

Bernhard Müller and Software Patents

<http://swpat.ffii.org/players/bmueller/index.en.html>

Workgroup\\swpatag@ffii.org

2003-12-15

Bernhard Müller worked in the European Commission's Industrial Property Unit and was in charge of the software patent directive proposal drafting and consultation activities for several years until March 2001, then moved to the European Trademark Office in Alicante. Müller conducted "representative surveys" among several dozen patent lawyers in order to conclude that patents on software and business methods as granted by the European Patent Office (EPO) are needed. Until summer 2000, Müller advocated a "harmonisation" of European patentability rules with those of US and Japan. Later, during the Consultation of late 2000 which he conducted, Müller presented the same contents with a more cautious packaging, claiming to be aiming at a "restrictive harmonisation of the status quo". In early 2001 Müller obtained support from governmental officials for a position paper which calls for codification of EPO practise and dismisses the 91% opposition to software patents expressed in the consultation as irrelevant.

Contents

-
- **European Consultation on the Patentability of Computer-Implementable Rules of Organisation and Calculation (= Programs for Computers)**¹

On 2000-10-19 the European Commission's Industrial Property Unit published a position paper which tries to describe a legal reasoning similar to that which the European Patent Office has during recent years been using to justify its practise of granting software patents against the letter and spirit of the written law, and called on companies and industry associations to comment on this reasoning. The consultation was evidently conceived as a mobilisation exercise for patent departments of major corporations and associations. The consultation paper itself stated the viewpoint of the European Patent Office and asked questions that could only be reasonably answered by patent lawyers. Moreover, it was accompanied by an "independent study", carried out under the order of the EC IndProp Unit by a well known patent movement think-tank, which basically stated the same viewpoint. Patent law experts of various associations and corporations responded, mostly by applauding the paper and explaining that patents are needed to stimulate innovation and to protect the interests of small and medium-size companies. However there were also quite a few associations, companies and more than 1000 individuals, mostly programmers, who expressed their opposition to the extension of patentability to the realm of software, business methods, intellectual methods and other immaterial products and processes. The EC IndProp Unit later failed to adequately publish the consultation results and moderate a discussion. Therefore we are doing this, and you can help us.

¹<http://swpat.ffii.org/papers/eukonsult00/index.en.html>