

FFII Opposition against Amazon

<http://swpat.ffii.org/lisri/04/amaz0125/index.en.html>

Workgroup

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english version 2025/01/04 by Holger Blasum*

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FFII has filed an opposition at the European Patent Office (EPO) against the Gift-Ordering Patent of Amazon. The FFII is asking the Technical Board of Appeal to revoke the patent and to return a more straightforward understanding of the European Patent Convention, which alone could securely prevent the granting of masses of broad and trivial monopolies on rules of organisation and calculation. This demand of the FFII is backed by a petition which has been signed by numerous politicians, entrepreneurs and organisations.

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1 Backgrounds

The gift ordering patent¹ was granted by the European Patent Office in Summer 2003. This patent was created by dividing the European version of Amazon-One-Click² into two patent applications. The Amazon-1-Click patent had become famous in 1998, when Amazon used it to obtain an injunction against its competitor Barnes & Nobles during the chrismats season. By a FFII press release, the public took notice of the EPO's decision to grant a successor of the 1-Click patent in August 2003. Until then, the proponents of the EU Commission's software patents directive had regularly claimed that patents like "Amazon-1-Click" would be impossible in Europe. Besides the FFII, two more parties have filed opposition: the Gesellschaft fr Informatik e.V.³ and the flower delivery service Fleurop.

FFII's legal representative is Olaf Koglin of Lenhardt Rechtsanwälte. André Rebentisch, press speaker of FFII, explains:

The patent system produces broad monopolies in combination with expensive administrative and judicial procedures. It has thereby created a paradise for patent professionals, who again promote the system by claiming that it benefits the economy as a whole. This claim has always been doubted and often negated by those economists who have endeavoured to subject it to scrutiny. When granting patents, at least special caution is needed. Increasing the number of patents by extending the invention concept⁴, as practised by the European Patent Office since the mid eighties, leads to a flood of harmful low-quality patents. Very many of the patents which the EPO has recently been granting are of similar breadth and triviality as the gift ordering patent of Amazon. Nowadays it is difficult to operate a webshop⁵ without infringing European patents. In the USA, the Federal Trade Commission has, after intensive hearings, concluded⁶ that software patents are damaging to innovation and competition. Claims to the contrary can be safely assumed to be empirically falsified. This is also the view of the European Parliament, which amended⁷ the European Commission's software patent directive proposal last September. But patent professionals are pushing⁸ governments and sectoral bodies to block the Parliament's decision. The European Patent Office is also persisting on its unfortunate path.

Hartmut Pilch, president of FFII, explains:

¹<http://localhost/swpat/pikta/mupli/ep927945/index.en.html>

²<http://localhost/swpat/pikta/xrani/1click/index.en.html>

³<http://localhost/swpat/gasnu/giev/index.de.html>

⁴<http://localhost/swpat/stidi/korcu/index.en.html>

⁵<http://webshop.ffii.org/>

⁶<http://localhost/swpat/papri/ftc03/index.en.html>

⁷<http://localhost/swpat/papri/europarl0309/index.en.html>

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In the past, e.g. in the “Controlling Pension Benefits System”⁹ decision, the European Patent Office has abused opposition proceedings against trivial business method patents as an opportunity to extend the limits of patentability while at the same time killing the trivial patent in question. Especially a patent such as Amazon Gift Ordering is susceptible to such manoeuvres. The opposition of GI seems to point into that direction.

By our opposition we remind the board of the context of its action. A new call Appeal¹⁰ signed by politicians, entrepreneurs and organisations urges the European Patent Office to immediately stop the illegal granting of software and business method patents. When the president of the European Patent Office, Dr. Ingo Kober, was asked about this during a hearing in the European Parliament, Kober referred in his published written answer¹¹ to the decisions of the technical board of appeals, which were not bound to his orders. Also national governments like to duck behind the Technical Boards of Appeals of the European Patent Office (EPO). It is time that we directly contact this de-facto patent legislator. The opposition procedure offers a good opportunity.

In our opposition we only referred to the valid law in the consistent interpretation given by case law and examination guidelines of the 80s or the European Parliament Vote of 2003. In contrast to the Pension Benefits doctrine the straightforward interpretation of the law gives a secure basis for withdrawing the contested patent as well as many other monopolies on algorithms and business methods framed in terms of general-purpose computing equipment.

