Europäisches Patentwesen im Mai 2010 Entwicklungen diesen Monat

Hartmut PILCH
http://eupat.ffii.org/10/05

21. Mai 2010

1 15/6

1.1 European Commission removes Open Standards from Digital Agenda

The European Commission has watered down its "Digital Agenda", removing most references to "open standards"or making them meaningless. Apparently the lobbying teams of some dominant vendors (i.e. producers of what the Digital Agenda calls "pervasive technologies") have done good work.

1.2 Legacy rapidly progressing

The Multilingual Hypertext building system will be available as Text::A2E on CPAN soon.

Conversion of legacy pages to the new format is gaining speed.

Among others the Archive pages (most of which do not appear in the menus because they are not well maintained) were converted this week.

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3 12/3

3.1 Enlarged Board of Appeal of EPO refuses to deal with software patentability question

The "conclusion"of their answer to the president of the European Patent Office is:

> The referral of 22 October 2008 of points of law to the Enlarged Board of Appeal by the President of the EPO is inadmissible under Article 112(1)(b) EPC.

This article says:
In order to ensure uniform application of the law, or if a point of law of fundamental importance arises

a. the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;

b. the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.

In the present case, the second path was chosen, but it seems that President Brimelow failed to raise points of law of fundamental importance, such as that of the legitimacy of groundbreaking decisions such as Vicom and IBM 1+2, by which the TBA bent the statutory law beyond bearing in order to extend patentability.

4 11/2

4.1 "No Power for the Parliament" warns EPO examiners association

The Staff Union of the EPO (SUEPO) sent a letter to the President of the European Parliament, Jerzy Buzek, warning of risks for the European Parliament to be "circumvented" as a legislator when the EU will accede to the European Patent Convention (EPC), in which it raises concerns about the lack of democratic legitimacy of the Commission's proposed unified patent system. Among other points it says:

> 1. It is particularly worrying that currently the EPO bodies, including legislative and judicial bodies, feel that they are not formally bound by EU legislation.

2. If a simple contractual relationship between EU and EPO is opted for, the procedures that allow the European Parliament to be involved in the legislative process (Ar. 218 EU Treaty) can be circumvented. Procedures allowing the European Parliament to hold the Commission accountable have no effect on a legislator - like the EPO - that is institutionally located outside the EU Institutions. The draft EU Patent Regulation [7], which is based on Art.118 of the EU Treaty, incorporates the EPC which may change in substance according to the wishes of the 37 EPO member states. Under a contractual relationship, an external legislator would be allowed to substitute into legislation under Art.118 EU Treaty. This would entail a loss of procedural rights of the European Parliament and introdude a structural inconsistency in the EU legislative process.

3. EU patent applications and third parties alike could challenge the validity of the EPO decisions based on international constitutional law, inspired by the appeal filed by a German businessman before the German Constitutional Court [8] (unconstitutionality of the European arrest warrant). Indeed, it is doubtful whether the European Patent Convention (EPC) provides for sufficient legal basis for the EPO to conclude far reaching agreements between the EU Member States and the EU (neither Art.40 EPC, nor Art.149 EPC).

4. Following the "Lisbon" judgement of the German Constitutional Court [9], the validity of the envisaged EU Patent Regulation itself could be challenged based on the failure to meet constitutionality standards equivalent to German standards, since an important element for the creation of the EU Patent, the EPC, would stay outside of constitutionally safe legislation.

5. Litigation brought before the ECJ (Court of Justice of the European Union) by patent applicants of third parties [10] may entail a challenge of the validity of the EU Regulation itself, for instance because of a lack on involvement of the EU Parliament.

The SUEPO proposes a solution by which the EU would accede to the EPC pursuant to Art 218 EPC. This solution may fit more cleanly into the EU's legislative process, but it is still far from providing the European Parliament with the needed power of legislative oversight over substantive patent law. See also Slashdot discussion.

5 10/1

5.1 Video Codecs: Food for Thought

Florian Müller concludes a series of articles on recent escalation of software patenting:

> It takes licenses to thousands of patents in order to build a GSM phone, and at some point it may be required to license large numbers of patents to build a fully functional HTML web browser.

I'm afraid it's only a question of when, not if it will happen.

5.2 EPO experts: 1/3 of all patents computer-related nowadays

A group of patent professionals who are, in one way or another, related to the European Patent Office (EPO), have written a book about software patenting whose abstract stresses the rising importance of this field:

> While roughly a third of all applications (and granted patents) relate, in one way or another, to a computer, applications where the innovation mainly resides in software or in a business method are treated differently by the major patent offices in the US (USPTO), Japan (JPO) and Europe (EPO).

6 04/2

Redhat and Novell lose on less bad patents

6.1 Computerworld: First, we kill all the patent lawyers

Steven J. Vaughan-Nichols describes the desperate situation of software producers in unambiguous terms:

> Unless the Supreme Court does the right thing and tosses out business practice and, by implication, software patents with the proper decision in the Bilski case, we're stuck with a system designed to wreck anyone who actually tries to implement his own ideas.

7 02/6

7.1 EPA-Ökonomen: Patentlizenzen müssen für arme Länder zugänglicher werden

EPA-Wirtschaftswissenschaftler meinen, Lizenzierung sei die beste Art zur Verbreitung von Technik.

Armen Länder haben oft keinen Zugang zu Lizenzen.

Um dem entgegenzusteuern sollen die Regierungen Entwicklungshilfe geben.

Das EPA bereitet zusammen mit UNEP und ICTSD einen Bericht für den Klimagipfel in Mexiko vor.

8 01/6

8.1 Es wird gerade ein Patentkartell gegen das letzte freie Videoformat gebildet

Leider hat Steve Jobs mit seiner Antwort an einen Freie-Software-Aktivisten nicht Unrecht. So lange es Softwarepatente gibt, gibt es keine Standards, die man gemäß den Kriterien des Europäischen Interoperabilitätsrahmenwerkes (EIF) "offen"nennen kann. Zumindest potentiell unter alle Standards der jederzeitigen Schließung durch Patentkartelle, und im Webvideobereich gibt es da kaum ein Entrinnen. Leider scheint Steve Jobs selber in letzter Zeit maßgeblich zu dieser Entwicklung beizutragen.

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From: Steve Jobs
To: Hugo Roy
Subject: Re:Open letter to Steve Jobs: Thoughts on
Flash
Date 30/04/2010 15:21:17
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> Alle Video-Kodierungen sind von Patenten abgedeckt. Derzeit wird ein Patentverbund zusammengestellt, der gegen Theora und andere "quelloffene"Kodierungen vorgehen soll. Leider bietet Quelloffenheit keine Gewähr dafür, dass ein System keine Patente verletzt. Die Frage, ob ein Standard offen ist, ist von der Frage, ob er lizenzgebührenfrei oder quelloffen ist, zu trennen.
>
> Sent from my iPad