

2003/05/07 BXL: Brevets Logiciels – De la Sémantique Juridique aux Brevets Logiciels Accordés

<http://swpat.ffii.org/dates/2003/europarl/05/07/index.fr.html>

Groupes de travail

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version française 2000/08/25 par Odile BNASSY

2003-09-18

Pendant cette première journée d'une conférence interdisciplinaire de deux jours à Bruxelles au sein et a coté du Parlement Européen, nous menons ensemble des programmeurs, ingénieurs, entrepreneurs, juristes, économistes et politiciens pour étudier toute la chaine de causalité entre les règles de brevetabilité proposés et les buts et valeurs politiques de l'Union Européenne, comme innovation, compétition, administration mince, sécurité juridique, sécurité de réseaux, e-Europe, e-inclusion et "devenir la société d'information la plus compétitive jusqu'à 2010".

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1 Temp et Lieu

temp: Mercredi 2003/05/07 09.00-18.00

lieu: Bruxelles Boulevard Charlemagne 11-19 (à coté de la Commission Européenne, 5-10 minutes à pied du Parlement Européen) Dorint Hotel

Une Carte avec description de route se trouve sur le Wiki AEL.

Traduction Simultanée Disponible au moins pour DE-EN, FR-EN et ES-EN

We have all kinds of projectors, including lcd projector (beamer), available.

2 Programme de Conférence

quand?	a propos de quoi?	qui?
09.00	<p>Software Patents – The U.S. as a Test Case</p> <p>Keynote Speech: Learning from American Mistakes</p> <p>The hearings held by the U.S. competition agencies paint a darker picture of U.S. practice than the report than the report on which the Commission relies, and the Undersecretary for Intellectual Property has described the Patent Office as an agency in crisis. What can Europe learn from the U.S. experience?</p>	<p>Prof. Lawrence Lessig</p> <p>Co-Panelists: Mozelle W. Thompson (Commissioner, US Federal Trade Commission) Brian Kahin (Professor for Information Policy Studies, Univ. of Michigan)</p>

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10.00	<p>Brevet, Droit d’Auteur et Libertés Civiles</p> <p>Some companies have used patents to obtain broad exclusion scopes which copyright denied them. Some are using patents to make their competitors, copyright property useless. Proponents of the directive say that “patents and copyright are complementary and may overlap”, whereas earlier doctrines called for a clear separation of spheres of property. How has such overlapping worked in semiconductor topography and areas? Will the broadest property right always win out? Are civil liberties crushed under a broadness competition? How can an integrated system of intellectual/industrial be (re)created?</p>	<ul style="list-style-type: none"> – Dr. Swen Kiesewetter-Köbinger (patent examiner at German Patent office¹) – Lessig – Ville Oksanen (EFFI.org, Helsinki) – Jörg Wittenberger (aske-mos.org) – MEP Piiia-Noora Kauppi

1. ne parlant que pour soi même, pas pour son employeur

quand?	a propos de quoi?	qui?
11.00	<p>Software Patents and Europe's Legal Structure</p> <ul style="list-style-type: none"> - With the challenges facing the European and global patent system(s), how should decisions on software and business methods be made? And by whom? - What can a EU directive achieve in the context of concurrence between inter-governmental treaties and EU Law? 	<ul style="list-style-type: none"> - Reinier Bakels (Amsterdam University, author of a EU-sponsored study on software patents) - RA Roman Sedlmaier (German attorney and writer of much-cited articles, coiner of the term "confusion by clarification") - Jozéf Halberszadt (Examiner at the Polish Patent Office²) - Dr. Luuk Van Dijk (vosn.nl, Pays-Bas) - Mikko Välimäki (effi.org, Finlande) - MEP Toine Manders (IP expert of ELDR, Pays-Bas, author of JURI amendment 72, which <i>calls on the commission to withdraw the directive because the fact that the European Patent Convention and Community legislation exist alongside each other makes the current legal rules concerning the granting of patents unnecessarily confusing.</i>) - Kahin
12.00	Buffet	

