



POSITION STATEMENT

PATENTS SHOULD BE LIMITED TO TECHNOLOGY

**(Approved by the IEEE-USA
Board of Directors, 13 Feb. 2009)**

IEEE-USA calls on Congress to amend the U.S. Patent Code to clarify that patents are limited to technology (*1*) and cannot be used to protect artistic activities, such as music or motion pictures. At the same time, Congress should also amend the requirement of non-obviousness, so that information stored or transmitted is given no weight, unless it has some special relationship with the storage or transmission medium.

As stated in the IEEE-USA position statement, *Computer Industry Patents (2)*, IEEE-USA supports patents for computer-based inventions that meet strict statutory criteria. But some individuals want to go well beyond that, both in terms of what can be patented and what the scope of a patent may cover. Claims to the media storing the program as an “article of manufacture” -- so that those producing and marketing computer programs that use a patented method can be sued as direct infringers -- are now common. Going beyond that, some patent applicants are now making claims to signals that propagate computer programs. These patent claims can cause problems, such as making Internet Service Providers liable for infringement when they “make” the signal to send it across the Internet.

As stated in the IEEE-USA position statement, *Multiple Patent Claim Forms (3)*, IEEE-USA calls upon Congress to make such infringement claims unnecessary by amending the patent statutes “so that intentional distribution of a computer program that uses a patented method is an infringement of that patent.”

With this direct protection in place, Congress can address the unrealistic distinctions now used to explain why a medium such as a CD containing a computer program is a patentable “article of manufacture,” while a CD containing digitized music isn't patentable, even though it has the same physical structure. The patent statute's obviousness requirement should be amended to say that patentable weight will not be given solely to information stored in a medium, unless a novel and non-obvious relationship exists between the information and the medium. In addition, patentable weight should not be given solely to the use of a computer in business method claims, where a prior art method is implemented on a computer in a straightforward way.

Some applicants are attempting to push patents even further, such as patenting movie plots -- either as a series of steps claimed as a process -- or with the plot stored in some medium claimed as an article of manufacture. The U.S. Patent and Trademark Office has issued patents on tax shelters, requiring people who take advantage of the tax code that permits the shelter to pay royalties to a patent owner.

Congress should clarify what patentable processes or manufactures are patentable, limiting them to new technology while being careful that truly novel and non-obvious software-based techniques remain patent protected.

This statement was developed by the IEEE-USA Intellectual Property Committee and represents the considered judgment of a group of U.S. IEEE members with expertise in the subject field. IEEE-USA advances the public good and promotes the careers and public-policy interests of the more than 215,000 engineers, scientists and allied professionals who are U.S. members of the IEEE. The positions taken by IEEE-USA do not necessarily reflect the views of the IEEE or its other organizational units.

END NOTES

1. For the purposes of this position statement, technology shall mean the practical application of knowledge in a particular area; a capability given by the practical application of knowledge; or the application of scientific knowledge to practical purposes in a particular field. Finally, technical shall mean having special practical knowledge, especially of a mechanical or scientific subject, or of or relating to a practical subject organized on scientific principles.
2. IEEE-USA Position Statement on “Computer Industry Patents” (15 June 2007), available on-line at: <http://www.ieeeusa.org/policy/positions/ComputerPatents0607.pdf>
3. IEEE-USA Position Statement on “Multiple Patent Claim Forms” (17 Nov. 2006), available on-line at: <http://www.ieeeusa.org/policy/positions/patentclaimforms.pdf>