

SOFTWARE PATENTS V3.0: THE UNITARY PATENT

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'European' law on software patents

1. European Patent Convention of 1973 (revised in 2000)
2. Regulation (EU) No 1257/2012 of 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection

EPC: Article 52

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

- (a) discoveries, scientific theories and mathematical methods;
- (b) aesthetic creations;
- (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
- (d) presentations of information.

EPC: Article 52

(3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

Article 52 applied by the EPO

by the end of 2000, EPO issued over
20 000
software patents

see: *Promoting Innovation through Patents. The Follow-up to the Green Paper on the Community Patent and the Patent System in Europe. COM (99) 42 final*, 5 February 1999.
http://ec.europa.eu/internal_market/indprop/docs/patent/docs/8682_en.pdf

'Technical' according to EPO

- Controlling the operation of a technical apparatus or a technical process
- Improving the internal functioning of the underlying computer
- Improving the efficiency, reliability, robustness, security, or compatibility of the software
- Saving CPU resources, saving network bandwidth
- Improving the retrievability of data within huge data collections

Software Patents v2.0



Software Patents v3.0: the Unitary Patent

"The acrimonious debate over the proposed directive on computer-implemented inventions might never have arisen if the patent litigation system in Europe had been unified, thereby eliminating the possibility of disparate national rulings on the same patent matter."

-- David Sant, former EPO lobbyist in Brussels

Unitary Patent: How legislation is sold

"Can software be patented under the new rules?"

No. The unitary patent package will not change the rules on granting a patent, but only the geographic extent of the legal protection that a patent affords, once it has been granted."

– European Parliament, The new EU unitary patent Q&A <http://ur1.ca/oczi5>

Unitary Patent: EPO and what the law means

Intellectual
Property

IP Magazine
@ipmagazine



Following

#EPOorg's G Philpott @londonIPsummit:
UPC to provide strong harmonisation in ICT
applications that will play a dominant role in
patent world

Unitary Patent: why will it enforce swpats?

- Pro-patent specialized courts
 - technical judges
 - elected from the patent community
 - International waters
 - US experience
 - No Supreme Court on top
 - ECJ not concerned?
 - Not EU law as such
 - Large German influence with pro-swpat tradition

Unitary Patent: other problems

- Democracy
 - European Parliament is powerless
 - Reform in international law
 - EU is semi-democratic, what about FIFA?
 - ECJ art 6 and 8, rejection by UK
 - No balance with other laws
 - Patent law in standalone mode in its own box

Unitary Patent: Belgian Challenge

- Languages: FR+NL+DE:
 - no translations other than EN
 - Automated translations with Google Translate (Don't be evil)
 - Automated translations without a legally binding effect

Unitary Patent: Belgian Challenge

- Languages discrimination is OK for the European Court of Justice:

„The Court emphasises that the language arrangements established by the regulation make access to the UPC and the patent system as a whole easier, less costly and legally more secure.“

Unitary Patent: Belgian Challenge (2)

- Rules of procedure
 - 130 pages of legal rules not made by Parliament(s)
 - Controversial rules (bifurcation, threshold for injunctions, freeze of assets, etc...)
 - Judges that write the rules of their own court

Unitary Patent: Belgian Challenge (3)

- EPO is irresponsible in Court
 - In Re:Bilski is not possible for patent applicants
 - Rule of law
 - L'etat de Droit: „*L'État de droit peut se définir comme un système institutionnel dans lequel la puissance publique est soumise au droit*”

Unitary Patent: Belgian Challenge (4)

- Timing: 6 weeks not 6 months
- Rejected
- Go to another country

Unitary Patent: ECHR challenge

- Language discrimination
- Administrative Committee
- EPO and rogue administration
(rule of law principle)

Unitary Patent: Rogue EPO



Unitary Patent: Actions

- Legal challenge is easy: just throw money at lawyers and they will eat it whole
- Ask your parliaments to say NO to the Unitary Patent Monster
- UK, DE, etc not yet ratified

Unitary Patent: Questions?

