

Malcolm Harbour MEP and Software Patents

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

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Malcolm Harbour, Member of the European Parliament, UK Conservative, has been an active and forceful promoter of software and business method patents in Europe, all while pretending that he was “only closing loopholes in the current law so as to avoid US-style broad patentability” and that claims to the contrary came from “misguided lobbyists in the European Parliament”. Harbour vigorously promoted program claims and opposed all amendment proposals, including those approved in CULT and ITRE, which put any limits on what can be patented. Patent lobbyists have great confidence in “Malcolm”. Some write letters to MEPs telling them to look out for Harbour’s amendment proposals and to support them as soon as they come out. Harbour, until recently an automobile industry manager at Rover, speaks in a very self-confident manner which gives many of his listeners, including MEPs from other countries and other parties, the impression that he is in power and they can rely on him and follow him.

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Looking at Harbour’s contributions to the discussions, it seems that Harbour has difficulty understanding how any process running on a computer (or, his favorite example, a mobile phone) could be unpatentable subject matter. He combines this lack of understanding with a deep trust for “IP experts” speaking in the name of large companies and industry associations. A trust which is has been reciprocated and nurtured for a while already.

In October, Malcolm Harbour showed dismay at the European Parliament's decision for real limits on patentability¹:

Parliament Misses the Chance to Close Software Patent Loophole

Parliament's approval of the Directive on Computer Implemented Inventions on 24 September should have given a boost to the EU's quest for a 'knowledge driven' economy. The Directive aims to clarify European Patent Law and give examiners clear grounds for refusing patents on software and business methods. However, MEPs voted to approve Socialist, Green and Liberal amendments which greatly complicate the proposal and render it largely unworkable. This is a disappointing result. We wanted to ensure that the EU did not go down the road of the USA in extending patents to computer software and business methods. This would be damaging to our economy and to the crucial IT sector. We now must wait for the Council and Commission to present a workable compromise proposal.

This statement was published in the e-mail newsletter of Geoffrey van Orden, Conservative MEP of the Eastern Region. Given that Mr. van Orden doesn't have any particular interest in software and that the statement closely reflects Malcolm Harbour's style and diction, we can be certain that it comes from Malcolm Harbour, the person in charge of the software patent directive on behalf of the UK conservative group in the Parliament.

see also Reactions to the EU Parliament's Vote of 2003/09/24²

- **FFII News: Letter from MEP Malcolm Harbour**³

Hartmut Pilch quotes a letter from Malcolm Harbour. Harbour says that his aim in pushing for the software patent directive is to halt the drift toward patents on algorithms and business methods, and that the fears of some "misguided lobbyists within the European Parliament" are groundless. This sounds reassuring, because it shows that Mr. Harbour knows what his constituents are expecting from him. In reality however Malcolm Harbour has been consistently pushing for unlimited patentability and maximum blocking effects of software patents, as Hartmut points out in a preface.

¹<http://swpat.ffii.org/papers/euoparl0309/index.en.html>

²<http://swpat.ffii.org/papers/euoparl0309/reag/index.en.html>

³<http://lists.ffii.org/archive/mails/news/2003/May/0002.html>

- **Malcolm Harbour 2003-06-16 Software Patent Speech in JURI**⁴

Malcolm Harbour, UK conservative MEP, celebrates CEC Software Patent Directive Proposal and McCarthy report as a great achievement in limiting patentability, explains that program claims are needed, because mobile phones are patentable and the functioning principles of a mobile phone might well be embodied in a program that is stored on a medium and sold in that form. Answers Berenguer on some points.

see also JURI 2003-06-16 Software Patent Speeches⁵

- **IV-net.at 2003/04/24: Letter to Austrian EuroMPs**⁶

Industrial Patent Lawyers from Austria tell their MEPs to watch out for Malcolm Harbour's upcoming amendment proposals and follow them, since they are those of "the industry".

- **Harbour declares "war on red tape": "We must stop this attack on innovation!"**⁷

This is what Malcolm Harbour MEP, under the heading "Conservative MEPs fight Brussels Bureaucracy", tells his home audience in the West Midlands. In reality Harbour is working in the EP to launch new attacks on innovation and create thousands of new regulations for SMEs to study and observe every year. Also, while Harbour tells his audience that he wants the European Parliaments legislative processes to be subject to auditing and impact assessments similar to those in the industry, within the European Parliament he consistently opposes demands that patent legislation be measured against a test suite of example patents.

