

CEOs of big telecom and electronics companies complain about Parliament's No to Software Patents

<http://swpat.ffii.org/news/03/telcos1107/telcos031107.en.html>

Workgroup

swpatag@ffii.org

english version 2004/01/24 by PILCH Hartmut*

2004-01-24

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: The letter is characterised by untruthful dogmatic assertions which say much about the thinking of patent departments and little about the interests of their companies, many of whose employees, especially software developers, support the positions of FFII.

Contents

1	The Text	1
2	Annotated Links	5

*<http://www.ffii.org/> phm

1 The Text

Minister Rocco Buttiglione, Competitiveness Council Commissioners Fredrik Bolkestein and Erkki Liikanen, European Commission

November 07, 2003

Dear Minister and Commissioners,

Re: Proposed Directive on the Patentability of Computer-Implemented Inventions (CIIs)

As chief executive officers of five of Europe's leading telecommunications and consumer electronics companies, we write to express our deepest concerns about the amendments recently adopted by the European Parliament to the Commission's proposed Directive on Patentability of Computer-Implemented Inventions (CIIs), commonly known as the Software Patents Directive.

It may be worth noting that the abbreviation "CII" is not used in the original directive title. The corporate patent lawyer who wrote this (Tim Frain from Nokia?) seems very eager to use every appropriate and inappropriate opportunity to launch "CII" as an abbreviation for replacing the colloquial term "software patents". It is clear that this is a patent lawyer wording, not a wording of CEOs of telecommunication companies. More on the campaign around the term "computer-implemented inventions", which was started at the EPO in May 2000, is found in the documentation *What is a Computer-Implemented Invention?*¹.

Collectively, our companies invest Euros 15 billion per annum in R&D. In some fields as much as 90% of these investments are in CIIs as defined in the directive proposal.

The R&D investments of the undersigned companies are concentrated on the development and deployment of telecommunication machinery and solutions. About 5-10% of this money² is spent on patent acquisition. The development of new computing ideas, as expressed in the patents owned by these companies, accounts for far less than that, probably below 1% of their expenses. Patents are moreover only one of several forms of formal and informal ways in which these companies protect their investments.

Details about the patent portfolio and typical software patents of the companies in question can be found at

¹<http://swpat.ffii.org/papers/eubsa-swpat0202/kinv/eubsa-kinv.en.html>

²see Arlene McCarthy's figures which were apparently supplied by the undersigned companies themselves.³

- Nokia and Software Patents⁴
- Alcatel and Software Patents⁵
- Ericsson and Software Patents⁶
- Siemens and Software Patents⁷
- Philips and Software Patents⁸

Having a stable and reliable patent system in place is vital to protect R&D investment and to encourage future innovation in Europe.

This may be the case for the pharma industry. As far as the subject matter of the directive is concerned, it contradicts all common knowledge and evidence gathered from economic studies⁹ so far.

The original aim of the directive was (1) to harmonise the law in Europe, and (2) stop the drift towards the US approach of patenting pure business methods and non-technical software, while (3) safeguarding interoperability. We firmly support all these aims.

The European Commission indeed claimed that these were the aims of its directive proposal, but upon a closer look, the proposal achieved none of these aims. Instead it achieved other unnamed aims, such as unlimited patentability of “computer-implemented business methods” and absolute priority of such patents over any interoperability considerations. The patent departments of the companies undersigned under this letter were major supporters of these real aims. One should judge the tree by its fruits.

The directive was also intended to maintain and codify the status quo in Europe based on current best practice, which has enabled open source software business models to flourish alongside patents, while also protecting the interests of small software developers and SMEs generally. We firmly support these aims as well.

By “status quo in Europe based on current best practise”, the bosses are referring to a practise of the European Patent Office¹⁰ which is not significantly different from that of the USPTO. If there was anything that protected small businesses in Europe, then it was the legal uncertainty which results from the fact that this “best practise” is at odds with the written law¹¹.

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

⁵<http://swpat.ffii.org/players/alcatel/index.en.html>

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

⁷<http://swpat.ffii.org/players/siemens/index.en.html>

⁸<http://swpat.ffii.org/players/philips/index.en.html>

⁹<http://swpat.ffii.org/archive/mirror/impact/swpatsisku.en.html>

¹⁰<http://swpat.ffii.org/patents/samples/swpikmupli.en.html>

¹¹<http://swpat.ffii.org/analysis/epc52/epue52.en.html>

As a report by the French State Planning Commission (Commissariat du Plan) of 2002¹² says:

Only the armistice which is currently prevailing, precisely due to the legal uncertainty around the notion of software patent, explains in effect that the existing patents are not more frequently used.

The stated aim of the directive proposal advocated by the European Commission and the undersigned CEOs was precisely to remove this “legal uncertainty” which has been “protecting the interests of small software developers and SMEs generally”.

