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## Software products can be protected under patent

23 March 2008 By Dick O'Brien

Software companies are often unaware they can patent their products because of confusion on European patent law, according to an Irish patent attorney.

Michael O'Connor, of Cruickshank Intellectual Property Attorneys, said there was a common perception in the software industry that software was not patentable in Europe.

This was most prevalent in US firms, but Irish companies can often be unsure of the law. O'Connor said that while the European Patent Office previously did not grant software patents, practices had evolved and it had been awarding software patents since the mid-1980s.



Despite that, a perception remained in the industry that it never granted such patents. O'Connor said there was also a lot of confusion over the wording of the European Patent Convention.

This was because Article 52 of the convention states that "programs for computers" should not be regarded as patentable inventions.

While that was often read in isolation, according to O'Connor, the next paragraph said that the exclusion applied "only to the extent to which a European patent application or European patent relates to such subject matter or activities".

"The wording is as clear as mud - it means that the European patent office can adopt a broad interpretation of what is and isn't patentable," said O'Connor.







He said many software firms were anxious to clarify the position around software patents. A recent offer by his firm to offer 60 minutes' free patent advice received the biggest response from the software sector.

O'Connor said that filing a European patent typically cost about €10,000, with a further €5,000 to €10,000 in follow-on costs to secure the patent in a number of the 38 countries that are covered by the European Patent Convention.

While it is possible to register it in every country, most firms opt to register in a small number of larger countries, such as France, Britain and Germany, he said.



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