2 Annotated Links

- **Amazon Kaufmethode in Europa Patentiert¹²**

This FFII Press Release of september 2003 drew attention to the EPO’s granting of the Amazon patent.

- **Aufrufe zum Handeln¹³**

The signators explicitly ask the EPO to follow the European Patent Convention and the European Parliament instead of the TBA’s illegitimate caselaw.

⁹<http://localhost/swpat/papri/epo-t950931/index.en.html>
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¹¹<http://localhost/swpat/lisri/04/kober0114/index.en.html>

¹²<http://localhost/swpat/lisri/03/amaz0818/index.en.html>

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- **EPO 0931/95: Controlling Pension Benefits System¹⁴**

The TBA used this case as an opportunity to extend patentability and at the same time spectacularly revoke one patent. The Pension Benefits doctrine was the basis of the European Commission's Directive Proposal, and it was completely negated by the amendments of the European Parliament.

- **One-Click Shopping¹⁵**

Amazon (internet bookstore) received a US patent on reducing the need for data input in case of repeated ordering through a network like the WWW. Based on this patent, Amazon sought an injunction against a competing bookstore. Amazon had applied for the same patent at the EPO under EP0902381 in Sep. 1998 under the name "Method and system for placing a purchase order via a communications network". By the time a search report was issued by the EPO, this patent had already aroused an uproar in the USA, leading to the discovery of new prior art, including similar patents which Amazon might be infringing. The EPO found the Amazon method patentable in principle, but listed new prior art in an examination report of 2001. Amazon decided to split the patent into two new applications. Of these, one, EP0927945, a method for simplified ordering of articles via Internet, was granted by the EPO in May 2003. The other is still pending.

- **Amazon Geschenkbestellung¹⁶**

If you want to program your online shop so that it delivers your articles as gifts to a third person specified by the customer, you might want to negotiate with Amazon Inc for a license. This patent, which is a direct descendant of Amazon's One Click Patent, was granted by the European Patent Office (EPO) in May 2003.

¹⁴<http://localhost/swpat/papri/epo-t950931/index.en.html>

¹⁵<http://localhost/swpat/pikta/xrani/1click/index.en.html>

¹⁶<http://localhost/swpat/pikta/mupli/ep927945/index.en.html>

- **Amazon 1Click¹⁷**

Amazon's application for a patent on its One-Click Shopping method at the EPO. The application reached the third stage of examination (A3), i.e. it was recognised as referring to a patentable invention and a full novelty examination was conducted. In 2001 the patent application was split into two new applications, of which one was granted and one is still pending.

- **Why Amazon One Click Shopping is Patentable under the Proposed EU Directive¹⁸**

According to the European Commission (CEC)'s Directive Proposal COM(2002)92 for "Patentability of Computer-Implemented Inventions" and the revised version approved by the European Parliament's Committee for Legal Affairs and the Internal Market (JURI), algorithms and business methods such as Amazon One Click Shopping are without doubt patentable subject matter. This is because

1. Any "computer-implemented" innovation is in principle considered to be a patentable "invention".
2. The additional requirement of "technical contribution in the inventive step" does not mean what most people think it means.
3. The directive proposal explicitly aims to codify the practise of the European Patent Office (EPO). The EPO has already granted thousands of patents on algorithms and business methods similar to Amazon One Click Shopping.
4. CEC and JURI have built in further loopholes so that, even if some provisions are amended by the European Parliament, unlimited patentability remains assured.

¹⁷<http://localhost/swpat/pikta/mupli/ep902381/index.en.html>

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- **FFII: Logic Patents in Europe**¹⁹

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.

3 Media contacts

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4 About the FFII – www.ffii.org

The Foundation for a Free Information Infrastructure (FFII) is a non-profit association registered in several European countries, which is dedicated to the spread of data processing literacy. FFII supports the development of public information goods based on copyright, free competition, open standards. More than 500 members, 1,200 companies and 75,000 supporters have entrusted the FFII to act as their voice in public policy questions concerning exclusion rights (intellectual property) in data processing.

5 Permanent URL of this Press Release

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¹⁹<http://localhost/swpat/index.en.html>