

# Instructions from BMVIT.gv.at for Unlimited Patentability

<http://swpat.ffii.org/papers/euopar10309/bmvit0405/bmvit0405.en.html>

Workgroup

swpatag@ffii.org

english version 2004/05/08 by FFII\*

2004-05-08

In this confidential paper, an anonymous patent official from Austria's Ministry for Transportation, Innovation and Technology (BMVIT) instructs Austria's diplomats in the EU Council to fully support the position of the Council working party on patentability of software. To justify this position, he claims that it represents a compromise with the software patent critics and excludes the patentability of algorithms, business methods and pure software. He bases this assertion on some a few ambivalent recitals from the Council document. Moreover, the BMVIT official says it must be the goal of the EU directive to make nothing unpatentable for which the European Patent Office (EPO) has already granted patents. He accuses the European Parliament of having sided with the software patent critics and restricted patentability in unacceptable ways. In particular, calculation rules must be patentable, if they help save time or space on a universal computer, because such an effect is "technical". A definition of "technical" in terms of "forces of nature", as proposed by the German delegation, is deemed "unnecessary" by Austria. He doesn't try to explain how the position of the European Patent Office is more advantageous for Austria than that of the European Parliament. The text assumes that the patent office is an unquestionable authority whose higher wisdom must in any case prevail over the elected legislature. The writer himself probably is from the Austrian Patent Office, which is organisationally a department of BMVIT.

---

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

# Contents

## 1 Annotated Links

2

### 1 Annotated Links

- **bmvit-weisung0405.pdf**

PDF-Version des MSWord-Originaldokuments aus dem BMVIT

- **bmvit-weisung0405.txt**

Das BMVIT-Dokument als schlichter Text

- **bmvit-weisung0405.en.txt**

Das BMVIT-Dokument als schlichter Text

- **Othmar Karas 2004-04: Letter to AT Government<sup>1</sup>**

The leader of the Austrian People's Party in the European Parliament, MEP Othmar Karas, wrote a letter to responsible members of the Austrian government two weeks before these "instructions" came out, in which he explained why the European Patent Office's practise is an unacceptable model and asked the ministry to follow the decision of the European Parliament. As of 2004/05/05 (when the "instructions" came out), there had been no response.

- **<http://www.bmvit.gv.at/>**

Selbstdarstellung des Ministeriums

- **<http://www.patentamt.at/>**

Das Patentamt ist dem BMVIT untergliedert. Es ist anzunehmen, dass die "Weisung" von einem Mitarbeiter des Patentamts verfasst wurde und dass Minister Bartenstein keine Zeit haben wird, sie genau zu lesen.

- **<http://kwiki.ffi.org/AtCons040505De>**

---

<sup>1</sup><http://swpat.ffi.org/papers/euoparl0309/okaras0404/okaras0404.de.html>

- **EU Council 2004/01/29 “Presidency Compromise Proposal” on Software Patents<sup>2</sup>**

The Irish EU Council presidency has circulated a paper among governmental ministries which contains alternative suggestions to the amendments on the directive “on the patentability of computer-implemented inventions” passed by the European Parliament (EP). In contrast to the EP version, the council version permits unlimited patentability and patent enforceability. Following the current version, “computer-implemented” algorithms and business methods would be inventions in the sense of patent law, and the publication of a functional description of a patented idea would constitute a patent infringement. Protocols and data formats could be patented and would then not be freely usable even for interoperability purposes. These implications might not be apparent to the casual reader. Here we try to decipher the misleading language of the proposal and explain its implications.

- **Comments on Consilium Recital 7 etc<sup>3</sup>**

explains why some of the recitals of the Council Working Party are not what they appear to be. Recitals 7 etc do not limit patentability but apparently do help soothe the conscience of political decisionmakers

- **Austria and Software Patents<sup>4</sup>**

The Austrian government has for a long time been hijacked by patent alwyers. It always took the most radical pro patent positions in the international patent policy fora. Austria introduced “program logic utility certificates” in the early 90s in an attempt to prevent patent expansion into this area while providing a more light-weight system for experimenting with exclusivity of algorithms. However, due to the intrusion of patents into the same field, the utility certificate with its shorter duration wasnot much used. The Austrian Chamber of Commerce has published an anti-swpat statement in 2000.

---

<sup>2</sup><http://swpat.ffii.org/papers/euoparl0309/cons0401/cons0401.en.html>

<sup>3</sup><http://kwiki.ffii.org/ConsRec7EtcEn>

<sup>4</sup><http://swpat.ffii.org/players/at/swpatat.en.html>