

From: Justin Short
Sent: mardi 31 octobre 2000 1:53
To: MARKT SOFTPAT
Subject: European software patents, suggested changes

Quoted from your webpage:

- > Some consider that patents in this field tend to
- > stimulate innovation in this sector by providing
- > adequate protection of the substantial amounts of
- > money and resources that can be required to develop
- > sophisticated and specific software.

I would argue that any software that complex, that took that long for a large company to develop must take nearly the same time for another company to develop. A software company's protection must lie in being first-to-market (with the associated cost-of-entry for competitors) and then retaining market share through a continued better service.

Software patents stifle the ability of competitors to adapt to changing conditions. They therefore stifle the market forces which guarantee societal and consumer freedom. That said, there may be some instances where granting a patent may be good for the consumer although the terms of the patent must be different from those today.

There are two main types of software patents being granted at the moment: those that describe how the computer does something (algorithms, protocols, etc.) and those that describe how the user of the computer achieves something (Human-Computer Interaction, Graphical User Interfaces, etc.).

Starting with how the user of a computer gets their job done: although I would say that an optimal interface is impossible anyway, I would certainly argue that a company may own the "look-and-feel" to some extent: new ways of interacting with the computer really can take a long time to develop, but be cloned easily. And I would like to see this researching supported to some degree, a patent may well be able to do this.

But such a patent should not last more than a year. Within a year it is the company's responsibility to build on its success and move the market on again. If it can do so, it will hopefully be able to make

another patent, guaranteeing market share, or it will just have to work in true market forces again.

But if a company cannot build on its ideas within a year, such is the speed of software development that if a patent lasts longer than this then it is holding the rest of the market back.

As for patenting of algorithms or methods, whilst these may take as long to develop as new interfaces, etc., I fail to see how preventing other people from implementing the same idea *in the same way* helps innovation or helps consumers.

If a company wants to keep a programs internal workings secret, it may well protect those through secrecy. But to prevent someone from having the same idea and then also using it does not help competition. And especially important with software development is the way that the same techniques often come back time and time again: new techniques often turn out to be useful for far more than they were originally intended.

It is this last point, that patenting blue because it seems to be particularly good for painting pictures of the sky with, that is the most important, I feel. We must look again at why patents are granted: Generally it's for a new idea, provably never described or implemented before. Whilst these are far more rare than the American patent office seems to believe, I can understand a natural desire to believe that software algorithms and protocols might fall into the same category.

But it is due to the speed, reusability and modularity of software that it should not have the same restrictions: As another example, you would never grant the idea of a patent on catalysis, or exo-thermic reactions. Equally it is ludicrous and damaging to allow companies to patent the most basic building blocks of software, even new ones. New ideas are best protected through secrecy, not lack of competition.

I sincerely hope that I have managed to persuade you of the importance of this issue and of the reasons why I believe the existing procedures have come about (for perfectly valid causes) and why they are, unfortunately, no longer valid.

Please feel free to quote from any part of this email.
All opinions expressed are my own and do not
necessarily correspond to those of my employer.

Justin Short