Sofware patents in Finland and Europe

Mikko Välimäki

28.2.2002

Structure

- Electronic Frontier Finland – EFFI ry

- What are sw patents?

- GNU licenses and patents

- EU update

- Finland update

- What to do with sw patents?

Electronic Frontier Finland ry

- Founded in September 2001, over 300 members
  - Board and many active members are experts in law and technology
- Comments law proposals concerning e.g. personal privacy, freedom of speech and fair use in copyright law; makes statements, press releases and participates actively in public policy discussions
- Works in close cooperation with organizations sharing the same goals and values in Europe, United States and elsewhere.
  - Founding member of European Digital Rights and a member of Global Internet Liberty Campaign.
- EFFI's home page: http://www.effi.org/

Recent achievement…

Finland Drops EUCD For Now

Posted by michael on Friday January 31, @05:10PM
from the war-overseas dept.

replicant_deckard writes "*Electronic Frontier Finland just got a huge legal victory. They report the local DMCA-copy (based on EU copyright directive) was dropped today at the parliament after heavy criticism. So far just two EU nations have accepted the innovation threatening law. Campaigns go on in different European states. They need your support!*" cabra771 writes "*The Europe Commission has put up a new proposal dealing with online music piracy that appears to have slightly upset a few people.*"

< Battlefield Medkits Improve | Dismal Console Failures >

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Threshold: [1: 83 comments ⌄] [Threaded ⌄] [Oldest First ⌄] [Char

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Finland Drops EUCD For Now (Score:4, Funny)
by sweeze (530463) on Friday January 31, @05:13PM (#5199817)

so how many posts by people who are never going to move to finland saying "whee, i'm moving to finland" do we get to see now?

Re:Finland Drops EUCD For Now (Score:5, Funny)
by Anonymous Coward on Friday January 31, @05:16PM (#5199841)

What are sw patents?

- Software innovations may be patented
- Patent is granted to a new, inventive ideas that have a technical effect (in Europe) and are capable of industrial application
- If found valid, a patent monopoly is granted and it costs some thousand euros for each of the next 20 years to renew
  - Granted patents are usually valid in many countries
  - Application process takes years to complete and may cost a lot of money

Wait – software innovation?

- Is computer program a machine or is programming more close to art?
  - Traditionally, free arts are under copyright while technical machines may be patented
- Is software development ...
  - Capital or human intensive?
  - Non-continuous or incremental?
  - Patents increase incentives to invest capital to achieve break-through innovations – does this apply to sw development?

What is the scope of sw patents?

- The scope is limited to the claims in the patent application
  - Claims may be either for methods, processes, [or products]
- Competing product using the same innovation is not ok
  - Even if you didn't know the method you used was patented, you are liable for infringing it

(54) **Method of displaying multiple sets of information in the same area of a computer screen**

Verfahren zur Anzeige einer Mehrzahl an Informationsgruppen im gleichen Rechnerbildschirmbereich

Procédé d'affichage d'une pluralité de groupes d'information dans la même région d'un écran d'ordinateur

(56) References cited:
- "IBM System Application Architecture -
Common User Access Advanced Interface
Design Reference (First Edition)
(SC34-4290-00)" October 1991 ,
INTERNATIONAL BUSINESS MACHINE
CORPORATION XP002013624 * page 1 * * page
163 - page 164 *
- IBM TECHNICAL DISCLOSURE BULLETIN, vol.
35, no. 5, October 1992, ARMONK, NY, US, pages

Claims

1. A method for combining on a computer display an additional set of information displayed in a first area of the display and having associated with it a selection indicator into a group of multiple sets of information needed on a recurring basis displayed in a second area of the screen, comprising the steps of:

   establishing the second area (10) on the computer display in which the group of multiple sets of information is displayed, the second area having a size which is less than the entire area of the computer display, the second area (10) displaying a first of the multiple sets of information;

   providing within the second area (10) a plurality of selection indicators (30,34), each one associated with a corresponding one of the multiple sets of information;

   selecting a second of the multiple sets of information for display within the second area by activating a selection indicator (34) associated with a second of the multiple sets of information, whereby the second of the multiple sets of information is substituted for the first of the multiple sets of information within the area of the display; and

   combining the additional set of information, displayed in the first area of the display into the group of multiple sets of information so that the additional set of information may be selected using its selection indicator (34) in the same manner as the other sets of information in the group.

