



Intellectual Property Watch

Industry Readies For Round Two Of EU Patent Directive

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Prague – Patent-dependent industries that spent heavily for lobbying on a failed directive on the patentability of computer-related inventions are learning from their mistakes as they prepare for the possible resurrection of the issue.

Lobbyists attending a Progress and Freedom Foundation (PFF) in Prague on 17 January signalled they will move early on the patent directive issue following the European Commission's release this week of [a questionnaire](#) asking for views on the patent system. Comments received by the 31 March deadline could lead to the formulation of a new proposed directive.

"It's starting again," said Guenther Schmalz, director of IP for Europe for software maker SAP. "And I hope this time we will be better prepared."

Schmalz, who lobbied on the directive last year, said industry "started very late" last time and will not let it happen again. He told Intellectual Property Watch that industry representatives developed informal networks last summer which are being revived. The networks are specific to each industry but also cut across industries that use patents.

Schmalz added that the difficulty in getting cross-industry consensus on specific positions led to favouring informal networks rather than formal coalitions. For instance, companies that make software can have different purposes for patented products. His company is the third largest independent software maker in the world after Microsoft and Oracle, but other companies develop more software than SAP. Siemens has twice the number of software developers that SAP has, but Siemens develops the software embedded in its machines rather than for retail.

Schmalz said opponents of the directive had a three-year start on industry. He described the opponents' arguments and tactics, such as protests and an effective door-to-door campaign to convince parliament members of the problems with the directive. Schmalz called for a "bridge" between positions on the directive, and posed questions to be answered about the need for special rules for the protection of computer-implemented inventions.

He identified some areas of disagreement with opponents that will need to be resolved, such as interoperability and whether a requirement that a software patent solve a technical problem would limit frivolous patents.

Jonathan Zuck, whose Association for Competitive Technology includes 4,000 large and small companies, said patent quality is “key” to getting support for a directive. Zuck, along with Stephen McGibbon, Microsoft’s representative for Central Europe, and others at the meeting acknowledged a problem with frivolous patents. Zuck said they can never be entirely eliminated, but fears can be lessened by taking the quality problem “head on” and showing it can be addressed. He also said more emphasis should be placed on letting small businesses speak for themselves on the issue.

Schmalz also mentioned an effort to develop a European community-wide patent, but said the requirement to put every filing in all 25 EU languages makes it more expensive than obtaining a patent. Zuck said industry “desperately wants” community patents.

Despite SAP’s call for a bridge, some meeting participants fed distrust of the directive’s opponents. PFF’s James DeLong asked how the opposition got its funding, and whether it came from foundations. Schmalz replied that it came from open-source software companies. Speaking to the like-minded business audience, Schmalz also said that some industry representatives reported being personally threatened during the debates last summer.

Meir Pugatch of the University of Haifa (Israel) and the pro free market Stockholm Network, warned industry representatives that this is not time for a “vacation” in the aftermath of last summer’s defeat. If there is a need to be filled, he said, it will be filled by one side or the other, so industry would be advised to act quickly.

Microsoft’s McGibbon said EU Internal Market Commissioner Charlie McCreevy sees the patent directive as “fundamental” to Europe’s productivity and competitiveness. Later, PFF President Ray Gifford said fear of lost competitiveness is an effective argument with policy makers. Schmalz also raised the spectre of Asian software developers taking jobs from Europeans if measures are not taken to improve the European patent system.

Highlighting the need for improvements in the patent system, DeLong said that in the United States, each patent application gets about 20 hours of review, but that because of the backlog it takes two years for the decision to come out.

Czechs Lean Toward Support for Directive

Dana Berova, minister of informatics for the Czech Republic, predicted the discussions over EU software patents “will continue for years.” She made clear that her country backs the patent directive, which she said should not change Czech law.

In response to questions, she said the Czech government is not under pressure to oppose intellectual property protections, and that the education of lawyers and others needs to take place to improve the environment for patenting.

Berova also said that in the debate over a development agenda at the World Intellectual Property Organisation that smaller economies should not have different levels of

intellectual property rights appropriate to their size and conditions. Differing levels of development should be addressed in other ways, she said.

Karel Cada, president of the Czech Industrial Property Office, said Czech innovators do not recognise the advantage in obtaining patents for their work, and that the number of patent filings in the country is far below its height in the 1930s. The Czech Republic joined the European Patent Office in 2002 and the European Union in 2004.

Cada argued against several concerns that had been raised by opponents of the software patent directive. For instance, he said it would not give patents to pure software, that only technical solutions would be patentable, and that no trivial patents would be granted.