quand?	a propos de quoi?	qui?
13.00	<p data-bbox="437 304 821 389">Invention Concepts in Europe and the Resulting Patents</p> <ul data-bbox="456 396 849 1032" style="list-style-type: none"> - Did the European Patent Office really grant software patents “from its earliest days”, as MEP Arlene McCarthy says in her report? What were the original standards of the EPC and how did the EPO change them from 1973 to 2003? - Were the changes motivated by evolution of technology or by internal political evolutions of the patent system? How many patents of which types were granted as a result? Were the changes gradual or were there major leaps and revolutions? - Was the EPO an innovator or a follower? How do national practises in Europe differ? Is the EPO violating Art 52 EPC? Is there a way back, or would that lead to “irreconcilable conflicts with the EPO”, as MEP McCarthy says? - What options does the European Parliament have today for defining what is a patentable invention and what not? 	<ul data-bbox="922 344 1318 752" style="list-style-type: none"> - Jürgen Siepmann (délégué légal de Linux-Verband, Allemagne) - Halbersztadt - Daniel Retureau (drafter of Opinion of the Economic and Social Council of the EU on the Directive Proposal) - Xavier Drudis Ferran (caliu.info) - MEP Neil MacCormick
14.00	<p data-bbox="445 1099 812 1162">Emerging Phenomena in Patent Practice</p> <ul data-bbox="456 1169 849 1361" style="list-style-type: none"> - Thickets, Holdup, Ambush, Broadcast Litigation, Contract Clauses. Who benefits and who loses? - Subsidizing Failure? – Patents after the Bust 	<ul data-bbox="922 1144 1318 1675" style="list-style-type: none"> - Richard Clark (MD, Elysium Ltd, UK, JPEG – Editor and WebMaster) - Robert Dewar (CEO, gnat.com, EUA) - DEIM Ágoston (CEO, lsc.hu, Hongrie) - Sylvain Perchaud (MD, europe-shareware.org) - Sven Biedermann (software entrepreneur, Allemagne) - Kahin - MEP Luis Berenguer Fusta - MEP Mercedes Echerer
15.00	Café	

quand?	a propos de quoi?	qui?
15.30	<p>IT Infrastructure Patents and the Information Society</p> <ul style="list-style-type: none"> - The path of operating system kernel development is cluttered with patents. What kind of services and applications have been affected so far? - Yesterday's Innovators Looking In Tomorrow's Innovation? Alcatel's proclaimed strategy of patenting the "Next Generation Internet" and the consequences of a possible domination of software by patent-oriented hardware industries. - Microsoft's Patenting Strategies - As patent numbers increase and patent quality decreases, is the noose around Free OS Development becoming tighter or looser? 	<ul style="list-style-type: none"> - Richard Stallman (gnu.org) - Franco Gasperoni (CEO, ACT Europe) - David Hughes (CEO, hcc-embedded.com) Hongrie - Alan Cox (redhat.com) - Santeri Kannisto (CEO, sot.com, Finlande) - Felix Gaehtgens (felix@symlabs.com, http://www.symlabs.com) - N.N. (Microsoft) - MEP Marco Cappato
17.00	<p>E-Patents and E-Commerce</p> <ul style="list-style-type: none"> - The directive proponents seem to consider advancements in database, groupware, enterprise resource planning etc to be patentable inventions but distance themselves from "pure business method patents". Can such a distinction prevent the worst in Europe? - Recently various E-Commerce companies, not all of which develop software, have been attacked with E-Patents in the US. In many cases, equivalent patents have been granted in Europe and would become enforceable under the proposed directive. How would E-Commerce be affected? 	<ul style="list-style-type: none"> - David Axmark (CTO, MySQL, Suède) - Jacob Hallen (CTO, AB Strakt, Suède; president, Python Business Forum) - Bernhard Runge (developpeur de logiciels, SAP) - Lars Soltau (CEO, slab.de) - J.P. Smets (CEO, nexedi.com) - Kahin - MEP Anders Wijkman³

quand?	a propos de quoi?	qui?
20.00	Dinner	Taihon, rue du march au fromage 35, tel 02-514 50 58

La Conférence Scientifique continue le jour suivant (jeudi) à 15.00. Le jeudi matin 9.00 il y a une Audition Parlementaire et à 13.00 une Performance de Rue / Manifestation, voyez la page d'accueil de l'évènement.

