Calls for Action

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http://a2e.de/i2p/srv/06/cpedu

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Preparing programmatic statements and signable petitions for use by FFII

1 Latest Wiki version of Call for Action

see http://wiki.ffii.org/Cpedu0510En Based on a draft by phm from October with enhancements by jmaebe.

Here's some more material

1.1 Problems

(clumsy draft, to be streamlined)

- The European Patent Office has in recent years granted 30-50000 harmful patents on data processing rules against the letter and spirit of the written law and is persisting in this practise, based on caselaw created by the said office's Technical Boards of Appeal and followed by some but not all national courts.
- The administrative arm of the EPO is lobbying for practises which it claims were decided by an independent judicial arm. This fact alone shows that the two powers are not separated.
- The supporters of the European Patent Office have tried several times to adapt the written law to reflect their new practise but each time failed due to lack of public support. Yet the harmful practise is continuing even without legislative support, and the EPO is promoting it more aggressively than ever (–> "CII" microsite, "CII" seminars all across Europe)
- The European Parliament has at several occasions proposed clarifications of the written law which would, if enacted, have effectively obliged the European Patent Office to exclude data processing rules from patentability, as intended by the law

which is currently in force. However these proposals of Europe's only democratically elected legislature have been frustrated by unreasoned resistance from the Commission and the Council.

- the EPO role as an executive, legislative and judicial body in one, violating all principles of the separation of powers that have been the standard since the 18th century.
- the lack of coordination between patent and innovation policy, perhaps even making the (common) mistake equating the two, BUT innovation policy (considered vital but problematic in the Lisbon Strategy) encompasses much more, like competition control, but perhaps more fundamentally, the CREATIVE management of CREATIVE POTENTIAL, e.g. by phenomena not understood by economists at all, such as OPEN SOURCE, OPEN CONTENTS, etc. etc.
  - EPO not incorporated into EU framework
  - Community patent would duplicate structures
- Commission introducing IPRED2, a directive that reintroduces something that the EP refused before
- Council introducing data retention directives refused by national parliaments
- judicial system has proliferated, ISPs are ordering takedown of websites and disconnecting web domains under the threat of legal costs, even if the legal claims have no merit
- digital signature is not advancing, functioning systems like PGP are not recognised because of a certification system that effectively puts everything under control of proprietary vendors (because these are the only ones who can afford the certification)
- EU has, as far as broadband access is concerned, fallen far behind Japan and Korea because it followed an ideology of privatisation in a sphere of essentially public services.

1.2 Solutions

- European Patent Office (administrative arm)
  - stop lobbying for the caselaw of your boards
  - stop granting software patents
- National Courts (and EPO judiciary arm): apply the law correctly, according to its original spirit and to that of the 21 amendments,
  - name some positive examples of recent court decisions from UK & PL

- National Parliaments
  - pass resolutions and if necessary laws based on the spirit of the EPC and the 21 compromise amendments
  - set up an organisational framework to effectively supervise the patent system
- EU Community Patent:
  - no Community Patent based on EPO caselaw or with EPO in charge of execution as long as this problem is not solved
  - the examination system is a proven failure, debureaucratise it first, then CP becomes easier
  - need fewer and more expensive patents, regulation should stay multilingual http://www.eurolinux.org/news/cpat02B/
  - need fast legislative review process to keep up with fast advance of technology: substantive patent law should be placed under the sole responsibility of the European Parliament.
- EP
  - pass a resolution based on 21 compromise amendments, ask CEC to provide proposal based thereon
  - do not agree to a CP that hands over effective legislative power to the EPO or Council Working Party
- Council:
  - answer the 22 questions concerning 2005-03-07
  - do not oppose EP unless national parliaments require you to do so
  - reform the EU institutions so as to establish parliamentary democracy
- Council + Commission: introduce directives only with national parliamentary mandate
- Commission: repect Parliament, withdraw Ipred2En (a directive that reintroduces something that the EP refused before), instead introduce directives based on what EP or national parliaments have requested.
- all legislators:
  - no more across-the-board strengthening of "IPR enforcement" and other judicial regulation of economic activities and public life
  - correctly weigh costs of judicial regulation of the knowledge economy, cut it back where appropriate

  - greatly reduce the power of courts and lawyers to curtail the freedom of publication on the Internet
  - we the undersigned do not want the judicial system to protect us against defamation. Rather we believe that the Internet provides us enough opportunity for the truth to be heard and to prevail by itself.

- acknowledge the public nature of information-based goods and adjust policies accordingly (...)
- take Lisbon Agenda seriously

2 EU Patent

2.1 Problems

- patent system produces much harm little good
- examination system slow & broken
- unaccountable & irrational legislative processes at the EU level, no response to needs
- europe's biggest advantage is inefficiency and costliness of its patent system
- language problem: incisive deprivation on individual rights based on claims formulated in foreign language

2.2 Solutions

- abolish patent examination system, entitle invalidator to reward
- substantive patent law (exclusion scope law) under exclusive competence of EP
- introduce easily machine-translatable EU language

3 Letter to Judges

- current EPO practise produces (only) harmful patents
- current EPO doctrine incoherent
- Rocard-Buzek-Duff report represents public consensus
- no program claims
- technology = applied natural science

- stop granting swpat
- concretise the written law