

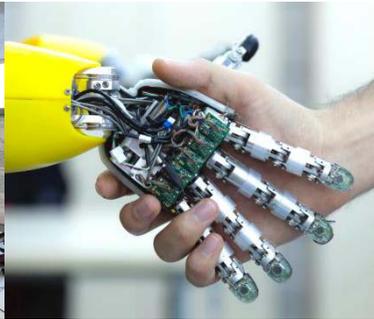


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The EPO approach to Computer Implemented Inventions (CII)



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Background and context

The EPO's approach to CII:

- fulfills the legal requirements of the EPC and is “fit for purpose”, i.e. supports industry and fosters economic growth
- is **workable**, examiners apply the EPO approach in a harmonized way in all technical areas in an efficient and targeted manner
- can be **readily understood** by users
- results in **predictable** outcomes for users

The EPO's legal framework

- Art. 52 EPC states that inventions shall be granted in "all fields of technology". However, some subject matter is not eligible for protection when claimed as such, for instance:
 - discoveries, scientific theories and mathematical methods;
 - aesthetic creations;
 - schemes, rules and methods for performing mental acts,
 - playing games or doing business, and programs for computers;
 - presentations of information;

“Technical character”

The subject-matter for which protection is sought must have a **"technical character"** i.e. it must show a technically skilled person how to solve a technical problem using technical means. The problem solved by the invention must be technical, in contrast to for example a purely financial, commercial or mathematical one.

Legal basis:

- The description must specify the **technical field** of the invention and disclose the invention so that **the technical problem and its solution** can be understood (Rule 42 EPC)
- Subject matter for which protection is sought must be defined **in terms of technical features of the invention** (Rule 43 EPC)
- Case law of EPO Boards of Appeal, e.g. T1173/97, T641/00, T258/03

Examples of technical and non-technical subject matter

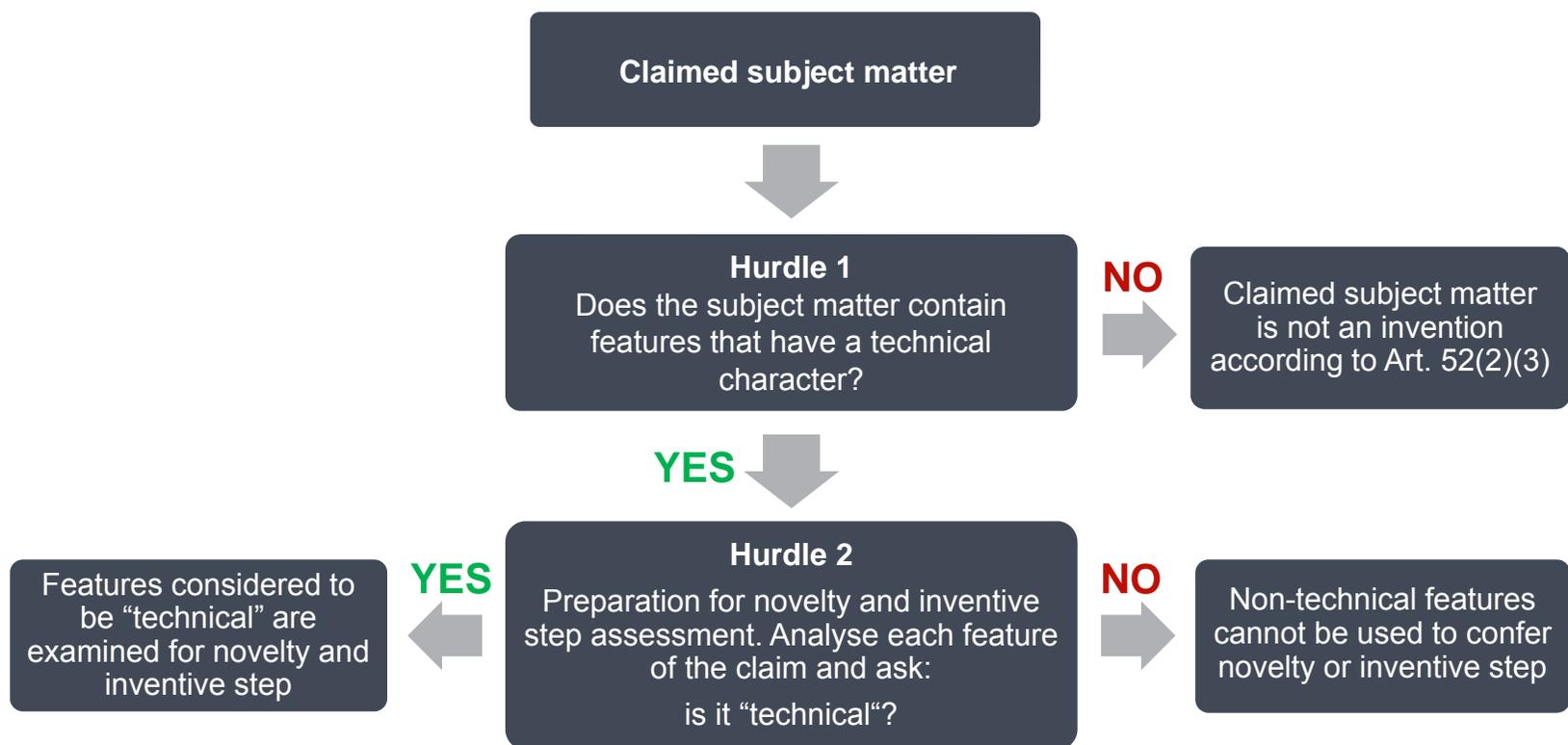
Technical

- control of an ABS system (vehicle Anti-blocking Brake System)
- implementation of a ground collision avoidance system in an aircraft
- balancing of computing load in a network of computers

Non-technical

- a method of teaching a foreign language
- a pyramid sales promotion scheme, a method to optimize an investment portfolio
- a method to minimize tax due

The EPO Approach



Conclusions

- Inventions having a technical character that are or may be implemented by a computer program are not excluded from patentability
- Applicant cannot rely on non-technical features in the claim to support inventive step
- EPO CII practice is developed in interaction with stakeholders (epi, SACEPO) and described in the Guidelines, such that applicant can argue efficiently and examination result is predictable
- EPO approach is highly interactive, EPO examiner is receptive to applicant's argumentation, giving applicant the benefit of the doubt
- EPO Guidelines adapted to provide for technology developments and to reflect relevant case law better

Outlook

- Follow-up on trilateral CII comparative study (feedback from industry, clarity on Trilateral practices, informing stakeholders globally)
- 2nd EPO scoping workshop on Artificial Intelligence, 14 March 2018, as a follow up to the 1st EPO scoping workshop with industry on Artificial Intelligence and Cloud Computing (November 2017)
- EPO conference on Patenting of Artificial Intelligence, 30 May 2018
➤ epo.org/AI2018