Mark Schar and Software Patents

http://swpat.ffii.org/players/schar/index.en.html

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one of the judges at the EPO's Technical Board of Appeal who brought about the landslide decisions of 1998, also wrote an article that explains the thinking behind those decisions and tries to redefine the concept of "technical invention" as "practical and repeatable problem solution".

Contents

- **Mark Schar 1998: What is Technical?**[1]

  An EPO judge proposes a consistent definition of the term "technical character" that has sinc 1986 been changed by the EPO's Technical Board of Appeal in an unsystematic manner, case by case. Schar proposes that that any practical and repeatable solution should be considered to be a technical and therefore patentable. This is well in line with current EPO practise, and it means that all computer programs as well as all programmed or otherwise practically applied mathematical methods, business methods, games and data structures are patentable. Only the problem solving event in the human mind is non-patentable according to this doctrine. As soon as the solution is objectivated, i.e. transformed into its practically applicable and repeatable form, it is no longer the solution as such and therefore patentable. Schar explicitely rejects previous doctrines such as those of the German Federal Court (and the EPO examination guidelines of 1978) which distinguished between the invention and its embodiment (objectivation) and demanded that not only the emodiment but also the invention be technical, i.e.

[1] http://swpat.ffii.org/papers/jwip-schar98/index.en.html

contain natural forces as a constitutive element. The chief reason he gives for this rejection is that certain books from 1900 contain some outdated or politically incorrect wording and that currently monism seems to be more fashionable than mind-matter dualism. This reasoning may be more than sufficient to convince the readers of the Journal of World Intellectual Property.