

Software Patent Hearing 2003/07/15 in Porto

<http://swpat.ffii.org/journal/03/port0711/index.en.html>

Workgroup

swpatag@ffii.org

2003-10-06

The Municipality of Porto in Portugal is conducting a hearing on July 15th about the possible effects of the proposed European Software Patent Directive on companies and citizens in Portugal. The hearing is chaired by Ilda Figueiredo, member of the European Parliament.

Contents

1	Details	1
2	What happened in Port – Report after the Hearing	3
3	About Symlabs Inc – www.symlabs.com	4
4	About ANSOL – www.ansol.org	4
5	About the Eurolinux Alliance – www.eurolinux.org	4
6	Permanent URL of this Press Release	4
7	Annotated Links	4

1 Details

The hearing will take place at

Auditório da Junta de Freguesia de Miragaia
Campo dos Martires da Pátria n^o 22 Porto, Portugal
July 15th 15:00.

Participants need to register only at the entrance.

Felix Gaehtgens, managing director of Symlabs Lda¹ from Lisbon, who spoke at a recent hearing in the European Parliament on the subject of software patents, explains:

Portugal is a great place for developing software. There are many smart and talented people coming out of the universities, and the labor costs are amongst the lowest in the EU. Any group of 5-10 good developpers can turn out nifty things and make a lot of money, relying on copyright and fast reaction to market demands. Our company has gained a leading position in this way.

According to the laxist standards proposed by the European Parliament's Legal Affairs Commission, we could have obtained plenty of patents on our software innovations, and we are indeed in obtaining some such patents in the US. The only reason that we do this is because in the US you need to play the "patent game". We have no intention of enforcing these patents ourselves - we need them only as bargaining chips to defend ourselves against bigger players. Patents do not protect our investments, and they do not even reliably protect us against patent attacks from other players. Patents make sense in the chemical industry perhaps, but in software their main effect is to make innovation expensive and dangerous.

If the Legal Affairs Committee has its way, the US patent game will be imposed on us in Europe, and productivity in software development will be greatly reduced, in particular in countries like Portugal. MEP Arlene McCarthy's draft report recommends that about 10% of development cost should be spent for patenting only, and she has introduced an amendment which says that Europe needs to impose such high legal costs in order to compete with "low-cost economies".

We see this directive as an assault on our livelihood and interests, an attempt to steal our intellectual property and to prevent us from competing. Bloated corporations with big legal departments, mostly located in what McCarthy would call "high-cost economies", are trying to gain control of the jewels of Portugal's and in fact Europe's software industry. They are making sure that broad and trivial patents on algorithms and business methods can no longer be revoked by Portuguese courts. Tautological requirements, such as that a "computer-implemented invention" should "make a technical contribution in its inventive step", do not prevent the enforcement of broad and trivial patents on algorithms and business methods. Rather, they prevent people from figuring out what is going on, and that may well be the intention behind these awkward formulas.

¹<http://www.symlabs.com/>

We therefore call on our Portuguese colleagues: Wake up and Catch the Thief! There is no time to lose! Join hands now with MEP Ilda Figueiredo and with all other politicians who are willing to defend the interests of Portugal's industry and citizens!

Jaime Villate, who represents the Portuguese Free Software Association ANSOL² and the Eurolinux Alliance at the hearing, explains:

Most employment in the IT sector in Portugal is created by companies of a size below 50 employees. Portuguese companies do not own a single one of the more than 30000 patents on algorithms and business methods that have been illegally granted by the European Patent Office (EPO) in Munich. Most people in these companies have protected their investments by means of copyright. The idea that an algorithm can be owned is completely unheard of to them and contrary to their ethics. When faced with the broad and trivial patents on abstract ideas which the EPO has been granting, they usually just say "You're kidding". It is very difficult to get people to face the reality that has been created in Munich and Brussels and that will wind down on us if we don't wake up now. Although the hearing was set up very late and hastily, we urge everybody to participate.

2 What happened in Port – Report after the Hearing

- Everyone in the meeting, except for the representative of the Portuguese Patent Office INPI, was against the directive.
- The INPI representative Isabel Alfonso said that there's a national consensus *for* the directive, based on an earlier consultation. Isabel Alfonso did not seem very convinced of this consensus herself and stressed that she was merely trying her best to say what INPI had told her to say. Later INPI provided a set of documents³ which explain how the previous "consensus" had come about, and promised to "re-open the consultations".
- Among the speakers were
 - Ilda Figueiredo (MEP who organized the hearing)
 - Jaime Villate (ANSOL president)
 - Tiago Fernandes (Electrical Engineer)
 - Paulo Marques (SME programmer)
 - another MEP
 - Isabel Afonso speaking for INPI

