

# European Parliament and Software Patents

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

Workgroup

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The European Parliament has less rights than a national parliament. Most importantly, it cannot itself propose legislation and it has only a negative voting power that again cannot block all EU legislation projects. However it has the right to block the CEC/BSA software patentability directive proposal, and it has used this right in September 2003.

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<b>1 Annotated Links</b>	<b>1</b>
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## 1 Annotated Links

- **Europarl 2003-09-24: Amended Software Patent Directive<sup>1</sup>**

Consolidated version of the amended directive “on the patentability of computer-implemented inventions” for which the European Parliament voted on 2003-09-24.

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\*<http://lists.ffii.org/mailman/listinfo/traduk>

<sup>1</sup><http://localhost/swpat/papri/euoparl0309/index.en.html>

- **EuroParl Committees<sup>2</sup>**
- **EuroParl Members by political group and county<sup>3</sup>**
- **Search mask to get lists of e. g. JURI members<sup>4</sup>**
- **Codecision Procedure<sup>5</sup>**

The legislation procedure under which the software patent directive is decided by the EU institutions. Explanations by Xavier Drudis Ferran (Caliu).

- **European Multimedia Convention: Codecision Procedure<sup>6</sup>**
- **Current Situation in Europe<sup>7</sup>**

Situation before the Vote in the European Parliament

- **EU Parliament Votes for Real Limits on Patentability<sup>8</sup>**

In its plenary vote on the 24th of September, the European Parliament approved the proposed directive on “patentability of computer-implemented inventions” with amendments that clearly restate the non-patentability of programming and business logic, and uphold freedom of publication and interoperation.

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<sup>2</sup>[http://www.europarl.eu.int/committees/home\\_en.htm](http://www.europarl.eu.int/committees/home_en.htm)

<sup>3</sup>[http://wwwdb.europarl.eu.int/ep5/owa/p\\_meps2.repartition?ipid=0&ilg=EN&iorig=home&img=](http://wwwdb.europarl.eu.int/ep5/owa/p_meps2.repartition?ipid=0&ilg=EN&iorig=home&img=)

<sup>4</sup>[http://wwwdb.europarl.eu.int/ep5/owa/p\\_meps.entry?ipid=0&ilg=EN&iorig=&img=](http://wwwdb.europarl.eu.int/ep5/owa/p_meps.entry?ipid=0&ilg=EN&iorig=&img=)

<sup>5</sup><http://patents.caliu.info/codecisio.en.html>

<sup>6</sup>[http://www.e-multimedia.org/eu\\_tracker/basics.htm](http://www.e-multimedia.org/eu_tracker/basics.htm)

<sup>7</sup><http://localhost/swpat/lisri/03/situ0923/index.en.html>

<sup>8</sup><http://localhost/swpat/lisri/03/plen0924/index.en.html>

- **Software Patent Discussions in and near the European Parliament in 2003<sup>9</sup>**

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.

- **Europarl Hearing of 2002-05-15<sup>10</sup>**

A group of members of the European Parliament invited Anthony Howard (who is in charge of the software patentability directive at the European Commission's Industrial Property Unit) and Hartmut Pilch from FFII/Eurolinux for a public hearing in Strasbourg. Here you find the details of the conference as well as some presentation slides.

- **Decision Procedure in the EC Institutions<sup>11</sup>**

The directive will be decided jointly by the European Parliament and the European Council. The legal details are found in various EC treaties and. We are trying to find out and document the intricacies of this Process.

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<sup>9</sup><http://localhost/swpat/penmi/2003/europarl/index.en.html>

