

Unternehmer gegen Softwarepatentierung



Common Declaration Against Patents on Software

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We – small and medium sized enterprises (SMEs) – are concerned about the fact that the problem of broad patent claims on software is still not sufficiently addressed. Even after the EU parliament rejected the “Directive on the Patentability of Computer-Implemented Inventions” [1] with an overwhelming majority in July 2005, there is no endeavour to define clear and effective restrictions preventing patents on software.

To us, patents do not offer any advantage in the usage or creation of software. For the software developers amongst us, the Author's Rights (often referred to as “Copyright”) are the most appropriate form of protection for our works, whereas patents which affect computer programs undermine the Author's Rights. For our companies, these patents are significant obstacles to the operational business and often even pose existential threats:

- The European Patent Office (EPO) continues to grant software patents. Thus, it infringes on the text and spirit of existing regulations, such as the German Patent Law or the European Patent Convention. This continuously increases legal uncertainty.
- It is impossible to perform reliable research on software patents. Therefore, no one can avoid to unintentionally infringe patents when developing or using software. The resulting risk of existence-threatening litigations is unforeseeable.
- Development and usage of Open Source Software is incompatible with patents on software. Especially for our enterprises, the usage of Open Source Software is indispensable.
- Software patents massively increase the costs of software development and lead to monopolisation. The middle-sized imprint of the European business landscape, which constitutes one of Europe's most important advantages of location, would get lost.

We call for a legal framework which prevents interpretations that allow computer programs to be affected by patents. Expedient approaches do exist – e.g. the proposals of Buzek/Rocard of June/July 2005 [2]. Such a legal framework must unambiguously preclude that any software patent granted by the EPO can ever be legally enforced.

Additionally, all processes in the European Patent Organisation (EPOrg) must be subject to independent democratic control. The principle of separation of powers has to equally apply to the European patent system. The EPOrg and its clerks must therefore not be assigned any tasks within the European jurisdiction.

The vitality of small and medium sized enterprises is a prerequisite for Europe to achieve the goals of the Lisbon Agenda [3]. Our companies are an essential element of Europe's economy and a supporting pillar of its employment market. We depend on a general framework that supports our creativity and productivity instead of hampering them.

Software does not need protection *through* patents but protection *against* patents.

[1] <http://register.consilium.eu.int/pdf/en/04/st09/st09713.en04.pdf>

[2] [http://www.europarl.europa.eu/registre/seance_pleniere/textes_deposes/rapports/2005/0207/amendements/P6_AMA\(2005\)0207\(135-155\)_EN.pdf](http://www.europarl.europa.eu/registre/seance_pleniere/textes_deposes/rapports/2005/0207/amendements/P6_AMA(2005)0207(135-155)_EN.pdf)

[3] http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/de/ec/00100-r1.d0.htm

patentfrei.de is an initiative of small and medium-sized German enterprises. It has been founded in 2004 to contradict the highly controversial software patent directive, which has eventually been thrown down by EU Parliament. In the spirit of patentfrei.de's "Common Declaration Against Patents on Software" patentfrei.de continues to represent the small and medium-sized enterprises. Their biggest concern is not the protection *through* patents, but the protection *against* patents. Supported by partner associations, the patentfrei.de initiative today represents some ten thousand German SME's with main focus on IT, software development and the automation sector.

patentfrei.de' official partner associations:



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Open Source Auto-
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