Software patents: the truth

Claims made by proponents of Software Patents	
This is not about software patents, this is about 'computer-implemented inventions'	Article 2 of the 'directive on the patentability of computer-implemented inventions' states that: 'a computer-implemented invention' means an invention the performance of which involves the use of a computer and having features which are realised by means of a computer program. **These are software patents.**
SMEs 'want' software patents.	The official results of a survey by the German Ministry of Economics, released in March 2005, show industry consensus against software patents. In the report 1011 companies (83%) indicate they lack the means and expertise to discover whether or not their products infringe on patents. 915 companies (75%) fear that due to software patents they won't be able to effectively compete in the market anymore. The full publication of the results from all 1200 participants confirmed nearly unanimous animosity against software patents among German companies in the ICT sector, based on fairly detailed knowledge of the problems. Software patents will harm innovation, reduce competitiveness and hurt consumers. In addition most software patents will be owned by non-european companies.
Whilst tightening the directive may solve a 'problem' for software developers, wouldn't it harm high tech industry.	Concrete new physical solutions to problems, regardless of whether they're realised with the help of computers and software, will remain patentable under all amendments. Tightening up the directive will simply ensure that software development is protected from the threat of patents while areas that traditionally received them will continue to do so.
'Pure' software will not be patentable. A computer program 'as such' cannot constitute a patentable invention, unless...	Art 52 of the European Patent Convention clearly says that software programs are not patentable. The current text of the directive works as follows: [A] is not patentable, unless [condition B] is met, where, upon close scrutiny, it turns out that condition B is always met. Thus a computer program would not be patentable, unless... it is loaded and executed in a computer.
Only 'technical' software will be patentable.	"Processing which effects the way in which a computer operates is technical. For example... operating a user interface." "Processing physical data is technical... for example, data represent ing an image" "Processing which is based on considerations of how a computer works is technical" These quotes from Dutch patent attorney website Iusmentis show the current definition of 'technical' software is overly broad. The EPO has itself admitted that its interpretation of technical includes such mundane activities as 'the act of writing using pen and paper'.
We are not going down the US route, we are harmonising the status quo. We have always opposed extending current practice	The statement that "we have always opposed extending current practice" is a direct contradiction of the facts. "Harmonising the status quo" - if that means codifying current EPO practice, will only result in US-style unlimited patentability. Claims to the contrary fly in the face of both evidence and common-sense. "Harmonising the status quo" should mean respecting the spirit and letter of the European Patent Convention which form the basis for all EPO decisions. This will ensure both a simpler system and a halt in the slide to broad and trivial patenting of software.

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The European Patent Office aims to keep the level of inventive merit high, and would certainly be more careful if the directive is passed.	With the explicit goal of the current text of the directive to establish existing EPO practice in statute law, it is clear that there will be no sudden jump up in quality of the patents granted by the EPO. FFII has demonstrated how a simple commercial site infringes on at least 20 patents granted by the EPO at http://webshop.ffii.org. Do you infringe on these or any one of the 30,000 patents granted by the EPO which will be codified into European law?
Under TRIPS we're obligated to extend patentability to 'fields of technology' and methods of industrial application.	The German Federal Patent Court explicitly refutes this TRIPs fallacy in a decision in the year 2000, in which it rejected a patent claim to a computer program stating: 'The Treaty on Trade Related Aspects of Intellectual Property Rights (TRIPs) does not entail any different judgment of patentability. Independently of the question as to in what form - directly or indirectly - the TRIPs treaty is applicable here, the application of Art 27 TRIPs would not lead to any extension of patentability here... The exclusion provision of Art 52 (2) and (3) EPC can also not be construed to be in conflict with Art 27 TRIPs, since it is based on the notion of lacking technical character of the excluded items.'
Interoperability problems are not an issue for software patents.	We already have clear evidence of the way in which patents can undermine interoperability and halt progress in standards making. For example, major bodies such as UN's CEFACT and the World Wide Web Consortium (see link below) have expressed serious concerns about the negative effects of software and business method patents on their standard's work.
Can't the anti-competitive effects of software patents be dealt with by competition law.	No. Correcting anti-competitive abuses using competition law can take decades. In a field as fast moving and interdependent as software development, this is shutting the door after the horse has bolted.
Total rejection would be better than a poor amendment.	There are two approaches FFII support. (A) Reinstatement of the spirit of the first reading of the EP. (B) If that would be deemed to be impossible, rejection of the directive. We are convinced that anything in between will lead, in the long term, to unlimited software patentability.
It makes no difference if the directive passes or fails because in the absence of the directive the status quo will be maintained.	A directive which effectively forbids software patents is of course the most desirable outcome. Although a European directive cannot influence the European Patent Office (EPO) directly, it does apply to the national courts where patents have to be enforced. If software patents are unenforceable, people will be less inclined to ask for them and threats using such patents will be less interesting, given that the chance for them to be invalidated in a court case will be very high. The EPO has also already publicly stated it will comply with the directive, whatever the outcome.

W3C letter: http://www.w3.org/2003/10/27-rogan.html