

# Arlene McCarthy PR “hits out” against “dishonest ... bullying ... lobbyists”

<http://swpat.ffii.org/journal/03/amcc0902/index.en.html>

Workgroup

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2003-10-06

In response to last week’s wave of protests against her software patent directive proposal, Arlene McCarthy MEP, rapporteur of the European Parliament for the EU Software Patent Directive Proposal, has circulated a press release which “hits out against claims made by opponents to the new EU law”. McCarthy, speaking in the name of UK Labour and partially of the parliament as a whole, calls on fellow MEPs to “back EU plans for patents for inventions” later this month, warning them not to be misled by a “dishonest and unconstructive campaign”, “orchestrated” by a group of “lobbyists”, who are “bullying” parliamentary staff and “putting at risk jobs in the growing software industry”.

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# 1 McCarthy/Labour PR: “MEPs must back EU plans for patents for inventions”

This Press Release was sent out by the “UK Labour Delegation in the European Parliament” (PseDelegUK at europarl eu int) to all Labour MEPs on monday Sep 1st 18:11 for immediate publication.

*Subject: MEPs must back EU plans for patents for inventions*

*For immediate release*

*1st September 2003*

*MEPs must back EU plans for patents for inventions*

*Controversial new legislation on patents for computer-implemented inventions will be put to a critical vote in the European Parliament in Strasbourg at the end of this month (Parliamentary Session 22-25 September).*

*Following a barrage of misinformation about the new EU wide patenting proposals, Labour MEP Arlene McCarthy - who wrote the Parliament's Report on the new proposals and is steering it through the Parliament - spoke out against the systematic campaign of misinformation being waged against new rules in the run up to the Strasbourg vote saying:*

*A proposal for an EU wide law on patents for computer-implemented inventions is essential both to protect the interests of European Industry and prevent the drift towards US-style patenting of business methods.*

*In a situation where both the European Patent Office (EPO) and the 15 national patent offices are handing out patents for computer-implemented inventions, an EU law can assist in clarifying the limits to patentability in the field of computer-implemented inventions. This would give industry more certainty and help innovators realise financial rewards and returns on their investment in novel and inventive technologies in the increasingly cut throat global marketplace.*

*Patent protection is vital if we are to challenge the US dominance in the software inventions market. While Japan is to step up its activity in supporting industry's efforts to use patents and licensing fees to reap the benefits of their inventions in this field, if European industry is to have a fighting chance in the field of computer-implemented inventions, then they must have the necessary protection.*

*McCarthy hit out at claims made by opponents against the new EU law, who last week brought their campaign to Brussels:*

*This is a dishonest and destructive campaign designed to cause confusion about what the Parliament is trying to achieve. They are bombarding members with factually incorrect claims and orchestrating ranting calls to members' offices.*

*I welcome representation from all sides of industry on this complex area of patent law, but it does not entitle people to abuse my staff in an aggressive and bullying manner. We need to approach this legislation, in particular the more difficult issues, in a calm considered way.*

*She warned that campaigners against patents for computer implemented-inventions risk seriously undermining European Industry's interests by putting them at an extreme disadvantage in the global marketplace and putting at risk jobs in the growing software industry, adding,*

*If we were to follow the demands of these lobbyists then we would be handing over inventions to US multinationals and getting no return on our R&D investments in the field of computer implemented inventions.*

*This will sound the death knell for our brightest and best European inventors, whilst the US and Japan will demand licence fees from European companies for the use of their patents. Without patent protection there will be no financial incentive for our most creative industries to develop genuine inventions.*

*McCarthy added,*

*An EU law can improve the current practice by both the EPO and national patent offices, by ensuring a stricter interpretation of what is patentable. It will also open up avenues to the European Court of Justice allowing more democratic scrutiny and oversight over the granting of patents in this field, and a better system of appeals to ensure that patents are handed out for 'genuine' inventions. The long-term result will be better patent law in Europe.*

*The Parliament is also challenging the Commission and Member States to do more for SME's, to enable them to both have easy access and affordable patents, but also to protect them against patent infringements by Industry giants. Some SME's have lost their patent rights because they have been unable to defend them in court against the might of the multinationals.*

*We would like to see more being done to assist SME's in getting patents and the setting up of a defence fund to help them protect their own inventions against the might of multinationals. Patents and the benefits they can bring, must not be seen as the exclusive domain of big companies.*

## 2 backgrounds

McCarthy's discourse has been criticized many times:

- **Why Amazon One Click Shopping is Patentable under the Proposed EU Directive<sup>1</sup>**
- **Economists Slam McCarthy Software Patent Directive Proposal<sup>2</sup>**
- **McCarthy 2003/05/03: Software Patent Directive Proposal FAQ<sup>3</sup>**
- **McCarthy 2003-02-19: Amended Software Patent Directive Proposal<sup>4</sup>**
- **MEP Arlene McCarthy 2002-06-19: Report on the CEC/BSA Directive Proposal<sup>5</sup>**

