

# John Mogg and Software Patents

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

Workgroup\\swpatag@ffii.org

2003-12-15

John Mogg has been Director General of Internal Market under commissioner Bolkestein and his predecessors since 1993, i.e. throughout the time of preparation of the Software Patentability Directive. He took particular interest in the software patentability debate and appears to have been an ardent believer in dogmas such as “intellectual property is the key to innovation, the more property the more innovation”.

## Contents



John Mogg has held his present position of Director General of DG XV (Internal Market and Financial Services) in the European Commission since May 1993. Before that he was Deputy Director General in the Internal Market and Industrial Affairs Directorate General from 1990. Between 1989 and 1990, he was Deputy Head of the European Secretariat in the United Kingdom Cabinet Office. Prior to that he held a number of senior positions within various United Kingdom Departments : these included Under Secretary in the Department of Trade and Industry and Principal Private Secretary to three Secretaries of State. From 1979 to 1982 he was the First Secretary at the United Kingdom Permanent Representation in Brussels. Mr. Mogg's early career was spent in British industry with the Rediffusion group.

- **John Mogg: The importance of software patents for the European Commission<sup>1</sup>**

keynote speech by John Mogg, british politician heading the patent policy work at the European Commission's Directorate General for the Internal Market

- **The Hidden Patent Agenda of the European Commission<sup>2</sup>**

Jean-Paul Smets writes in spring 2000: The European Commission's Directorate for the Internal Market has built a consistent network of fallacies to argue in favour of software patents. It is closely following a new proprietarist ideology championed by the United States government. Expect the Directorate to push patents on intellectual methods in the near future.

---

<sup>1</sup><http://www.patent.gov.uk/about/ippd/softpat//1030.htm>

<sup>2</sup><http://www.eurolinux.org/news/agenda/index.en.html>

- **WIPO Ecommerce Patent Conference 2001 – Mogg CV**<sup>3</sup>

Mogg was a keynote speaker at this conference. Here you find most of his CV data and his presentation<sup>4</sup>. In the speech, he uses the word “balance” very often. Although this seems may have learnt something since the London conference of 1998, the directive proposals that came out of Mogg’s directorate don’t seem to show any noticeable progress.

- **The UK Patent Family and Software Patents**<sup>5</sup>

Much of the lobbying for software patents in Europe has been done by British patent lawyers and patent officials wearing the hat of the European Commission or the British government. Most of the law-drafters and alleged “independent contractors” for the European Commission (CEC) were members of the British patent family. The UK Patent Office (UKPO) was the first national patent office to officially follow the European Patent Office (EPO) in allowing direct patent claims to computer programs in 1998. The UKPO has also succeeded in keeping its hand on the British government’s patent policy, in moderating a public consultation which showed strong public opposition to software patentability, and, most admirably, in interpreting this public opinion as a legitimation basis for (1) establishing software (including business method) patents in Britain and (2) pushing Brussels to establish them in all of Europe. The UK Patent Family appears to be the strongest single force behind the European Commission’s software patentability directive project.

---

<sup>3</sup><http://ecommerce.wipo.int/meetings/2001/conference/speakers/mogg.html>

<sup>4</sup><http://ecommerce.wipo.int/meetings/2001/conference/presentations/pdf/mogg.pdf>

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

- **CEC & BSA 2002-02-20: proposal to make all useful ideas patentable**<sup>6</sup>

The European Commission (CEC) proposes to legalise the granting of patents on computer programs as such in Europe and ensure that there is no longer any legal foundation for refusing american-style software and business method patents in Europe. “But wait a minute, the CEC doesn’t say that in its press release!” you may think. Quite right! To find out what they are really saying, you need to read the proposal itself. But be careful, it is written in an esoteric Newspeak from the European Patent Office (EPO), in which normal words often mean quite the opposite of what you would expect. Also you may get stuck in a long and confusing advocacy preface, which mixes EPO slang with belief statements about the importance of patents and proprietary software, implicitly suggesting some kind of connection between the two. This text disregards the opinions of virtually all respected software developers and economists, citing as its only source of information about the software reality two unpublished studies from BSA & friends (alliance for copyright enforcement dominated by Microsoft and other large US companies) about the importance of proprietary software. These studies do not even deal with patents! The advocacy text and the proposal itself were apparently drafted on behalf of the CEC by an employee of BSA. Below we cite the complete proposal, adding proofs for BSA’s role as well as an analysis of the content, based on a tabular comparison of the BSA and CEC versions with a debugged version based on the European Patent Convention (EPC) and related doctrines as found in the EPO examination guidelines of 1978 and the caselaw of the time. This EPC version help you to appreciate the clarity and wisdom of the patentability rules in the currently valid law, which the CEC’s patent lawyer friends have worked hard to deform during the last few years.

---

<sup>6</sup><http://swpat.ffii.org/papers/eubsa-swpat0202/index.en.html>