

Swedish Government Fighting for Software Patents

<http://swpat.ffii.org/lisri/04/sver0116/index.en.html>

Workgroup

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In a response to a parliamentary question in december 2003, Sweden's minister of justice Thomas Bodström endorsed the approach of the European Patent Office and the European Commission on software patents and criticised the European Parliament for amending the directive with the effect of narrowing the scope of patentability and making already-granted patents invalid. Bodström announced that his government will push for reversal of these amendments. His comments provoked applause from the patent movement (also called the "technostructure" in Sweden) and criticism from some software associations and companies.

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*<http://gibuskro.lautre.net/>

1 Introductory Remarks

The liberal MP Nyamko Sabuni submitted parliamentary questions to the government about its policy on the proposed software patent directive¹ and the European Parliament's amendments². Sabuni does not seem to be in favour of software patents. From justice minister Thomas Bodström's response of 2003/12/16 (see text below) it appears that the Swedish government is blindly following the patent establishment, which again is blindly following the European Patent Office in order to evade the basic policy questions.

The minister's statement contains several layers of misinformation.

1. The minister says that the Council took a first common position before the EP vote of 2003-09-24. That's false. The council common position can't come before the Parliament's first reading. The current state is Council first reading, not council second reading. The state this minister reports (second reading in council without a second reading in Parliament) might be illegal in EU law see EU treaties art 251. What the council did in november 2002 is no formal part of the codecision procedure and it's just a marketing/pressure move by patent offices, presumably with consent of their ministers. They talked, and issued a text³, but it was not their turn to speak, so it has no formal weight. It's just an early informal agreement by governmental patent experts. It may truly represent their governments' current intention, but it's not a completed first reading.
2. Bodström confuses current EPO caselaw with the current law. The EPO caselaw is widely criticised for not being in line with the law, and even according to the advocates of the directive the chief reason for having a directive is to remove doubts about the legality of the EPO's practise.
3. There is no significant difference between current EPO caselaw and the practise of the US Patent Office which Bodström claims he does not want in Europe. Nor is there anything in the Council's inofficial "position/alignement" that could prevent such a practise. Evidently it is the intent of the minister or the people standing behind him to allow unlimited patentability in Europe.
4. The minister boldly states that software patents as granted by the EPO are conducive to innovation and a lesser scope of patentability will mean less innovation. This statement is unsubstantiated and at odds with all scientific evidence as well as the common sense of the developers skilled in the concerned fields.
5. The swedish translation of c.i.i. is %, not "datorimplementerade uppfinningar" - probably a move to make sure nobody understands that c.i.i. is what it says it is

¹<http://localhost/swpat/papri/eubsa-swpat0202/index.en.html>

²<http://localhost/swpat/papri/europarl0309/index.en.html>

³

6. The minister says computer-related invention (datorrelaterade uppfinningar) and means pure software patents, as granted by the EPO. The EPO's newspeak term "computer-implemented invention⁴" (datorimplementerade uppfinningar) was apparently not yet euphemistic enough for Mr. Bodström. By renaming it to "computer-related inventions", Bodström makes it even less likely that his audience can understand what he is talking about.

2 The minister's answer with translation

Answer to question 2003/04:393 regarding computer related patents

Minister of Justice Thomas Bodström

Nyamko Sabuni has asked me about the ongoing EU-negotiations about a directive on computer related inventions. The question is partly about which actions I intend to take to clarify the legal situation in the area, partly about preventing that the consequences of the directive will render already granted patents void/inneffective in infringement situations.

The Directive is enacted by the Council and the Parliament through codecision procedure. Both the Council and the Parliament has finalized their first processing of the legal document. The Council took a common position november 14 2002 and the Parliament accepted their statement at the first reading september 24 this year. The Council has just now started its second processing [behandling].

The Commission proposal and the general alignment/position of the Council aims to make clear the legal situation through uniform rules within the union. The proposal builds on the practice that is applied by the EPO. This is an application of law that already is embraced/serving as guidance in Sweden and in other states that are members of the EPC.

Furtermore, it is the ambition/will of the Commission and the Council to establish a boundary against the legal situation in the US, where they grant patents on computer related business methods. That is a development that the Commission and the Council does not want in Europe. The establishing of a boundary is realised by the requirement that all computer related inventions must involve a technical contribution, that is a technical new way of thinking [technical newthinking], to be patent protectable.

Sweden, as also a broad majority of EU member states, stand behind the general alignment/position of the Council. Sweden thinks that the general alignment/position involve a well balanced solution that makes it possible for the business world to further future protection of their innovations, at the same time as the scope of the patent protection does not become unreasonably broad in relation to third parties.

The Directive is important since it creates clearer rules for when patents on computer related inventions can be granted/given, at the same time as it clearly marks/indicates that the EU will not go in the direction towards the american legal development.

The Parliament has in its statement proposed a large number of changes to the Commission proposal. Many of them are such that they substantially would limit the poss-

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abilities of today to get and enforce patent protection for computer related inventions, and thereby have serious consequences for employment and economic growth. The proposals [of the Parliament] in those parts, goes against the general alignment/position of the Council.

What now is about to happen in the negotiations, is that the Council shall review and take a position on the Parliament statement. The Council will then decide on a common position, which will be given to the Parliament at their second reading.

In the future work [arbetet], I will forcefully work for [verka för] that the directive gets a balanced solution in line with the general alignment/position of the Council. Such a wording means that the legal situation in the field is clarified and that the business world is given satisfactory opportunities of protection of their innovations in the field.

3 Annotated Links

- **Bodström's answer**⁵
- **Awapatent 2004/01/14: Sweden prepared to fight for software patents**⁶

A patent litigation service company hyping Bodström's answer:

Sweden refuses to accept the EU Parliament's proposal for drastically diminished patent protection for computer-related inventions. That is the clear message given by the country's Minister for Justice, Thomas Bodström, in his reply to a question from the Swedish parliament.

Awapatent is a patent bureau that last year built an extra floor on top of their already mighty building here in Malmö.

(Swedish Private Equity & Venture Capital Association⁷ Awapatent is an Associate Corporate Member. NUTEK and other state agencies for "innovation and technology transfer" are also members. NUTEK (co)financed e.g. the startup Hapax.com, owner of many text processing patents (granted by SePTO).)

⁵<http://www.riksdagen.se/debatt/fragor/svar.asp?rm=0304&nr=393>

⁶<http://www.newsonline.nu/release.asp?PmId=33570&ComId=90>

⁷http://www.vencap.se/start_e.asp