclusions and exceptions from patentability which is a negative requirement for an invention to enjoy a patent protection. It aims to answer the question why the exclusions are needed and whether they should be preserved as some of them proved to be very controversial. The law and practice of the European Patent Office, the Czech Republic and the United Kingdom are compared with the emphasis on the European Patent Convention and the EPO's case law. In the national regulation, mainly the differences and peculiarities to the European approach are pointed out.

The work is composed of four chapters. The first chapter explains the basic concepts of patent law and presents justifications for patent protection. The second chapter deals with various patent systems and reviews the most important international tools of harmonization. In the third chapter, the exclusions are introduced and the distinction between Article 52(2) and (3) EPC (exclusions) and Article 53 (exceptions) is clarified whereas it is submitted that the difficulty posed by the exclusions lies in the interpretation of the words "as such" used in Article 52(3) EPC.

The main focus of the thesis lies in chapter four which is subdivided into nine subchapters, each discussing one of the exclusions and exceptions from patentability. Strong emphasis is put on the exclusion of computer programs as such which can be found in subchapter 4.1. On this exclusion the development of case law regarding exclusions from patentability at the European Patent Office is demonstrated and is to be applied on other exclusions under Article 52(2) EPC. Hence, it is submitted that two approaches have been developed by the European Patent Office throughout the years: firstly, the so called contribution approach and secondly, the so called "any hardware" approach. It is shown that while this development was accepted in the Czech Republic, the Court of Appeal declined to apply the "any hardware" approach in the United Kingdom.

In the conclusion, firstly, the findings made in the previous chapters are summarized. It is maintained that by making the exclusions merely an insignificant bar to patentability and putting emphasis on the tests of novelty and inventive step instead, the "any

hardware” approach does not take due account of the EPC framers’ intents. However, it is suggested that in spite of that it is not desirable for the national courts and patent offices to depart from the EPO’s practice and create differences across the European Patent Organization member states. Secondly, possible amendments to the current legislation and practice are considered. It is argued that Europe should preserve the exclusions, especially the exclusion of programs for computers and methods of doing business as such, because patentability of these would not work as an incentive for innovations; on the contrary, it could be detrimental to the competitors and consumers. It is recommended that the computer programs exclusion should be moved to Article 53 EPC and become an exception.

Nevertheless, it is concluded that we must be rather sceptical to the idea that the amendment should come within next few years as there is a lack of political will to solve this controversial issue now. Therefore, it is important to rely on the guidance by the Boards of Appeal in the meantime while especially the notion of “technical means” requires further explanation.