- **Conservative Party - Malcolm Harbour MEP**⁸

Harbour vita on tory website

- **ICDP: Harbour: Man of the Automobile Industry**⁹

Harbour vita on website of an automotive industry association

⁴<http://wiki.ael.be/index.php/JuriEnPartFour>

⁵<http://wiki.ael.be/index.php/JuriEnPartNine>

⁶<http://swpat.ffii.org/papers/eubsa-swpat0202/ivat0304/index.de.html>

⁷<http://www.torymeps.com/content/redtape.htm>

⁸<http://www.conservative-party.org.uk/people/person.cfm?PersonID=3576>

⁹<http://www.icdp.net/malcolm.htm>

- **FFII UK: Malcolm Harbour MEP**¹⁰

Documentation on Malcolm Harbour by FFII UK

- **Harbour 03-01-29: report on Internal Market Strategy for Services**¹¹
- **JURI adopts Harbour report on Internal Market strategy for services**¹²
- **EURIM 03/05: Letter**¹³

says that Harbour hosted an EURIM meeting on 03-06-11 in EP in Brussels. EURIM is a british lobby organisation which represents mainly big business

- **UK Patent Office work meeting**¹⁴

lists members of the European Parliament (MEPs) who have taken particular interest in patent matters. Arlene McCarthy, Malcolm Harbour, Diana Wallis and Neil McCormick are marked with an asterisk.

- **<http://www.timj.co.uk/digiculture/patents/timeline.php>**

Contains correspondence with Harbour and Tory colleagues who mainly copy&paste standard letters by Harbour on software patents

- **Harbour letter on Swpat**¹⁵

standard response by Harbour to questions about software patents

- **Conservative Party: European eDimension**¹⁶

Harbour speech on E-Commerce etc

- **EU Research Policy**¹⁷

Malcolm Harbour as a fighter for EU efforts in research

¹⁰<http://www.ffi.org.uk/conservative.html>

¹¹<http://www.smallbusiness europe.org/Issues/Internal%20Market%20Strategy%20for%20Services/1055515109/ep>

¹²<http://www.aig.org/notices/151.pdf>

¹³<http://www.eurim.org/news/0305nlet.htm>

¹⁴<http://www.patent.gov.uk/about/groups/240101.htm>

¹⁵<http://www.xenoclast.org/free-sklyarov-uk/2003-May/004829.html>

¹⁶http://www.conservativeparty.org.uk/news/article.cfm?obj_id=3575&speeches=1

¹⁷http://www.db.europarl.eu.int/oeil/oeil_ViewDNL.ProcedureView?lang=2&procid=4157

- **EP Journal**¹⁸

contains questions by Harbour on Information Society

- **Roger Helmer: Malcolm Harbour on bureaucratic obstacles**¹⁹

reports about a speech where Harbour presents himself as a fighter against bureaucracy

- **EPP-ED Group Press Release: Harbour admonishes BMW management**²⁰

Harbour as a former Rover employee expresses concern about BMW's policy toward its acquired subsidiary.

- **The UK Patent Family and Software Patents**²¹

Much of the lobbying for software patents in Europe has been done by British patent lawyers and patent officials wearing the hat of the European Commission or the British government. Most of the law-drafters and alleged "independent contractors" for the European Commission (CEC) were members of the British patent family. The UK Patent Office (UKPO) was the first national patent office to officially follow the European Patent Office (EPO) in allowing direct patent claims to computer programs in 1998. The UKPO has also succeeded in keeping its hand on the British government's patent policy, in moderating a public consultation which showed strong public opposition to software patentability, and, most admirably, in interpreting this public opinion as a legitimation basis for (1) establishing software (including business method) patents in Britain and (2) pushing Brussels to establish them in all of Europe. The UK Patent Family appears to be the strongest single force behind the European Commission's software patentability directive project.

¹⁸<http://europa.eu.int/eur-lex/en/archive/2001/ce07220010306en.html>

¹⁹<http://www.rogerhelmer.com/highlights11.shtml>

²⁰http://www.epp-ed.org/press/pcom00/com147_en.asp

²¹<http://swpat.ffii.org/players/uk/index.en.html>

- **Why Amazon One Click Shopping is Patentable under the Proposed EU Directive²²**

According to the European Commission (CEC)'s Directive Proposal COM(2002)92 for "Patentability of Computer-Implemented Inventions" and the revised version approved by the European Parliament's Committee for Legal Affairs and the Internal Market (JURI), algorithms and business methods such as Amazon One Click Shopping are without doubt patentable subject matter. This is because

1. Any "computer-implemented" innovation is in principle considered to be a patentable "invention".
2. The additional requirement of "technical contribution in the inventive step" does not mean what most people think it means.
3. The directive proposal explicitly aims to codify the practise of the European Patent Office (EPO). The EPO has already granted thousands of patents on algorithms and business methods similar to Amazon One Click Shopping.
4. CEC and JURI have built in further loopholes so that, even if some provisions are amended by the European Parliament, unlimited patentability remains assured.

- **FFII: Software Patents in Europe²³**

For the last few years the European Patent Office (EPO) has, contrary to the letter and spirit of the existing law, granted more than 30000 patents on rules of organisation and calculation claimed in terms of general-purpose computing equipment, called "programs for computers" in the law of 1973 and "computer-implemented inventions" in EPO Newspeak since 2000. Europe's patent movement is pressing to legitimate this practise by writing a new law. Although the patent movement has lost major battles in November 2000 and September 2003, Europe's programmers and citizens are still facing considerable risks. Here you find the basic documentation, starting from the latest news and a short overview.

²²<http://swpat.ffii.org/papers/eubsa-swpat0202/tech/index.en.html>

²³<http://swpat.ffii.org/index.en.html>