

FFII: Logic Patents in Europe

<http://swpat.ffii.org/index.en.html>

Workgroup

swpatag@ffii.org

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For the last few years the European Patent Office (EPO) has, contrary to the letter and spirit of the existing law, granted more than 30000 patents on rules of organisation and calculation claimed in terms of general-purpose computing equipment, called “programs for computers” in the law of 1973 and “computer-implemented inventions” in EPO Newspeak since 2000. Europe’s patent movement is pressing to legitimate this practise by writing a new law. Although the patent movement has lost major battles in November 2000 and September 2003, Europe’s programmers and citizens are still facing considerable risks. Here you find the basic documentation, starting from the latest news and a short overview.

Contents

1	Why all this fury about software patents?	2
2	Current Situation in Europe	2
3	What can we do?	3
4	Specially Recommended Reading	3

*<http://www.ffii.org/~phm>

1 Why all this fury about software patents?

If Haydn had patented “a symphony, characterised by that sound is produced [in extended sonata form]”, Mozart would have been in trouble.

Unlike copyright, patents can block independent creations. Software patents can render software copyright useless. One copyrighted work can be covered by hundreds of patents of which the author doesn't even know but for whose infringement he and his users can be sued. Some of these patents may be impossible to work around, because they are broad or because they are part of communication standards.

Evidence from economic studies¹ shows that software patents have led to a decrease in R&D spending.

Advances in software are advances in abstraction². While traditional patents were for concrete and physical *inventions*, software patents cover *ideas*. Instead of patenting a specific mousetrap, you patent any “means of trapping mammals” or means of trapping data in an emulated environment. The fact that the universal logic device called “computer” is used for this does not constitute a limitation. **When software is patentable, anything is patentable.**

In most countries, software has, like mathematics and other abstract subject matter, been explicitly considered to be outside the scope of patentable inventions. However these rules were broken one or another way. The patent system has gone out of control. A closed community of patent lawyers is creating, breaking and rewriting its own rules without much supervision from the outside.

2 Current Situation in Europe

- **Software Patents in Europe: A Short Overview³**

In 20 minutes you can learn what is going on in the fight about software patents in Brussels. Most of the complexities of the debate arise from a few simple parameters. When you have learnt these, you can hopefully feel confident to write well-informed articles about a fascinating political drama with far-reaching implications.

¹<http://swpat.ffii.org/vreji/minra/sisku/index.de.html>

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³<http://swpat.ffii.org/log/intro/index.en.html>

- **FFII interests and the EU Software Patent Directive**⁴

What are the central freedom and exclusivity interests of software creators and users how do they translate into the language of the Software Patent Directive? What other interests exist? Where can space for meaningful negotiations be found?

3 What can we do?

- **How you can help us stop Software Patents**⁵
- **Tasks and Projects for a Free Information Infrastructure**⁶

A forum for people who want to learning to use and improve the system for managing FFII projects and help newcomers to use the system.

4 Specially Recommended Reading

- **Software Patents: News and Chronology**⁷

New and old developments concerning the limits of patentability and the FFII's activities for the protection of information innovation against the abuse of the patent system

- **Software Patents: Questions, Analyses, Proposals**⁸
- **European Software Patent Horror Gallery**⁹

A database of the monopolies on programming problems, which the European Patent Office has granted against the letter and spirit of the existing laws, and about which it is unsufficiently informing the public, delivering only chunks of graphical data hidden behind input masks. The FFII software patent workgroup is trying to single out the software patents, make them better accessible and show their effects on software development.

⁴<http://swpat.ffii.org/analysis/needs/index.en.html>

⁵<http://swpat.ffii.org/group/todo/index.en.html>

⁶<http://kwiki.ffii.org/FfiiprojEn>

⁷<http://swpat.ffii.org/log/index.en.html>

⁸<http://swpat.ffii.org/analysis/index.en.html>

⁹<http://swpat.ffii.org/patents/index.en.html>

- **Reviews**¹⁰

- **Conferences on Software Patenting**¹¹

The FFII Workgroup for the Protection of Digital Innovation against Software Patents frequently participates in conferences and exhibitions. We have presented our case at trade fairs as well as hearings of governments, parliaments and parties and academic conferences. We are trying to document these activities.

- **Actors on the Software Patents Stage**¹²

a home page for each institution and person of the software patentability debate

- **Archive**¹³

- **Letters and Appeals against Patent Inflation**¹⁴

A collection of letters and petitions on the subject of patent inflation sent by FFII and others to various decisionmakers since 1999.

- **Software Patent Work Group of FFII**¹⁵

¹⁰<http://swpat.ffii.org/papers/index.en.html>

¹¹<http://swpat.ffii.org/events/index.en.html>

¹²<http://swpat.ffii.org/players/index.en.html>

¹³<http://swpat.ffii.org/vreji/index.en.html>

¹⁴<http://swpat.ffii.org/letters/index.en.html>

¹⁵<http://swpat.ffii.org/group/index.en.html>

- **EU Council 2004 Proposal on Software Patents¹⁶**

The Council of Ministers has reached political agreement on a paper which contains alternative suggestions to the amendments on the directive “on the patentability of computer-implemented inventions” passed by the European Parliament (EP). In contrast to the EP version, the council version permits unlimited patentability and patent enforceability. Following the current version, “computer-implemented” algorithms and business methods would be inventions in the sense of patent law, and the publication of a functional description of a patented idea would constitute a patent infringement. Protocols and data formats could be patented and would then not be freely usable even for interoperability purposes. These implications might not be apparent to the casual reader. Here we try to decipher the misleading language of the proposal and explain its implications.

