

Consilium 2003/09: Proposals for Changes to EPC

<http://swpat.ffii.org/papri/eupat0309/index.en.html>

Workgroup

swpatag@ffii.org

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The European Council's Working Party on Intellectual Property (Patents), which is a circle of patent administrators who are also sitting on the administrative council of the European Patent Office, has worked out a set of proposals for changing the European Patent Convention (EPC) in view of the planned Community Patent. Substantive Patent Law (art 52-57) seems to have been left untouched by this proposal.

Contents

- [eupat0309.pdf](#)
- **Observations by Xavier Drudis Ferran¹**

Wishes of the European Parliament to make the EPO more accountable were not accomodated. The EP seems to have no say. The draft doesn't touch the subject of patentability.

*<http://www.ffii.org/~phm>

¹[eupat-xd031005.txt](#)

- **Influencing the EU Council²**

Collect and Provide Information on who makes the policies of the Council on patents and information infrastructure issues and how to best contact these people.

- **Art 52 EPC: Interpretation and Revision³**

The limits of what is patentable which were laid down in the European Patent Convention of 1973 have been eroded over the years. Influential patent courts have interpreted Art 52 in a way that renders it obscure and meaningless. Not all courts have followed this interpretation, and numerous law scholars have shown why it is not permissible. The EPO had accepted the inconsistencies in anticipation of an expected change of law. However this expectation was frustrated in 2000 by the governments and in 2003 by the European Parliament. The Parliament voted for a clarification which gives Art 52 back its meaning. Meanwhile, proponents from all sides have proposed to modify Art 52(3) EPC in one or the other way, of course while claiming that this merely serves to “clarify the status quo” or to implement a directive which serves this purpose, and, since the European Commission and the Council have not signalled support for the Parliament’s approach, there is still no common understanding of which “status quo” we are talking about.

- **UKPO 2002-02-20: proposal to allow patents to programs as such⁴**

The UKPO has been urging the European Commission to come up with a directive that legalises its practise of granting software patents and proposed that, should the CEC be slow to come up with this directive, it would pursue changes to Art 52(3) EPC in through the Council.

see also The UK Patent Family and Software Patents⁵

²<http://localhost/swpat/gasnu/consilium/index.en.html>

³<http://localhost/swpat/stidi/epc52/index.en.html>

⁴<http://localhost/swpat/papri/ukpo-swpat0202/index.en.html>

⁵<http://localhost/swpat/gasnu/uk/index.en.html>