

Letter to Telecom CEOs

<http://swpat.ffii.org//letters/tele03B/index.en.html>

Workgroup

swpatag@ffii.org

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Draft by Jacob Hallen

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- **CEOs of big telcos sign letter against Europarl Amendments¹**

The chief executive officers of Alcatel, Ericsson, Nokia and Siemens have signed a letter to the European Commission and the European Council which complains about the European Parliament's amendments to the proposed software patent directive, saying that these will effectively remove the value of most of the patents of their companies and thereby harm the competitiveness of Europe's industry and violate the TRIPs treaty. FFII points out that the Directive indeed threatens the interests of the patent departments of such companies, but not of the companies themselves, and criticises that the letter is characterised by wild dogmatic assertions which say much about the thinking of patent departments and little about the interests of the undersigned companies, many of whose employees, especially software developers, support the European Parliament's decision.

¹<http://swpat.ffii.org//news/03/telcos1107/index.en.html>

2 Draft by J. Hallen

Open letter to the Chief Executive Officers of Alcatel, Ericsson, Nokia, Philips and Siemens

Dear Executive Officers,

in your letter of 7 November 2003 to Minister Rocco Buttiglione, Competitiveness Council, Commissioners Frederik Bolkestein and Erkki Liikanen, European Commission you assert a number of things about the amendments the European Parliament made to the Commission's proposed Directive on "Patentability of Computer-Implemented Inventions", commonly known as the Software Patents Directive.

Some of these assertions we believe to be untrue and some to be irrelevant. In any event, nothing of what you say is substantiated in any way. While you claim that your companies would be badly affected by the directive you do not point at any studies, show any examples or make any convincing argumentation for your cause. We think this shows very little respect for the large number of members of the European Parliament who have actually made the effort to understand the software patent issue and the broad implications it has on society. You simply take it for granted that they and the Council of Ministers will accept your statements and yield under the pressure of the large economic power your companies hold.

Fortunately the Foundation for a Free Information Infrastructure has been able to assist both members of the European Parliament as well as members of various European Union governments of the broad scope of the software patent issue. While naturally being biased against broad patentability, the information given has been in a form that promotes understanding and personal thinking. We believe that this means that your FUD tactics will have little effect on the politicians involved. If you want to convince them you will have to present sound arguments based on real examples and the data from real scientific studies. If you do not, our elected EU politicians have right and duty to ignore what you say.

In this letter we will not try to pick apart everything you say, since the Foundation for a Free Information Infrastructure quite exhaustively argues and analyses why the European Union should be restrictive in its view on software patentability at its website, <http://www.ffii.org>. We recommend studying the website carefully, since we believe the patentability you wish for would be a severe blow to your companies in the short term. With the extremely open-ended text of the original directive proposal, the US and Japanese companies who already have large software patent portfolios in their home countries would eat your lunch.

We would like to put focus on one sentence in your letter though. You say:

The loss of effective patent protection would put our companies at a competitive disadvantage in the short term, and in the longer term reduce the incentive for further investment in R&D in Europe.

This makes us wonder

- 1. in comparison to what competitors does it put you at a disadvantage?*
- 2. for whom does it reduce the incentive to make investments in R&D?*

All your companies are active on the global scene. So are your main US and Japan based competitors. For you, as well as for them, there is little difference between registering a patent with the EPO and registering it in the US or Japan. The way that the EU handles patent law has hardly any impact on the competitive balance between the large multinational corporations. That leaves competition with smaller actors who by nature are active inside the EU or in a part of the EU.

This leaves us with the conclusion that you want the protection of the monopoly that a patent grants in order to be able to compete with smaller local companies and that without this protection your companies are not good enough to keep your customers.

We are unable to understand how restrictive software patent laws would reduce the incentive to perform R&D in Europe. The fact that something was researched in Europe does not make it less patentable in the US, Japan, or Mongolia for that matter. This is just a scare tactic saying that JOBS ARE GOING AWAY. Indeed, we think that the open climate and lack of grounds for litigation that limiting patentability would produce would encourage foreign multinationals to establish research branches here.

For the smaller companies that do not play in your league, restrictive patent policy means that they can focus on R&D rather than P&L (Patents & Lawsuits). It is in these smaller companies that numerous studies show that real innovation and creative thinking is done. Most of them prefer to trust their ability to serve their customers better than their competitors, rather than rely on government enforced monopolies. Europe is best served by making your companies compete on equal terms with your small competitors and not allow you to hide behinds large departments of patent lawyers.