3 Liens Annotés

– **Recherches sur les effets macroéconomiques du système de brevets**⁴

Depuis le rapport de Fritz Machlup délivré au congrès américain en 1958, il y a toute une série d'études sur les effets du système de brevets sur divers domaines de l'économie

– **Citations sur la Question de la Brevetabilité des Règles d'Organisation et de Calcul**⁵

Citations de textes juridiques, analyses économiques, document politiques ainsi que énoncés de programmeurs, politiciens et autres partis qui s'intéressent au débat sur les limites de la brevetabilité vis-a-vis le logiciel

3. subject to confirmation

4. <http://swpat.ffii.org/archive/miroir/sisku/index.fr.html>

5. <http://swpat.ffii.org/archive/citations/index.fr.html>

– **Ensemble de tests pour la législation sur les limites de la brevetabilité**⁶

Pour tester la capacité d'un loi sur la brevetabilité, nous devons essayer des innovations exemples. Chaque exemple est décrit par un état de la technique, un enseignement technique et une série de revendications. Dans l'hypothèse que ces descriptions sont pertinentes, nous essayons notre nouvelle règle de loi. Notre attention se porte sur (1) la clarté (2) l'effet macro-économique du résultat: la réglementation proposée mène-t-elle à une décision prévisible? Quelles revendications seront acceptées? Ce résultat exprime-t-il nos souhaits? Nous essayons différentes propositions de lois sur la même série d'exemples (Testsuite) et comparons lesquelles réussissent le mieux. Pour un programmeur c'est une question d'honneur que de "supprimer les erreurs avant de diffuser le programme" (first fix the bugs, then release the code). Les ensembles de tests sont un moyen connu pour atteindre ce but. D'après l'article 27 ADPIC (TRIPS) la législation appartient à un "domaine de la technique" notamment "d'ingénierie sociale" (social engineering), n'est-ce pas? Technicité ici ou là, il est temps d'aborder de ce côté la législation avec cette rigueur méthodique, qui est partout annoncée, où les mauvaises décisions de construction peuvent fortement porter atteinte à la vie des individus.

6. <http://swpat.ffi.org/analyse/tests/index.fr.html>

– **McCarthy 2003-02-19: Propos de Directive Brevets Logiciels**⁷

Arlene McCarthy, British Labor MEP appointed by the European Parliament’s Committee for Legal Affairs and the Internal Market (JURI) to report on the European Commission’s Software Patentability Directive Proposal (CEC/BSA Proposal), suggests that the European Parliament should enact the CEC/BSA version with additional safeguards to align Europe on the US practise and make sure that there can be no limit on patentability. McCarthy reiterates the CEC/BSA software patent advocacy and misrepresents the wide-spread criticism without citing any of it. Even economic and legal expertises ordered by the European Parliament and other critical opinions of EU institutions are not taken into account. McCarthy’s economic argumentation consists of tautologies and unfounded assertions, such as that companies like Ericsson and Alcatel need software patents to finance their R&D, that SMEs need european software patents in order to compete in the USA, that patents are needed to keep developping countries at bay. McCarthy uses the term “computer-implemented inventions” as a synonym for “software innovations”. These “by their very nature belong to a field of technology”. McCarthy insists that “irreconcilable conflicts” with the EPO must be avoided. McCarthy says she wants to “set clear limits as to what is patentable” – and that she wants to avoid the “sterile discussions” about “technical effects” and “exclusions from patentability”. Yet her proposal stays confined to such discussions. McCarthy demands that all useful ideas, including algorithms and business methods, must be patentable as “computer-implemented inventions”. McCarthy proposes to recognise the EPO as Europe’s supreme patent legislator and to make decisions of a few influential people at the EPO irreversible and binding for all of Europe.

– **Swpat Conference Amsterdam 2002-08-30..1 (Columbanus Symposium)**⁸

Hartmut Pilch is attending a conference hosted by Prof. Bernt Hugenholtz and Reinier Bakels from University of Amsterdam about the typology of innovations in the software and business method area and the implications of various rules for defining what is patentable, including the European Commission’s recent proposal for a directive and hopefully also our widely supported counter-proposal.

7. <http://swpat.ffii.org/papiers/eubsa-swpat0202/amccarthy0302/index.en.html>

8. <http://swpat.ffii.org/dates/2002/ivir08/index.en.html>

– **Information Economy and Swpat Conference Paris 20020610-1**⁹

Institut Français des Relations Internationales (IFRI.org) and Center of Information Policy Research at Mariland University (CIP.umd.org) are organising a transatlantic conference on information economy and in particular on the limits of patentability as well as the problems in neighboring areas such as database exclusion rights and copyright. Hartmut Pilch is participating on behalf of FFII and Eurolinux on two of the panels.

9. <http://swpat.ffii.org/dates/2002/ifri06/index.en.html>