

2003/06/17 BXL: The JURI Vote

<http://swpat.ffii.org/events/2003/euoparl/06/17/index.en.html>

Workgroup

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A short public meeting between software stakeholders and members of the European Parliament to discuss about the JURI vote on the Directive Proposal, which is taking place on the same day. This will also be a kickoff meeting for a campaign to inform MEPs in the plenary.

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1 Time & Place

2003/06/10 14.45	EP ASP	mentry to the Parliament
2003/06/10 15.00	EP ...	Erik et al listen to JURI meeting
2003/06/17 08.45	EP ASP	entry to the parliament
2003/06/17 10.50	EP	JURI vote meeting in PHSHEM
2003/06/17 11.10	EP	Talks with MEPs and journalists near the JURI meeting site
2003/06/17 11.00-13.00	EP 4B48	Public Meeting in Visitors' Area with participation of MEPs and journalists
2003/06/17 11.00	EP 4B48	Informal talks in the room, while most of us are still near the JURI meeting site.
2003/06/17 12.00	2	<p>Luuk Van Dijk, Erik Josefsson: What happened in JURI today?</p> <ul style="list-style-type: none"> • Who voted for what? • Wich choices were made? • What would be patentable/enforcable under the JURI proposal?
2003/06/17 12.30		Discussion

2 Annotated Links

- **JURI votes for Fake Limits on Patentability**¹

The European Parliament’s Committee for Legal Affairs and the Internal Market (JURI) voted on tuesday morning about a list of proposed amendments to the planned software patent directive. It was the third and last in a series of committee votes, whose results will be presented to the plenary in early september. The other two commissions (CULT, ITRE) had opted to more or less clearly exclude software patents. The JURI rapporteur Arlene McCarthy MEP (UK socialist) also claimed to be aiming for a “restrictive harmonisation of the status quo” and “exclusion of software as such, algorithms and business methods from patentability”. Yet McCarthy presented a voting list to fellow MEPs which, upon closer look, turns ideas like “Amazon One-Click Shopping” into patentable inventions. McCarthy and her followers rejected all amendment proposals that try to define central terms such as “technical” or “invention”, while supporting some proposals which reinforce the patentability of software, e.g. by making publication of software a direct patent infringement, by stating that “computer-implemented inventions by their very nature belong to a field of technology”, or by inserting new economic rationales (“self-evident” need for Europeans to rely on “patent protection” in view of “the present trend for traditional manufacturing industry to shift their operations to low-cost economies outside the European Union”) into the recitals. Most of McCarthy’s proposals found a conservative-socialist 2/3 majority (20 of 30 MEPs), whereas most of the proposals from the other committees (CULT = Culture, ITRE = Industry) were rejected. Study reports commissioned by the Parliament and other EU institutions were disregarded or misquoted, as some of their authors point out (see below). A few socialists and conservatives voted together with Greens and Left in favor of real limits on patentability (such as the CULT opinion, based on traditional definitions, that “data processing is not a field of technology” and that technical invention is about “use of controllable forces of nature”), but they were overruled by the two largest blocks. Most MEPs simply followed the voting lists of their “patent experts”, such as Arlene McCarthy (UK) for the Socialists (PSE) and shadow rapporteur Dr. Joachim Wuermeling (DE) for the Conservatives (EPP). Both McCarthy and Wuermeling have closely followed the advice of the directive proponents from the European Patent Office (EPO) and the European Commission’s Industrial Property Unit (CEC-Indprop, represented by former UK Patent Office employee Anthony Howard) and declined all offers of dialog with software professionals and academia ever since they were nominated rapporteurs in May

¹<http://swpat.ffii.org/news/03/juri0617/index.en.html>

2002.

- **JURI 2003/04-6 Amendments: Real and Fake Limits on Patentability**²

Members of the European Parliament’s Commission on Legal Affairs and the Internal Market (JURI) submitted amendments to the European Commission’s software patent directive proposal. While some MEPs are asking to bring the directive in line with Art 52 EPC so as to clearly restate that programs for computers are not patentable inventions, another group of MEPs is endorsing the EPO’s recent practice of unlimited patentability, shrouded in more or less euphemistic wordings. Among the latter, some propose to make programs directly claimable, so as to ensure that software patents are not only granted but achieve maximal blocking effects. This latter group obtained a 2/3 majority, with some exceptions. We document in tabular form what was at stake, what various parties recommended, and what JURI finally voted for on 2003/06/17.

- **Patentability Legislation Benchmarking Test Suite**³

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.

