

10 European Industry Leaders Raise Concerns about Software Patents

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For immediate release

10 European Industry Leaders have raised concerns about the ongoing legal process to update the European Patent Law in order to extend the range of application of software patents. According to pioneers of the software industry, the use of patents to protect software may actually lead to less innovation, less competition and eventually job cuts in the European Software Industry instead of generating new businesses and stimulating innovation as it is often believed. In order to promote innovation, competition and new businesses in the IT industry, Europe should be very careful with the application of software patents.

Although article 52.2c of the München Convention states that, in Europe, programmes for computers are not patentable, the European Patent Office (EPO) has been granting for the last 10 years an increasing number of patents that can be used to protect programming techniques, computer programmes and software. What may sound as contradictory at first sight, is actually perfectly legal since article 53 of München Convention makes it possible to patent industrial inventions which are based on innovative programming techniques. Such patents are sometimes called "software patents" because they protect software even though they are not patents on software as such.

Software Patents granted by the EPO to protect programming techniques were very few 10 years ago and were mainly used by large industrial corporations to protect, for example, computerized oil exploration techniques. In such cases, it was quite reasonable both in terms of contents and in terms of economic efficiency. However, the EPO jurisprudence has evolved a lot under the continuous pressure of lawyers and patent experts who have been trying to patent in Europe what they could already patent in the USA. One must remember that the US patent law allows to patent anything "useful and non obvious" which, according to the US Supreme Court, may include business methods and mathematical methods whereas in Europe, only inventions which have "industrial application" are patentable.

But this difference in terms of law was not sufficient to protect Europe from the abuse of software patents, as it is already the case in the United States where, according to Luc Hatlestad in Red Herring, "Industry leaders are putting startup through legal hell - and dampening innovation". The recent case of IBM patent application No 96305851.6 shows that the EPO is now used to grant patents on extremely elementary, if not obvious, programming techniques for which patenting has no macroeconomic rationale. Since patents last 20 years, and because the WTO TRIPS agreements do let them last less, the whole European Software Industry may get paralysed.

The following opinions were expressed by European Industry pioneers who call for a more careful use of Software Patents.

According to Ralf Schoebel of Intradat, creator of the first professional electronic commerce solution for Linux and inventor of an innovative electronic commerce programming language, "there are so many new patentable programming techniques emerging every day in the software industry that it is really impossible to keep up to date". As a consequence, "any large software package is likely to infringe dozens of software patents held by companies such as IBM or Lucent" says Tatu Ylönen, Founder and CEO of SSH Communications Security Ltd, and author of the popular SSH (Secure Shell) software, a proposed IETF standard. Jean Ferré, CEO of ARISEM, makers of very innovative indexing and searching software, adds that "it is impossible to manage a development process in which one has to check for each algorithm used in a software whether royalties should be paid to someone else".

Frank Hoen, CEO of NetPresenter and first inventor of Internet push technology, thinks that "patents on software are potentially very damaging to SMEs". According to him, "Europe is already lagging behind in software development. If developers now also need to worry about software patents, Europe will fallback even further". And Haavard Nord, CEO of Troll Tech, makers of the Qt advanced frameworks declares that he is "strongly against software patents because they prevent competition and make life harder for small and medium businesses" while Ismael Ghalimi, CEO of ExOffice, providers of advanced Java/XML technologies in open source, is in general "strongly against any form of patent for software technology".

Software Patents also have negative impact on standardisation. In France, Senator Laffitte claims that "Governments should not use patented standards to exchange information with citizens" since that would contradict the principle of free access to the public information defined by the French Law. And in a meeting organised by ISOC France during the Internet Fiesta at the French Senate, a consensus of specialists agreed that "Patents on Internet standards should be free or banned".

Together with Linus Torvalds, AFUL, APRIL, FFII and the EuroLinux Alliance for a Free Information Infrastructure consider that "patents as they stand now are a real problem". The general opinion, best summarised by Michael Widenius, coordinator of the widely awarded MySQL commercial database, is that "Software patents are more harmful than useful". M. Ylönen adds that "Innovation in information technology would be best served without software patents". And ISOC France stated in its yearly meeting in Autrans, "the European Law should not accept patents on software unless it is proved that patents do efficiently protect innovation, competition and free software".

However, the 19 European member States of the European Convention on Patents are considering to further extend the application of software patents by removing programmes for computers from the list of exceptions in article 52.2c of the München convention. Such a move would dramatically increase the risks taken by software editors which could be sued directly for patent infringement instead of indirectly as it is the case now. It would also open the way to a new kind of patent : Electronic Commerce and Business Method Patents.

A detailed case study shows that it would be possible to use patents to get a monopoly on the use of a business method or an electronic commerce method by patenting as such its implementation in a programme for computers. As an example of what this would mean, US citizens who are selling books on the Internet are being increasingly approached by US lawyers who claim that they are infringing some patent although they are just selling books. Tim Berners-Lee, creator of the Web, acknowledged during the Eighth International World Wide Web Conference in Toronto that "the bar for innovation seems too low. You are able to take an existing social practice and write software to do it and get a patent" and he added that "The challenge is to prevent us from becoming completely paralysed by fear, uncertainty and doubt,"

Ron McQuaker, Director of Exxel Consultants Ltd, finds that "Although there are strong pressures to extend patent protection to computer programs as such, the case is not yet made out well enough to convince large sections of the software industry. It is not enough to argue that other forms of invention enjoy patent protection, so why not software. That statement is too simplistic".

According to the above collection of opinions expressed by Industry Pioneers, in order to promote innovation, competition and new businesses in the IT industry, Europe should be very careful with the application of software patents. "It would be quite regrettable for Europe not to take this occasion to create a new model for intellectual property" notices Guido Gualandi; CEO of Ziggourat and maker of 3D software.

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The EuroLinux Alliance for a Free Information Initiative (www.eurolinux.org) is a coalition of companies and associations to promote and protect the use of Linux, Free Software and Open Standards at the European Level.

[IMAGE] The freepatents campaign (www.freepatents.org) is a EuroLinux initiative to protect Europe from the misuse of Software Patents. The freepatents web site includes most references to economic issues of patenting software.

[IMAGE] AFUL (www.iful.org) is the French Speaking Linux and Free Software Association, a French association of users, developers and companies to promote and protect the use of Linux, Free Software and Open Standards

[IMAGE] FFII (www.ffii.org) is the Foundation for a Free Information Infrastructure, a German association of users, developers and companies to promote and protect the use of Linux, Free Software and Open Standards

[IMAGE] APRIL (www.april.org) is a French Speaking Free Software Association, association of users, developers and scientists to promote and protect the use of Free Software, Open Standards.

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