Piratpartiet statement concerning case G03/08

A few days ago the Business Software Alliance (BSA) sent around a letter in which it announced:

> "We've all been following the events of the past week of the pirates off the Horn of Africa. Piracy takes many forms, some more violent than others. I wanted to let you know that the Business Software Alliance is launching a new campaign today..."

So let us clarify once and for all that we from the Pirate Party are not affiliated with those persons who board ships. We help our society deliberate about the challenges of the digital transformation process. Not unlike the BSA we also influence the political landscape but we prefer a popular mandate and participate in elections. That is not the only aspect where we are entirely different from the BSA and its American vendors.

As a political movement, the Pirate Party strongly supports democratic decision making, also in fields like patent law that were considered just "technocratic" regulation.

In 2002, the European Commission and the European Council decided that there was a need for them as legislators to interfere in the controversy about software patentability, when they published their proposal for a European Directive on the patentability of "computer-implemented inventions". While this specific proposal was eventually rejected in 2005, the fact still stands that the legislator has decided that there was a need to interfere.

Law always requires interpretation, and in any court case, the question can be raised whether certain interpretations still comply with the intent of the legislator, or are perhaps beyond the interpretation competence of the court. Specifically for software patents, the legislative history is unclear. Even now that the technology requirement has been codified in the new "EPC 2000", there is no certainty that the legislator intended the technical character to be the only decisive factor for software patentability – as all of the questions submitted by the EPO president to your board assume.

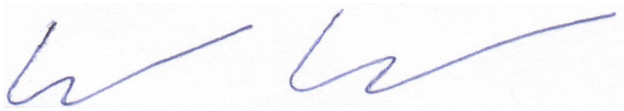
The fact that the legislator effectively has decided that there was a need to interfere, logically implies that the issue to set the proper limits for software patentability is beyond court competence.

Therefore Piratpartiet would advise the Enlarged Board of Appeal, to declare the referral not admissible. This is an issue for the legislator: it has already decided it is.

In the information age, information policy is no longer a technicality. It has become mainstream politics. Patent law should not only cater for the interests of major corporations. It is of public interest. So it should be on the political agenda. In our opinion, the fact that the Directive Proposal was rejected shows first of all that a comprehensive debate on the role of patent law in present society is

needed. It is not merely a “technical” matter whether “further technical effects” are required, or “technical considerations” are accepted. It is about fundamental questions like whether patent law should allow comprehensive commodification of thought, that severely affects the fundamental freedom of enterprise, and, on a more practical level, introduces huge transaction costs, while it is a recognised policy to reduce transaction costs. Europe is a continent of SMEs who prosper due to freedom of competition. An inadequate patent policy will block new entrants, and hurt rather than further innovation.

On behalf of Piratpartiet,



Sina Amoor Pour, Head of the working group on patents

About Piratpartiet:

Piratpartiet wants to change the global legislation to support the rise of an information society that is characterized by diversity and openness. This is achieved by working for an increased respect for the citizens and their personal integrity and by working to reform the laws of intellectual property.

Piratpartiet builds its basic values on three principles: protection of the personal integrity, free knowledge and shared culture.