

Business Method Patents in Europe and their Strategic Use – Evidence from Franking Device Manufacturers

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There has been a wide-spread misconception based on the imprecise wording of Art. 52 of the European Patent Convention (EPC) that the protection of business methods by patents is prohibited in Europe. This paper investigates the legal framework set by patent laws with respect to the patentability of business methods, contrasting the situation in Europe and the situation in the US. It is shown that in praxi business methods have never been excluded from patentability in Europe.

Further, 1,901 European patent applications relating to business methods are found by identifying European equivalents to granted USPTO patents filed in US Class 705 (i.e. business method patents). The computation of major patent indicators reveals that European applications for business method patents differ from the average of all EPO patent applications with respect to the number of claims, the number of references made and the frequency of legal actions against granted patents. Additionally, a case study from the franking device industry gives evidence of the strategic use of business method patents leading to comparably high opposition rates against 44% of all granted patents.