

Robert J. Hart and Software Patents

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

Workgroup\\swpatag@ffii.org

2003-12-15

Some data and links about one of the leading figures of the British software patentability lobbying effort at the European Commission.

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Robert J. Hart is a british Chartered Patent Agent, European Patent Attorney and Fellow of the British Computer Society. Formerly the Intellectual Property Development Executive for Plessey Telecommunications. Around 2000 he was an independent consultant in the field of intellectual property. Consultant of the European Commission on both the Software Directive and the Database Directive. Consultant to WIPO and the World Bank. Secretariat to the CAI Founders Group handling licensing of the intellectual property in the CT2 Air Interface an Senior Associate with EAG Ltd who performed a study contract for the Commission on the Member States implementation of the Software Directive.

- **Robert Hart 1997: The Case for Patent Protection for Computer Program-Related Inventions¹**

Patent lawyers try to create the impression that the United States introduced software patents after a conscious, public-opinion based debate. One of the most outspoken pro software patent activists at the European Commission, Robert Hart, argued the case in 1997 by misrepresenting the positions of some major patent-critical voices as being pro software patent. Hart later co-authored an “independent study” at the order of the European Commission. Both use approximately the same methodology.

¹<http://swpat.ffii.org/papers/clsr-rhart97/index.en.html>

- **IPI 2000: The Economic Impact of Patentability of Computer Programs²**

A patent advocacy text by the London Intellectual Property Institute, ordered by the Industrial Property Unit at the European Commission (CEC Indprop), finished in spring 2000, held back until Oct 2000. The name is misleading: this is not an economic study. There is only one chapter which deals with economics but even this chapter only roughly summarises third parties's works. Basically this pseudo-study only restates well-known beliefs of civil servants from the british patent establishment who at the time were in charge of the European Commission's Industrial Property Unit at DG Markt (Directorate General for the Internal Market). Yet, while main author Robert Hart is a well known patent lawyer and lobbyist, the economics chapter was written by an outsider, Peter Holmes. It provides evidence to show that software patents have damaging effects on economic development and tries to balance this by adding some unreasoned statements in favor of software patents. Holmes later explained that he had no other choice in view of the "convictions" of his partners. Yet the CEC Indrop people did not like the study: they locked it away for half a year. During this time the European patent establishment was preparing to rewrite Art 52 EPC so as to remove all limits of patentability. In October 2000, after the plans been dropped, CEC/Indprop suddenly published the IPI treatise and used it as a basis for a "consultation exercise". From then on, various pro software patent proposals from Brussels have again and again relied on this "economic study" for justification.

²<http://swpat.ffii.org/papers/indprop-ipi00/index.en.html>

- **UK Patent Office: Software Patentability Rally Brussels 2002-06-19**³

The UK Patent Office, wearing the hat of the British Government, has entrusted one of its subcontractors to organise a high profile rally in support of the proposed CEC/BSA software patentability directive. Speeches will be held by hard core patent movement activists from the European Commission, the UK Government, the European Patent Office, the IBM patent department and some well-known patent law firms. At the end of an intensive 6 hour long software patentability propaganda firework a podium discussion will be held in which an “open source representative” will be allowed to sit at the table. The organisers’ initial choice was Alan Cox. Alan has occasionally expressed deep concern about the software patent problem but, as a core developer of the Linux kernel and other key projects, he never really had the time to study the legal intricacies. This fact alongside with his long hair and beard seemed to make him particularly qualified for the role of the social romantic dissident, generously tolerated by a group of patent lawyers posing as the businessmen of the real software industry. Alan immediately understood the game and declined the invitation, handing the case over to the Eurolinux Alliance. We have meanwhile been put on the conference program, but our abstract was doctored, our criticism suppressed, our message distorted, so that now we nevertheless fit into the design of this rally.

- **The UK Patent Family and Software Patents**⁴

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.

³<http://swpat.ffii.org/events/2002/ukpo06/index.en.html>

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