²<http://www.ansol.org/>

³<http://swpat.ffii.org/players/pt/index.en.html>

3 About Symlabs Inc – www.symlabs.com

Symlabs defines itself as “an energetic collection of bright and gifted software engineers”. These engineers have worked together as a team on various large directory development and deployment projects throughout Europe, United States and Japan. Some of Symlabs’ major clients include Vodafone UK, Vodafone Global Content Services (VGCS), Vodafone Spain and Vodafone Portugal. Witnessing first hand some of the repetitive challenges that these organizations were experiencing in their directory services and applications, it was decided that a valuable service could be offered in this specialized area. Symlabs began operations in a high-tech technology park in Lisbon, Portugal and has branched out to include its new headquarters in San Francisco, California, and an office in Madrid, Spain. Symlabs has since then evolved to become a middleware development company specializing in the development of LDAP directory solutions and directory development productivity tools.

4 Permanent URL of this Press Release

<http://swpat.ffii.org/journal/03/port0711/index.en.html>

5 Annotated Links

- **Portugal and Software Patents⁴**

Portugal, a nation whose citizens own none of the 30,000 software patents granted by the EPO as of summer 2003, has formed a “national consensus” in favor of software patents and of the EU directive proposal. This consensus was reached by a consultation exercise conducted by the Portuguese Patent Office (INPI) in 2001. Back then the INPI sent a pro-software-patent letter to 33 senior corporate executives, and received 6 responses, all of which applauded the INPI viewpoint. In summer 2003 MEP Ilda Figueiredo conducted another hearing which showed a large consensus of portuguese software companies against software patents. Impressed by this, INPI launched a second round of consultations.

⁴<http://swpat.ffii.org/players/pt/index.en.html>

- **JURI votes for Fake Limits on Patentability**⁵

The European Parliament's Committee for Legal Affairs and the Internal Market (JURI) voted on tuesday morning about a list of proposed amendments to the planned software patent directive. It was the third and last in a series of committee votes, whose results will be presented to the plenary in early september. The other two commissions (CULT, ITRE) had opted to more or less clearly exclude software patents. The JURI rapporteur Arlene McCarthy MEP (UK socialist) also claimed to be aiming for a "restrictive harmonisation of the status quo" and "exclusion of software as such, algorithms and business methods from patentability". Yet McCarthy presented a voting list to fellow MEPs which, upon closer look, turns ideas like "Amazon One-Click Shopping" into patentable inventions. McCarthy and her followers rejected all amendment proposals that try to define central terms such as "technical" or "invention", while supporting some proposals which reinforce the patentability of software, e.g. by making publication of software a direct patent infringement, by stating that "computer-implemented inventions by their very nature belong to a field of technology", or by inserting new economic rationales ("self-evident" need for Europeans to rely on "patent protection" in view of "the present trend for traditional manufacturing industry to shift their operations to low-cost economies outside the European Union") into the recitals. Most of McCarthy's proposals found a conservative-socialist 2/3 majority (20 of 30 MEPs), whereas most of the proposals from the other committees (CULT = Culture, ITRE = Industry) were rejected. Study reports commissioned by the Parliament and other EU institutions were disregarded or misquoted, as some of their authors point out (see below). A few socialists and conservatives voted together with Greens and Left in favor of real limits on patentability (such as the CULT opinion, based on traditional definitions, that "data processing is not a field of technology" and that technical invention is about "use of controllable forces of nature"), but they were overruled by the two largest blocks. Most MEPs simply followed the voting lists of their "patent experts", such as Arlene McCarthy (UK) for the Socialists (PSE) and shadow rapporteur Dr. Joachim Wuermeling (DE) for the Conservatives (EPP). Both McCarthy and Wuermeling have closely followed the advice of the directive proponents from the European Patent Office (EPO) and the European Commission's Industrial Property Unit (CEC-Indprop, represented by former UK Patent Office employee Anthony Howard) and declined all offers of dialog with software professionals and academia ever since they were nominated rapporteurs in May 2002.

⁵<http://swpat.ffii.org/journal/03/juri0617/index.en.html>

- **FFII: Software Patents in Europe**⁶

For the last few years the European Patent Office (EPO) has, contrary to the letter and spirit of the existing law, granted more than 30000 patents on rules of organisation and calculation claimed in terms of general-purpose computing equipment, called “programs for computers” in the law of 1973 and “computer-implemented inventions” in EPO Newspeak since 2000. Europe’s patent movement is pressing to legitimate this practise by writing a new law. Although the patent movement has lost major battles in November 2000 and September 2003, Europe’s programmers and citizens are still facing considerable risks. Here you find the basic documentation, starting from the latest news and a short overview.

⁶<http://swpat.ffii.org/index.en.html>