

OEB 2002-06-21: Rapport concernant le propos de directive CCE/BSA

<http://swpat.ffii.org/papiers/eubsa-swpat0202/epo020621/index.en.html>

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L'Office Européen de Brevets (OEB) présente une prise de position sur le propos de directive européenne pour la brevetabilité des logiciels et demande un avis du comité consultatif SACEPO, qui est composé surtout par experts en brevet de l'industrie, notamment des grandes entreprises. L'OEB mentionne la campagne eurolinux comme un position "intégriste" d'une "groupe de pression forte". L'OEB explique que le propos de directive se fonde sur des papiers de l'OEB et mentionne quelques points où il y a des différences ou des manques de clarté. L'OEB explique l'état des consultations dans le Conseil et le Parlement Européen. L'OEB est présent dans le conseil comme représentant expert de la commission européenne. L'Alliance Eurolinux se demande pour quoi elle n'a pas de l'accès à ces sessions et pour quoi elle n'est pas encore membre du SACEPO.

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The EPO paper¹ on the CEC proposal, presented to its Standing Advisory Committee (SACEPO), notes

A strong “fundamentalist” lobby (open source community, Eurolinux) opposing patent protection of software-related inventions would like to see this opposition reflected in the directive, while the patent community, in principle, welcomes the initiative but not without criticism as to the contents of the proposal, particularly the envisaged ban on computer program claims.

Discussion on the proposal in the EC Council (Working Party on Intellectual Property) and European Parliament (Committee on Legal Affairs) has commenced only recently. The EPO will be involved in the deliberations of the Council Working Party as an expert of the EU Commission.

The EPO statement about the Eurolinux campaign is doubly inaccurate:

1. Eurolinux does not oppose patentability of inventions related to software, e.g. new chemical reactions conducted under program control. But Eurolinux does oppose the EPO’s practise of patenting of innovations which do not qualify as inventions under Art 52 EPC.
2. The opposition against software patents does not only come from the “open source community” or Linux users, but from a large number of software professionals who write proprietary software. It has very little to do with open source evangelism, let alone fundamentalism.

In its short analysis, the EPO finds that the EC proposal is based very closely on the new EPO guidelines and the EPO’s practise. However, it finds two questions worthy of further clarification:

- meaning of restriction on claim form for enforcement of claims
- how to distinguish technical contributions from non-technical ones

The EPO’s concepts seem better than those of CEC/BSA. In particular they do not award any patent claim the status of an “invention” but, in accordance with Art 52 EPC, acknowledge that there must be a test of whether an invention is present.

Also, they suggest at the end to

Make clear that mere computer implementation of a per se non-technical method such as business method does not involve a “technical contribution”.

This, thought through to the end, would mean that a mere computer implementation of a coding method such as that in the JPEG patent² as well as numerous other questionable patents granted by the EPO³ does not involve a technical contribution and is therefore not an invention.

Unfortunately EPO reasoning, like that of the CEC patent lawyers, usually consists of verbal rubble which will have no consequences when it doesn’t suit the EPO and the people on SACEPO.

1. epo020621.pdf

2. <http://swpat.ffii.org/brevets/effets/jpeg/index.fr.html>

3. <http://swpat.ffii.org/brevets/echantillons/index.fr.html>

At Eurolinux, we wonder why the EPO can't give the Eurolinux Alliance a seat in SACEPO rather than spread misleading assertions about us. We are, in the EPO's words, a "strong lobby", and we are certainly a part of the public whom the EPO is supposed to serve. There is also little reason why the "Council Working Party" should be composed only of experts from the patent community and why the European Commission should nominate the EPO as its "expert" delegate.