

Enlarged Board of Appeal
European Patent Office
Erhardtstrasse 27,
80469 Munich,
Germany

Case G3/08 – Amicus Brief

Dear Sirs,

I am a Chartered and European Patent Attorney resident in the UK. Partially in response to previously filed amicus briefs such as that of *De Keyzer*, I submit the following short amicus brief in support of the existing provisions on software patents.

In essence the process of conceiving and executing a software product is little different from the process of conceiving and executing, for example, a pharmaceutical product; given a problem to solve, one must put together a series of steps, whether chemical or algorithmic, to take an initial input and synthesise an output that solves the problem at hand.

If one of those steps, or the series itself, is not obvious then it is an invention. The difference as to whether one is a patentable invention whilst the other is not therefore devolves solely to whether there should be discrimination between different inventive activities as a matter of public policy.

Assertions that software patents (uniquely in the fields of industry) suppress innovation do not appear to be based in commercial reality; a start-up company that has an innovative idea and is attempting to turn it into a marketable product would be completely vulnerable to any competitor taking the idea (which is not protected by copyright) and expressing their own version, were it not for the protections afforded by patents. Moreover, investors would not give money to innovative software developers to bring their ideas to fruition if they expected or feared that the idea – and

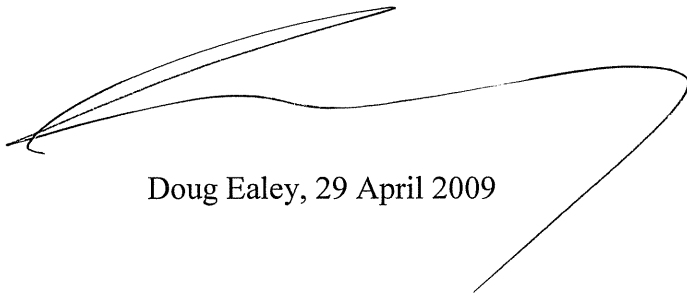
hence their investment - could simply be stolen. This is a true barrier to software development.

Thus patents are vital to innovation because they enable the innovators - and those who financial support them – to capitalise on their ideas safely. This is of course true in all fields of innovation and software is no different.

By contrast, in reality the open source movement and other small developers appear to be relatively unhindered by the existence of software patents, with a plethora of products available that are compatible with and replicate the functionality of big-name products such as iTunes (e.g. the application Songbird) or Microsoft's flagship enterprise product Office (e.g. the application OpenOffice).

In short, patents protect the type of software development that warrants serious investment whilst they do not hinder the type of software development undertaken by amateur enthusiasts, and acceding to an ideological bias against patents held by some of these enthusiasts is not in the interests of the software industry.

Yours,

A handwritten signature in black ink, consisting of a series of fluid, connected loops and curves, extending from the left towards the right.

Doug Ealey, 29 April 2009