

From: James D. McIninch [mailto:james.mcininch@cereon.com]
Sent: vendredi 27 octobre 2000 20:46
To: MARKT E2
Subject: Re: The Economic Impact of Patentability of
Computer Programs

I've read your analysis cited below, and I have a couple of comments:

1. the article mentions independent software developers and implies that independent and open source developers should hence patent their software. However, the article does not address the issue that nearly all technical innovation within the field is performed by individuals not developing for profit nor receiving payment for their work. Any requirement that open source projects patent their developments at their own expense, without remuneration, is not only burdensome on the developers, but will also be invariably detrimental to further technological development. For example, a majority of what people today now know as the Internet is based on software and protocols developed by hobbyists and students in their free time using tools developed in whole or in part from analysis and reverse engineering of hardware and software.

2. the article does not address the fact that computer software rarely operates in a vacuum: each software component relies on others to generate, communicate, or consume data. EU and US rules now permit corporations to tie products together and generate artificial software dependencies and incompatibilities that intentionally interfere with competing

products
for purposes such as maintaining market dominance,
enforcing brand
loyalty, reducing consumer choice, and maximizing costs
while minimizing
functionality. Were software algorithms to be made
patentable,
corporations
could legally obliterate all interoperability between
programs and have
same enforced. Together with the elimination of
individual's rights to
develop software to interoperate with existing programs (or
the
requirement
that they take a corporation to court and prove prior art),
will
undermine development of software and computer technology.

If you would like specific scenarios regarding the
potential global
economic impact of software patents, please let me know.

http://europa.eu.int/comm/internal_market/en/intprop/indprop/studyintro.htm

Sincerely,

James D. McIninch, Ph. D.