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<sup>1</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/tech/index.en.html>

<sup>2</sup><http://swpat.ffii.org/journal/03/ekon0820/index.en.html>

<sup>3</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0305/index.en.html>

<sup>4</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0302/index.en.html>

<sup>5</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0206/index.en.html>

Some basic questions posed to McCarthy in

XDrudis to AMccarthy 03/06/10: Your Note on Directive COM (2002) 92<sup>6</sup>

PHM to AMccarthy 03/06/10: Questions based on 2 Example Patent Claims<sup>7</sup>

Economists Slam McCarthy Software Patent Directive Proposal<sup>8</sup>

and elsewhere are meanwhile still left without a trace of an answer. An answer to these questions could have been a first step toward the “calm and considered” reasoning which McCarthy is calling for.

This PR argues for a EU-financed “patent defence fund” to help SMEs assert their patents “against the might of multinationals”, i.e. an insurance for patent owners, which is currently functioning nowhere in the world on a free-market basis. The patent insurance idea has been championed by the Danish Patent Office, by David Ellard from DG Internal Market of the European Commission, and by John Mitchell, CEO of Allvoice Computing PLC, founder of the “Patent Defence Union”. Allvoice is a patent litigation company in Devon, South-West England, whose business model McCarthy has been repeatedly citing as an example of how patents can be beneficial to software SMEs.

- **From AllVoice to AllPatent: Milking the Speech Recognition Business with Parliamentary Support**<sup>9</sup>
- **Software Patentability with Compensatory Regulation: a Cost Evaluation**<sup>10</sup>

### 3 Annotated Links

- **McCarthy 03/08/29: “McCarthy sets the record straight”**<sup>11</sup>

McCarthy has meanwhile published her press release, in which she accuses “dishonest and destructive campaigners” of “abusing” parliamentary staff)

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<sup>6</sup><http://aful.org/wws/arc/patents/2003-06/msg00040.html>

<sup>7</sup><http://aful.org/wws/arc/patents/2003-06/msg00047.html>

<sup>8</sup><http://swpat.ffii.org/journal/03/ekon0820/index.en.html>

<sup>9</sup><http://swpat.ffii.org/patents/effects/allvoice/index.en.html>

<sup>10</sup><http://swpat.ffii.org/analysis/cost/index.en.html>

<sup>11</sup><https://www.copernicus.co.uk/WiaB2/ViewPage.cfm?Page=2339>

- **Arlene McCarthy 2003/09/01: “The Myths - The Truth”<sup>12</sup>**

In response to the wave of protests against the proposed software patent directive COM(2002)92 2002/0047 in late August 2003, the European Parliament’s rapporteur for this directive, Arlene McCarthy MEP, has published a “Factsheet” which attempts to explain that she has been a victim of a “misinformation campaign” and is in reality championing the protesters’ cause. We republish the paper with comments here.

- **UK Gov’t Promoting Patent Extremism in the European Parliament<sup>13</sup>**

The UK Government’s Foreign Office is circulating a “briefing to UK MEPs”, in which it instructs british members of the European Parliament to back Arlene McCarthy’s position and vote (1) against any attempt to define what is technical or otherwise limit what is patentable (2) against Article 6a which allows converters to be written when standards are patented (3) for JURI Art 5 which forbids publication of descriptions of patented inventions on the Net. The intervention of the government comes at a moment where McCarthy has shown nervous reactions in view of dwindling support in her party group. The government statement can be attributed to the UK Patent Office and its policy working group, consisting mainly of patent lawyers from large corporations. This group has been determining the software patent policy of the UK and largely also of the EU during recent years.

- **Heise 203/09/03: Controversy about software patents in EU is heating up<sup>14</sup>**

German press report (english version available) about McCarthy’s PR and other UK patent lobbying activities in the European Parliament

- **Lenz Blog: Some More McCarthy<sup>15</sup>**

Dr. Lenz finds some more inconsistencies in McCarthy’s reasoning. According to her own argumentation, McCarthy is putting Europe at a competitive disadvantage.

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<sup>12</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy030901/index.en.html>

<sup>13</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/ukrep0309/index.en.html>

<sup>14</sup><http://www.heise.de/english/newsticker/news/40032>

<sup>15</sup><http://k.lenz.name/LB/archives/000580.html>

- **Arlene McCarthy MEP and Software Patents**<sup>16</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.

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<sup>16</sup><http://swpat.ffii.org/players/amccarthy/index.en.html>