- **Pamphlets on Software Patents**⁴

Pamphlets, posters etc concernign questions of patentability and impact of patents on software

²<http://swpat.ffii.org/papers/eubsa-swpat0202/juri0304/index.en.html>

³<http://swpat.ffii.org/analysis/testsuite/index.en.html>

⁴<http://www.ffii.org/proj/kunst/swpat/pamflet/index.en.html>

- **McCarthy 2003/05/03: Software Patent Directive Proposal FAQ⁵**

Arlene McCarthy, member of the European Parliament and rapporteur of the Legal Affairs Commission (JURI) on the Software Patentability Directive Proposal explains her point of view in a FAQ manner. She asked us to distribute this document to the participants of a conference which we organised in Brussels. In a nutshell, she says that

1. Software patents, as granted by the European Patent Office (EPO) at present, are needed for various reasons, e.g. protecting Europe against competition from Asia, allowing European SMEs to compete in the US, etc
2. The EPO is granting software patents but not patents on non-technical algorithms and business methods.
3. The current proposal is designed to ensure that the EPO's practise is followed throughout Europe in a uniform manner and that a drift toward patenting of "non-technical algorithms and business methods" is halted.

We debug McCarthy's questions and answers one by one. It seems that many of McCarthy's proclaimed objectives could be achieved only by voting in favor of a series of CULT, ITRE and JURI amendment proposals which unfortunately have not enjoyed the support of the rapporteur.

- **Bessen & Hunt 2003/05: An Empirical Look at Software Patents⁶**

James Bessen (Research on Innovation and MIT) and Robert M. Hunt (Federal Reserve Bank of Philadelphia) in a study published in May 2003 present extensive statistical data and analysis to corroborate their hypothesis that software patenting has substituted rather than promoted R&D investments. Software patents are serving as cheap alternatives to real innovation.

- **FFII Community Tool⁷**

Allows you to register for our meeting, to contact MEPs, and to cooperate in other ways

- **EU event planning mailing list⁸**

⁵<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0305/index.en.html>

⁶<http://swpat.ffii.org/papers/bessenhunt03/index.en.html>

⁷<http://aktiv.ffii.org/?l=en>

⁸<http://lists.ffii.org/mailman/listinfo/bxl/>

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- **Call for Action**⁹

The European Commission's proposal for the patentability of software innovations requires a clear response from the European Parliament, the member state governments and other political players. Here is what we think should be done.

- **EU Software Patent Directive Amendment Proposals**¹⁰

The European Commission proposed on 2002-02-20 to consider computer programs as patentable inventions and make it very difficult not to grant a patent on an algorithm or a business method that is claimed with the typical features of a computer program (e.g. computer, i/o, memory etc). We have worked out a counter-proposal that upholds the freedom of computer-aided reasoning, calculating, organising and formulating and the copyright property-based property rights of software authors while supporting the patentability of technical inventions (problem solutions involving forces of nature) according to the differentiations that have been laid down in the European Patent Convention (EPC), the TRIPs treaty and the classical patent law literature. This counter-proposal is receiving support from numerous prominent players in the fields of software, economics, politics and law.

- **2003/06/24 BXL: Software Patents as Financial Tools**¹¹

next meeting

⁹<http://swpat.ffii.org/papers/eubsa-swpat0202/demands/index.en.html>

¹⁰<http://swpat.ffii.org/papers/eubsa-swpat0202/prop/index.en.html>

¹¹<http://swpat.ffii.org/events/2003/europarl/06/24/index.en.html>

- **Software Patent Discussions in and near the European Parliament in 2003**¹²

The European Parliament may pass or reject the Software Patentability Directive Proposal of the European Commission immediately after plenary discussion on 2003-09-01. The most likely course is that it will propose amendments. Currently many members of the three concerned commissions (juri, itre, cult) have lost confidence in the Newspeak from the European Patent Office (EPO), in which the proposal is written. We are trying to keep track of the Parliament's schedule and to organise some complementary occasions for an informed discussion. In fact we want more than that: justice. The patent lobby has trampled on our rights without justification and is asking MEPs to perpetuate the injustice. We ask for a fair trial. Only the European Parliament can offer it.

- **FFII: Software Patents in Europe**¹³

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 computer-implemented rules of organisation and calculation (programs for computers). Now Europe's patent movement is pressing to consolidate this practise by writing a new law. Europe's programmers and citizens are facing considerable risks. Here you find the basic documentation, starting from a short overview and the latest news.

¹²<http://swpat.ffii.org/events/2003/europarl/index.en.html>

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