Patentability and Democracy in Europe How can industrial property be subordinated to modern economic policy?

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A software patent is a a monopoly on (i.e. a right to prohibit) the publication, distribution and execution of a category of (not yet written) programs that would run on general-purpose computers. Software patents are broad and trivial by nature; they are known to be harmful to the economy, and according to the written law they should not exist in Europe. Given that the work of the programmer is already adequately protected by copyright, patents in this area tend to function as tools for expropriating software producers for the benefit of patent producers. Unfortunately for the software producers, legislative competence in patent matters is exclusively owned by the patent producers, i.e. a wide-ranging but yet intimate community of private, corporate and governmental patent professionals. The patent community is governed by a strong consensus which it occasionally codifies in the form of written law. When the patent community finds that a law no longer reflects its consensus, it first circumvents this law and then, at the date of earliest convenience, updates it. Normally this works quite well, because nobody outside the patent community ever cares. However, in the case of software patents, this approach led to internal confusion, diverging court decisions and, apparently for the first time ever, serious external resistance.

In July 2005, after several failed attempts to legalise software patents in Europe, the patent establishment changed its strategy. Instead of explicitely seeking to sanction the patentability of software, they are now seeking to create a central European patent court, which would establish and enforce patentability rules in their favor, without any possibility of correction by competing courts or democratically elected legislators.

With the Lisbon treaty in force, we now have several articles in the EU treaties that encourage the establishment of precisely this court, "notwithstanding other provisions of the treaty". It is not normal even in the EU to outsource a section of the national

judicial system to an international organisation. Such a measure touches on the foundations of democracy. However, the Lisbon Treaty does nothing to counter-balance the abnormality. National parliaments would lose their right to pass corrective legislation. The European Parliament has only blocking rights which apply to the Council but not to the new de facto legislator, the patent community court. The patent establishment is determined to use these and other anti-democratic provisions and seems closer than ever to achieving its goal.

1 Entry Points

Below you find some useful entry points to this site, which has played a historic role as a source of documentation during the fights against legalisation of software patents in Europe.

- This site can be edited by all members of the Eupat Workgroup.
- Developments of the current year and current month
- History of the software patent struggle including an introductory overview of 2000-2004
- Draft Call to Action – our concerns with regard to the discussion about a centralised European patent litigation system
- Papers on Software Patents – Many of these are or were not directly accessible on the Net.
  - Amendments of the European Parliament of September 2003 – The will of a large majority of the parliament was subsequently ignored by the governmental patent bureaucrats who run the Council.
  - 10 Core Clarifications – a presentation of the position of the FFII at a conference in the European Parliament shortly befor the final vote.
  - Rocard-Buzek-Duff Compromise Amendments of July 2005 – these represented the voting intention of the rapporteur and behind him a substantial majority of the European Parliament; because the Council remained in the hands of the intransigent ministerial patent officials, the Parliament had no other choice than to bury the directive project as a whole.
- European Patent Policy Players – The people and institutions who have been influencing decisions regarding the limits of patentability and governance of the patent system in Europe and the world
- Limits of Patentability in Europe – What is the effect of patents on the economy in general and on software in particular? Why do software patents tend to be so trivial? What exactly have the rules of patentability in Europe been and how did they change? Under what constraints is the patent system moving? What

are our choices? With this collection of articles, members and friends of the FFII workgroup on software patents try to give answers.

- European Software Patent Horror Gallery – A database of the monopolies on programming problems, which the European Patent Office has granted against the letter and spirit of the existing laws, and about which it is unsufficiently informing the public, delivering only chunks of graphical data hidden behind input masks. The FFII software patent workgroup is trying to single out the software patents, make them better accessible and show their effects on software development.

2 Sites with Related Content

- Foundation for a Free Information Infrastructure – the public interest association under whose auspices we are working
- Twitter channel of FFII – Microblog with quick news fragments
- FFII Planet – aggregator of various FFII blogs
- Digital Majority – current stories regarding software patents and european patent system
- Petitions to Stop Software Patents
  1. EndSoftwarePatents.ORG – US-based initiative – recently including efforts to fill gaps in the documentation of the European software patent struggle
  2. StopSoftwarePatents.ORG – run by Benjamin Henrion
  3. StopSoftwarePatents.EU – run by Ivan Villanueva
- Patented Webshop – Patented Webshop
- gauss.ffii.org – Database of EPO-granted software patents
- EPLA – FFII site about the European Patent Litigation Agreement (EPLA) and its successors (whose name tends to change once every 1-2 years)
- NoSoftwarePatents – gentle introduction to the software patent debate
- EU ABC – Critical dictionary of EU institutions and affairs