However, the vote in Parliament on 24 September 2003 has completely turned the Commission’s original proposal around, removing effective patent protection for much — and in the case of telecommunications and consumer electronics, probably most - of our R&D investment. This would have devastating consequences for our companies. It would be open for all-comers to exploit the results of our expensive R&D programmes at no cost, and even without any R&D overheads of their own. This is contrary to what was stated at the Lisbon European Council, namely that “innovation and ideas must be adequately rewarded within the new knowledge-based economy, particularly through patent protection”.

This bold statement contradicts all common knowledge about the economics of software development in the telecom field as in other fields.

Anyone who wants to compete with one of the undersigned companies would have to incur huge costs. Imitating and reimplementing software itself is an extremely costly process, especially when, as is regularly the case, the software is available only in binary form and copyright has to be observed.

see Statement of Robert Barr, IPR department of CISCO¹³

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. Overall there will be less software-related innovation in Europe, and ultimately Europe is unlikely to meet the Lisbon goal of becoming the “most competitive and dynamic, knowledge-based economy in the world”.

This unreasoned assertion contradicts the common sense of software developers, including about more than 500 employees of the undersigned companies who have signed the NoEPatents Petition¹⁴. From conversations with managers at some of the undersigned companies (and from testimonies such as the one of Robert Barr from Cisco, see above) we know that patents are widely perceived to be a brake on innovation even at big telcommunication and electronics companies.

¹²<http://www.plan.gouv.fr/organisation/seeat/Economiedulogiciel/Documents/rapport.pdf>

¹³<http://swpat.ffii.org/papers/cisco/ftc020228-cisco.en.html>

¹⁴<http://swpat.ffii.org/news/03/epet0622/swnepet030622.en.html>

Parliament's amendments suggest that Europe is ready to fly in the face of international obligations under the TRIPS Agreement.

This again is a well-documented lie.

See Security in Information Technology and Patent Protection for Software Products – Expert Opinion by Lutterbeck et al written at the order of the German Ministry of Economics and Technology¹⁵

Furthermore they would change the legal climate in Europe so suddenly, dramatically and unexpectedly, that they already send a message to the rest of the world that one of the legal cornerstones necessary for attaining a viable European Information Society is unstable, unpredictable, and unreliable.

While the patent system may be a corner stone of a viable pharma industry, no serious economic study has ever claimed that it is beneficial, let alone indispensable, for the information society. Rather, the information society needs a stable, predictable and reliable reassurance that everyone is free to create and publish his own copyrighted works and to interoperate with other systems. The Parliament's amendments provide precisely this reassurance.

We therefore believe the Council and the Commission need to take appropriate measures affirmatively to redress the current situation by sending a strong counter-signal that the law in Europe will not be changed suddenly and dramatically, and confirming that Europe will not ignore or flout international obligations.

In other words the bosses of 5 large companies are calling on administration officials to take legislative decisions against the European Patent Convention and against the EU's only democratically elected legislative body.

The Directive as amended by Parliament will deal a severe, perhaps fatal, blow to our shared aspirations declared at the Lisbon Summit for Europe to become the most competitive knowledge based economy in the world.

The current legal framework for CIIs in Europe is serving all stakeholders well. We do not want to see any sudden or dramatic reduction in the scope of what is patentable. If a solution cannot be found which codifies the status quo, it would be better to have no directive at all than a directive which does untold damage to European industry.

Sincerely,

These concluding remarks show that the support of the signators for the professed goals of “harmonisation” and “clarification” are indeed of minor importance.

¹⁵<http://swpat.ffi.org/analysis/trips/swpattrips.en.html>

The CEOs of the five companies have allowed themselves to be abused by their patent departments. These patent departments have been producing thousands of broad and trivial patents on methods of organisation and calculation every year, and they want a directive that makes these patents enforceable. If they do not get such a directive, they prefer to have an unclear situation (where their patents can at least continue to be collected for corporate accounting and tax evasion¹⁶).

Some of the undersigned CEOs like to present themselves as leaders with a scientific mind and a sense of social responsibility. Quoting this letter may “deal a severe, perhaps fatal, blow” to that aspiration.

2 Annotated Links

- **telcoceos031107.pdf**
- **PDF version derived from the original msword document which contained traces hinting to (someone at) Nokia as the author.**

(eicta031127 The Eicta press release was largely copy&pasted from this “CEO letter”. It was explained to the press by Tim Frain, patent chief of Nokia. Its contents also reflect Frain’s personal style.)

siemens-brandt03
reuters-telcos0311
bswk031216
europarl-reag0309
swpatnokia
swpatericsson
swpatalcatel
swpatsiemens
swpatphilips

¹⁶<http://swpat.ffi.org/analysis/tax/swpatcteki.en.html>