

UK High Court 2002-03-15: patent infringement doesn't depend on server location

<http://swpat.ffii.org/papri/ewhc-mh020315/index.en.html>

Workgroup

swpatag@ffii.org

english version 2004/08/16 by Hartmut PILCH*

2005-01-06

According to this decision (Menashe v. Hill) of the High Court of England & Wales, a game played between a foreign server and UK clients would still infringe on a UK (EP) patent for a computer-implemented game system, if that patent is valid and the game falls within the claims. The fact that the server is placed outside of the territory, so that the system as claimed does not physically occur within the UK jurisdiction, does not protect the defendant from liability.

Contents

The judge adopts a somewhat unbalanced teleological (purpose-oriented) law interpretation, according to which it is the purpose of patent law to protect the inventor and claim-wordplays, which are commonplace and even the basis of software patentability in Europe, may be played by the patentee but not by those who try to stay out of harmsway. The only reason why in this case it was possible to dodge was that an

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

illegal software patent had been granted. To use such a patent as a basis for creating a precedent that blurs the territoriality principle of patent law seems quite bold.

It is also unfortunate that the defendant did not fight on the basis that he was using only a game and program as such, with no extra inventive element, and that therefore, even if the patent could be valid, he could not have been infringing on it, since the invention, according to art 52 EPC, must have been in something beyond a mere game or computer program.