¹⁶<http://swpat.ffii.org/papers/europarl0309/cons0401/index.en.html>

- **CEC & BSA 2002-02-20: proposal to make all useful ideas patentable¹⁷**

The European Commission (CEC) proposes to legalise the granting of patents on computer programs as such in Europe and ensure that there is no longer any legal foundation for refusing american-style software and business method patents in Europe. “But wait a minute, the CEC doesn’t say that in its press release!” you may think. Quite right! To find out what they are really saying, you need to read the proposal itself. But be careful, it is written in an esoteric Newspeak from the European Patent Office (EPO), in which normal words often mean quite the opposite of what you would expect. Also you may get stuck in a long and confusing advocacy preface, which mixes EPO slang with belief statements about the importance of patents and proprietary software, implicitly suggesting some kind of connection between the two. This text disregards the opinions of virtually all respected software developers and economists, citing as its only source of information about the software reality two unpublished studies from BSA & friends (alliance for copyright enforcement dominated by Microsoft and other large US companies) about the importance of proprietary software. These studies do not even deal with patents! The advocacy text and the proposal itself were apparently drafted on behalf of the CEC by an employee of BSA. Below we cite the complete proposal, adding proofs for BSA’s role as well as an analysis of the content, based on a tabular comparison of the BSA and CEC versions with a debugged version based on the European Patent Convention (EPC) and related doctrines as found in the EPO examination guidelines of 1978 and the caselaw of the time. This EPC version help you to appreciate the clarity and wisdom of the patentability rules in the currently valid law, which the CEC’s patent lawyer friends have worked hard to deform during the last few years.

- **Quotations on Software Patents¹⁸**

Salient quotations from law texts, economic analyses, political documents as well as statements by programmers, politicians and other parties interested in the debate about software patents.

¹⁷<http://swpat.ffii.org/papers/eubsa-swpat0202/index.en.html>

¹⁸<http://swpat.ffii.org/vreji/quotes/index.en.html>

- **Patent Jurisprudence on a Slippery Slope – the price for dismantling the concept of technical invention**¹⁹

So far computer programs and other *rules of organisation and calculation* are not *patentable inventions* according to European law. This doesn't mean that a patentable manufacturing process may not be controlled by software. However the European Patent Office and some national courts have gradually blurred the formerly sharp boundary between material and immaterial innovation, thus risking to break the whole system and plunge it into a quagmire of arbitrariness, legal insecurity and dysfunctionality. This article offers an introduction and an overview of relevant research literature.

- **European Consultation on the Patentability of Computer-Implemented Rules of Organisation and Calculation (= Programs for Computers)**²⁰

On 2000-10-19 the European Commission's Industrial Property Unit published a position paper which tries to describe a legal reasoning similar to that which the European Patent Office has during recent years been using to justify its practise of granting software patents against the letter and spirit of the written law, and called on companies and industry associations to comment on this reasoning. The consultation was evidently conceived as a mobilisation exercise for patent departments of major corporations and associations. The consultation paper itself stated the viewpoint of the European Patent Office and asked questions that could only be reasonably answered by patent lawyers. Moreover, it was accompanied by an "independent study", carried out under the order of the EC IndProp Unit by a well known patent movement think-tank, which basically stated the same viewpoint. Patent law experts of various associations and corporations responded, mostly by applauding the paper and explaining that patents are needed to stimulate innovation and to protect the interests of small and medium-size companies. However there were also quite a few associations, companies and more than 1000 individuals, mostly programmers, who expressed their opposition to the extension of patentability to the realm of software, business methods, intellectual methods and other immaterial products and processes. The EC IndProp Unit later failed to adequately publish the consultation results and moderate a discussion. Therefore we are doing this, and you can help us.

¹⁹<http://swpat.ffii.org/analysis/korcu/index.en.html>

²⁰<http://swpat.ffii.org/papers/eukonsult00/index.en.html>

- **Berlin 2001-06-21: Software Patents Hearing in the Federal Parliament²¹**

Eight experts from the areas of law, informatics and economics will answer questions from MPs, based on written responses to a set of questions. The interested public is also called to present its answers to any subset of these questions in writing. We publish here the proceedings and submissions.

- **Software Patents: News Sources and Discussion Rounds²²**

As the number of undeserved patents on program logics, business practises and all kinds of trivialities soars to hundreds of thousands and the dire consequences are gradually being felt, the activity of various mailing lists and newsletters gradually intensifies. Here we try to keep track of the most important ones.

²¹<http://swpat.ffii.org/events/2001/bundestag/index.en.html>

²²<http://swpat.ffii.org/log/krasi/index.en.html>