

Software Patents: a Management Perspective



Reinier B. Bakels

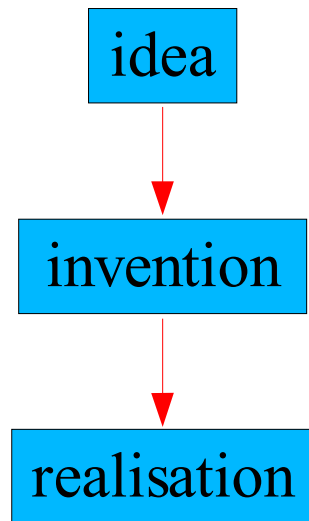
Institute for Information Law - University of Amsterdam

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Questions ...

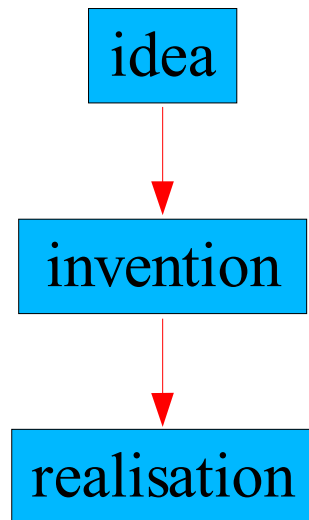
- Ideas, inventions and patents ...
- What is a software patent?
- Who benefits from software patents?
- How usable is the directive?
- What should legislators do??

Ideal Patent World



- valuable invention
- protection of investment
- reward for disclosure
- acceptable restriction of competition

Deterioration



- idea patent with limited valuable by itself
- no substantial investment
- disclosure irrelevant
- unacceptable blocking effect

“Strategic” patenting

- Age-old “text-book” practice:
 - build “easy” patents portfolio
 - cross-licence to similar companies
 - block new entrants (SME!)
- Good for
 - large players
 - patent lawyers and patent offices
- Bad for anybody else ...

Software patents

- typically: “ideas” rather than inventions
 - Source e.g. dr. Melullis from German Supreme Court (BGH).
- directive
 - “technical contribution” approach unusable
 - proven unworkable in EPO and German courts
 - “desired” outcome leads to inconsistent application!
 - criteria economically unfounded

Directive and amendments

- “tax law” approach
 - very detailed rules
- opportunity for (expensive) patent attorneys
 - *a lawyers paradise!*
- arms race
 - rules to be updated again and again
- unsatisfactory results at huge cost

Structural approach

- structural classification of objects that may require legal protection *badly needed*
- criteria must be *economically* meaningful
- lawyers should build *clear* and *concise* rules based on such criteria
 - interpretation should be neither guesswork nor a word game
- definitely: no more patents for mere ideas!

Proposition

- complexity of directive amendments shows this approach is a failure
- not yet another consultation! BUT:
- a task force of senior “wise men”
 - mixed economists/lawyers
 - objective: define the “problem” and propose a high-level action plan
- The current patent system is *not* healthy!

Directive objectives

- Maintain status quo - roughly
 - prevent business method patents
- Improve legal security
 - but very confusing new wordings
- Improve unity of law
 - if and when case law is developed