

Patentability Legislation Benchmarking Test Suite

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

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In order to test a law proposal, we try it out on a set of sample innovations. Each innovation is described in terms of prior art, a technical contribution (invention) and a small set of claims. Assuming that the descriptions are correct, we then test our proposed legislation on them. The focus is on clarity and adequacy: does the proposed rule lead to a predictable verdict? Which of the claims, if any, will be accepted? Is this result what we want? We try out different law proposals for the same test series and see which scores best. Software professionals believe that you should “first fix the bugs, then release the code”. Test suites are a common way of achieving this. Pursuant to Art 27 TRIPS, legislation belongs to a “field of technology” called “social engineering”, doesn’t it? Technology or not, it is time to approach legislation with the same methodological rigor that is applicable wherever bad design decisions can significantly affect people’s lives.

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1 Some sample patents

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2 Questions to be answered for each

Assuming that the prior art and the contribution are correctly disclosed, how would the following questions be answered, if the proposed law was in force:

1. Is there a patentable contribution (invention / teaching) in here? Why (not)?
2. Is the contribution (invention / teaching) a technical one? Why (not)?
3. Will any of the claims be accepted? Which? Why?
4. Would any judge reach the same conclusions? Where are areas of uncertainty?
5. Are these conclusions adequate? To what extent would they promote/stifle innovation? To what extent would they conform to public policy goals, such as those spelled out in the Rome Treaty, in e.Europe etc?
 - What effort is needed to arrive at the claimed innovation? What effort is needed to imitate the claimed innovation without violating copyright? How does this compare to the innovation effort (innovation vs imitation cost ratio)? What effort is needed to develop and distribute an average system (e.g. software application, embedded system) of which the claimed innovation would typically be a part? How does this compare to the innovation effort (innovation vs development cost ratio)?
 - What special right might be adequate in case patents are deemed too heavy and copyright too light? Utility certificate? Specially tailored innovator's privilege / reward¹?

3 Comparison Table

¹<http://swpat.ffii.org/analysis/suigen/index.en.html>

test sample	innovation vs imitation cost ratio	innovation vs development cost ratio	other indicators	should be patentable?	invention by standard A (CEC/BSA)	invention by standard B (EPC/FFII)	eligible for special right X
Adobe Patent on Tabbed Palettes ²	1	0.00001	...	-	+	-	-
testing learned material in schools ³	0.5	0.005	...	-	+	-	-
Audio Coding ⁴	2	0.05	...	-	+	-	o
Fe-B-R Alloy	10	0.5	...	+	+	+	o
...							

4 Legislation candidates to be tested

Please propose other candidates, we will link to them!

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