

-----Original Message-----

From: Herman Bruyninckx  
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Sent: vendredi 27 octobre 2000 11:34  
To: MARKT SOFTPAT  
Cc: Herman Bruyninckx  
Subject: Reaction about ``Software patents''

Sir,

I take the opportunity to react to what I've read on

<[http://europa.eu.int/comm/internal\\_market/en/intprop/indprop/softpaten.htm](http://europa.eu.int/comm/internal_market/en/intprop/indprop/softpaten.htm)>

The following remarks are my personal opinion, but I am following the evolution of the topic for many years already, in the context of the values of Open Software. As professor in an engineering department with lots of spin-off companies, I have a good view on the current software trends and the impact of patents.

1. The Western civilization has become the dominant factor in technical evolution because, since the Renaissance, intellectual property has been freely available to everybody. Reversing this trend to give rights to IP to companies will kill an important asset of the Western civilization.

2. The study mentions that in the US companies have profited financially from having IP. But: this profit is at the expense of the profits of others; and who says that the IP holder is the best one to use the IP? Having the IP in the open would make customers able to choose which service provider makes best use of the knowledge, at the best price. In a software patent world, the IP holder chooses who can

provide service.

3. Too many trivial ideas are patented.

4. The cost of getting patents and defending them is much too high.

5. The border between the patentability of a `software' idea and other ideas is too vague and too dangerous: what would stop people from patenting medical operation techniques? Or educational methods? Or even new words? This would lead to a disastrous over-commercialisation of the intellectual culture!

6. Software should not be a product in itself: the service derived from it should be the product. Software patents are othing else but 19th century pure capitalism with all known negative effects; modern software practice should be targeted to service, not to property.

7. We have many spin-off companies from our Engineering Department, and they all have to spend enormous amounts of money to re-implement basic things that have nothing to do with their core business: interfaces, numerical libraries, web-interaction, graphical widgets, plotting tools, advanced 3D display, ... All these tools exist (and often with unmatched quality) in Open Source software. The introduction of software patens would make things only worse.

8. What happens to the IP if the holder is not licensing his knowledge? Or the company fails, or shifts its interests, or just uses the patent passively as ``exchange money'' in portfolios. All these

things are a big loss for the \_community\_!

9. I haven't seen any software patent that is more complex or innovative than what any of our engineering students can come up with in a couple of hours of brainstorming.

10. Take a look at the history of the commercial Unix systems: they all started from a common basis, but grew apart because innovation in a IP context induces splits and separation: every manufacturer wants to differentiate himself from the others. Compare this to the unifying and enormously stimulating effect that Linux has had on the business: it has saved the commercial Unices from a sure dead under the pressure of technically \_wildely inferior\_ Microsoft products. This history is going to repeat itself over and over again, without guarantee that the technically best solution is going to survive! This is a unprecedented break with 5000 years of technical and scientific human evolution... Please don't make our generation responsible for this disaster.

11. The argument of the protective value of software patents for open source software is false: it costs too much to get these patents, and they can not only be used against closed source developments but also against competing open source projects!

Best regards,

Prof. dr. ir. Herman Bruyninckx

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Real Time and Embedded HOWTO:

<<http://www.mech.kuleuven.ac.be/~bruyninc/rthowto>>