

# 2003/05/08 BXL 15:00 Dorint: The Economic Impact of Software Patents

<http://swpat.ffii.org/events/2003/europarl/05/08/15/index.en.html>

Workgroup

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During this final part of our symposium in the Dorint Hotel near the European Parliament in Brussels, we bring leading software professionals, patent practitioners, economists and politicians from EU and US together to assess the economics of patent portfolios, the use of patents for tax evasion, the impact of patents on standardisation and competition and the prospects of bridging the age-old gap between patent science and patent policy. Major talks will be given by FTC Commissioner Mozille Thompson, Software Entrepreneur and JPEG Standardiser Richard Clark, Software Entrepreneur and Economist Dr. Jean-Paul Smets-Solanes, as well as the scholars Puay Tang (UK), Peter Holmes (UK) and Brian Kahin (US).

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## 1 Time and Place

**time:** Thursday 2003/05/08 15.00-19.00

**place:** Dorint Hotel Brussels Boulevard Charlemagne 11-19 (beside European Commission, 5-10 minutes by foot from European Parliament)

## 2 Schedule

time	about what?	who?
15.00	<p><b>Patents, Portfolios, and SMEs</b></p> <p>Research shows that SMEs are skeptical about the value of patents. How do the numbers play out in the software industry with the great variation in size and business model? Do portfolios permit large companies to “tax”?</p> <p>New Bessen &amp; Hunt Study with Statistical Data about patterns in software patents and their use</p>	<ul style="list-style-type: none"><li>• Puay Tang (University of Sussex)</li><li>• Prof. Roberto DiCosmo (informaticist, Paris)</li><li>• Brian Kahin (professor for information policy studies, Univ. of Michigan)</li><li>• Sylvain Perchaud (president, europe-shareware.org)</li><li>• Matthieu Farcot (doctorand in information economics, Univ. Strasbourg)</li><li>• Jorge Cortell (software entrepreneur and professor for ecommerce law)<sup>1</sup></li></ul>

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<sup>1</sup>Unfortunately Jorge can not join us due to a traffic accident in his family.

time	about what?	who?
16.00	<p><b>Software Patents as Fiscal Tools</b></p> <ul style="list-style-type: none"> <li>• Generating Virtual Transactions with Virtual Inventions – How Software Patents Help Companies Save Taxes</li> <li>• Patents and the Stock Market – Companies’ Annual reports list patent numbers as proofs of strength and correlate them to R&amp;D efforts. MEP Arlene McCarthy cites such “proven correlations” as a motive for legalising software patents. What do patent statistics really mean?</li> </ul>	<p>Dr. Jean-Paul Smets-Solanes (CEO, nexedi.com) Cortell MEP N.N.</p>
16.45	Coffee	
17.00	<p><b>Patents, Standards, Interoperability and Competition</b></p> <p>Patents have made the work of standardisation bodies such as the W3C difficult and have often led to the exclusion of free software and shareware from the use of standards. Competition authorities in the US and Europe have tended to be critical of patents, and the software patent directive proposal contains provisions which (pretend to) address this issue by an interoperability privilege, which some MEPs have proposed to further clarify and strengthen. Competition regulation is often seen at the forefront of efforts to limit the excesses of the patent system and similar systems. What can be achieved by this approach?</p>	<ul style="list-style-type: none"> <li>• Richard Clark (elysium.ltd.uk, JPEG Standardisation, United Kingdom)</li> <li>• Peter Holmes (University of Sussex)</li> <li>• Håkon Wium Lie (CTO, opera.com)</li> <li>• Perchaud</li> <li>• Mozelle W. Thompson (Commissioner, US Federal Trade Commission)</li> </ul>

time	about what?	who?
18.00	<p><b>Bridging the Gap between Patent Science and Patent Policy</b></p> <p>Fritz Machlup described the history of the patent system as a “victorious movement of lawyers against economists”. How have social science and patent legislation interacted since then? Why did so few scientists take part in the European Commission’s consultations? Why did economic studies practically without influence on the legislative process at the Commission, the Council and JURI?</p>	<ul style="list-style-type: none"> <li>• Tang</li> <li>• Holmes</li> <li>• DiCosmo</li> <li>• Bakels</li> <li>• Retureau</li> <li>• Kahin</li> </ul>
20.00	<p>Dinner</p> <p>location disclosed to participants</p>	

### 3 Annotated Links

- **2003/05/07 BXL Dorint: From Legal Wordplay to Granted Software Patents<sup>2</sup>**

During this first day of a two-day conference in Brussels, in and near the European Parliament, we bring software professionals, patent practitioners, economists and politicians from EU and US together for a symposium in the Dorint Hotel to explore the chain of causality from a proposed EU software patent directive to resulting patenting practises. The day begins with speeches by FTC.gov commissioner Mozelle W. Thompson and Prof. Lawrence Lessig on “The US as a Test Case”, and ends with a panel of software leaders from small and large enterprises, social scientists and MEPs on “E-Patents and E-Commerce”.

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<sup>2</sup><http://swpat.ffii.org/events/2003/europarl/05/07/index.en.html>

- **Research on the Macroeconomic Effects of Patents**<sup>3</sup>

Since Fritz Machlups report to the US congress of 1958, a considerable number of studies about the economic effects of the patent system has accumulated. Some studies deal with certain types of innovation (sequential, complex systems) or with special areas such as semiconductors, genetics or computing rules (algorithms, mathematics). None seems to claim that the patent system has a positive effect on innovation in these fields. Most find strong indications for negative effects. Some governmental studies (e.g. by intellectual property institutes and the like) combine such negative findings with a recommendation to legalise software patents.

- **Quotations on the question of the patentability of rules of organisation and calculation**<sup>4</sup>

Salient quotations from law texts, economic analyses, political documents as well as statements by programmers, politicians and other parties interested in the debate about software patents.

- **Patentability Legislation Benchmarking Test Suite**<sup>5</sup>

In order to test a law proposal, we try it out on a set of sample innovations. Each innovation is described in terms of prior art, a technical contribution (invention) and a small set of claims. Assuming that the descriptions are correct, we then test our proposed legislation on them. The focus is on clarity and adequacy: does the proposed rule lead to a predictable verdict? Which of the claims, if any, will be accepted? Is this result what we want? We try out different law proposals for the same test series and see which scores best. Software professionals believe that you should “first fix the bugs, then release the code”. Test suites are a common way of achieving this. Pursuant to Art 27 TRIPS, legislation belongs to a “field of technology” called “social engineering”, doesn’t it? Technology or not, it is time to approach legislation with the same methodological rigor that is applicable wherever bad design decisions can significantly affect people’s lives.

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<sup>3</sup><http://swpat.ffii.org/archive/mirror/impact/index.en.html>

<sup>4</sup><http://swpat.ffii.org/archive/quotes/index.en.html>

<sup>5</sup><http://swpat.ffii.org/analysis/testsuite/index.en.html>

- **McCarthy 2003-02-19: Amended Software Patent Directive Proposal**<sup>6</sup>

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)**<sup>7</sup>

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.

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<sup>6</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0302/index.en.html>

<sup>7</sup><http://swpat.ffii.org/events/2002/ivir08/index.en.html>

- **Information Economy and Swpat Conference Paris 20020610-1**<sup>8</sup>

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.

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<sup>8</sup><http://swpat.ffii.org/events/2002/ifri06/index.en.html>