<sup>10</sup><http://localhost/swpat/penmi/2002/swppar1025/index.en.html>

<sup>11</sup>

- **Arlene McCarthy MEP and Software Patents<sup>12</sup>**

British Member of the European Parliament, Labor/PSE, appointed by the Europarl Committee for Legal Affairs and Internal Market (JURI) in 2002/03 to report on the software patentability directive. In June 2002 Arlene McCarthy published a short report which aggressively promoted the agenda of the European Patent Office (EPO). The paper charged the patent critics of having provided only invalid arguments, but failed to quote or refute any of these arguments. Meanwhile various people from the EPO and patent lobby were in contact with McCarthy and boasted that their viewpoint would prevail and the discussion would soon be over. A hearing arranged by McCarthy and the europarl webspace dedicated to the hearing both offered minimal room for critical views. Arlene McCarthy's draft report of 2003/02/19, her explanatory note of 2003/05/03 and her refusal to accept any amendments which limit patentability or patent enforceability in any way show complete dedication to the interests of patent owners. While staying away from all informed discussions and conferences on software patent questions, McCarthy has actively reaching out to the media in order to present herself as a victim of a "dishonest and destructive misinformation campaign" who is sincerely trying to limit patentability. McCarthy has been serving the recording industry and various projects of the Commission's Directorate for the Internal Market (Bolkestein) with equal fervor. McCarthy's political business model appears to consist in (1) aggressively and unconditionally serving of the Commission and big business (2) obtaining favorable treatment by Commission and Big Business for her electoral region / constituency.

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<sup>12</sup><http://localhost/swpat/gasnu/amccarthy/index.en.html>

- **Malcolm Harbour MEP and Software Patents<sup>13</sup>**

Malcolm Harbour, Member of the European Parliament, UK Conservative, has been an active and forceful promoter of software and business method patents in Europe, all while pretending that he was “only closing loopholes in the current law so as to avoid US-style broad patentability” and that claims to the contrary came from “misguided lobbyists in the European Parliament”. Harbour vigorously promoted program claims and opposed all amendment proposals, including those approved in CULT and ITRE, which put any limits on what can be patented. Patent lobbyists have great confidence in “Malcolm”. Some write letters to MEPs telling them to look out for Harbour’s amendment proposals and to support them as soon as they come out. Harbour, until recently an automobile industry manager at Rover, speaks in a very self-confident manner which gives many of his listeners, including MEPs from other countries and other parties, the impression that he is in power and they can rely on him and follow him.

- **Janelly Fourtou MEP and Software Patents<sup>14</sup>**

Janelly Fourtou, member of the European Parliament, French Conservative, has actively promoted software and business method patents in Europe, while pretending that she was “only restating the current law”. Fourtou in particular used every opportunity to push for legalisation of program claims (e.g. “a program, characterised by that upon loading into memory some computing process is executed”), which the European Commission had suggested not to allow. Jean-René Fourtou, husband of Janelly, former top manager of Aventis (pharma), is currently the CEO of Vivendi Universal. Vivendi is involved in cooperation negotiations with Microsoft. In 2002/12 J-R became the head of the International Chamber of Commerce (ICC), an organisation with a very active patent arm (IP Commission) which is lobbying for expansion of the patent system worldwide. In 2003, Fourtou became the rapporteur of a new IP enforcement directive, which, if enacted according to Fourtou’s proposal, may allow the Fourtou family to earn many thousands of EUR by suing people, either on the grounds of patents or copyright. This directive proposal is once again based on documents from BSA and once again claims to be “only harmonising the status quo”. Fourtou finds the proposed measures still not draconian enough.

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<sup>13</sup><http://localhost/swpat/gasnu/mharbour/index.en.html>

<sup>14</sup><http://localhost/swpat/gasnu/jfourtou/index.en.html>

- **Dr. Joachim Wuermeling MEP and Software Patents**<sup>15</sup>

Joachim Wuermeling, doctor of law, member of the European Parliament (MEP) for Bavaria's Christian Social Union (CSU), shadow rapporteur of the European People's Party (EPP) on the software patent directive, opposed everything that could somehow limit patentability (e.g. interoperability privilege) and advocated everything that extends it beyond the European Commission's wishes (e.g. program claims). Most EPP colleagues tend to blindly follow their shadow rapporteur. Many critics have in vain sought dialogue with Wuermeling. Wuermeling has however actively contacted the press in order to present himself as an opponent of "patents on pure software and business methods" and to ascribe contrary impressions of the public to "irrational fears of the opensource lobby". Wuermeling may believe what he says. In the JURI discussions of May 2003, Wuermeling tabled a pseudo-restrictive amendment (recital 13d), according to which a patent claim is limited to a specific product and may not encompass underlying algorithms. Some corporate patent lawyers from Wuermeling's clientele have been laughing about Wuermeling's lack of basic knowledge about patent law. Wuermeling accuses the European Parliament of having bowed to these "irrational fears" in September 2003 and hails the Council decision of May 2004 as a "positive signal for innovation in Europe".

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<sup>15</sup><http://localhost/swpat/gasnu/jwuermeling/index.en.html>