2. The method of claim 1 wherein the established area is movable to various locations around the display.

3. The method of claim 1 wherein the additional set of information is combined by pointing to a selection indicator for the additional set of information and dragging that selection indicator into the second area.

4. The method of claim 1 wherein one of the multiple sets of information in the established area is moved away from the second area.

5. The method of claim 4 wherein the move is accomplished by activating a selection indicator for the set of information to be moved and dragging that selection indicator away from the second area.

6. A method for removing a set of information from a group of multiple sets of information on a computer display, comprising the steps of:

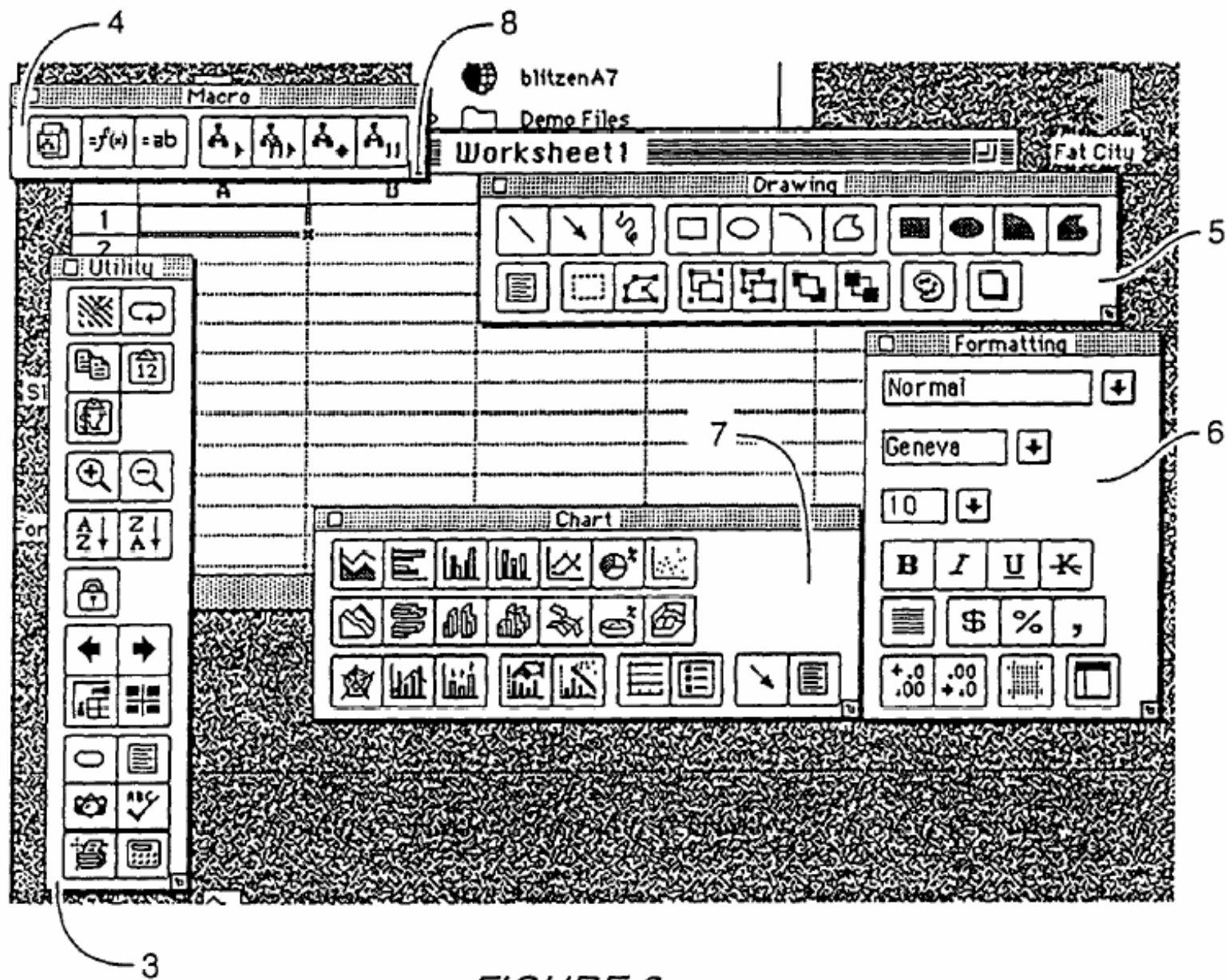   establishing an area (10) on the computer display in which the group of multiple sets of infor-
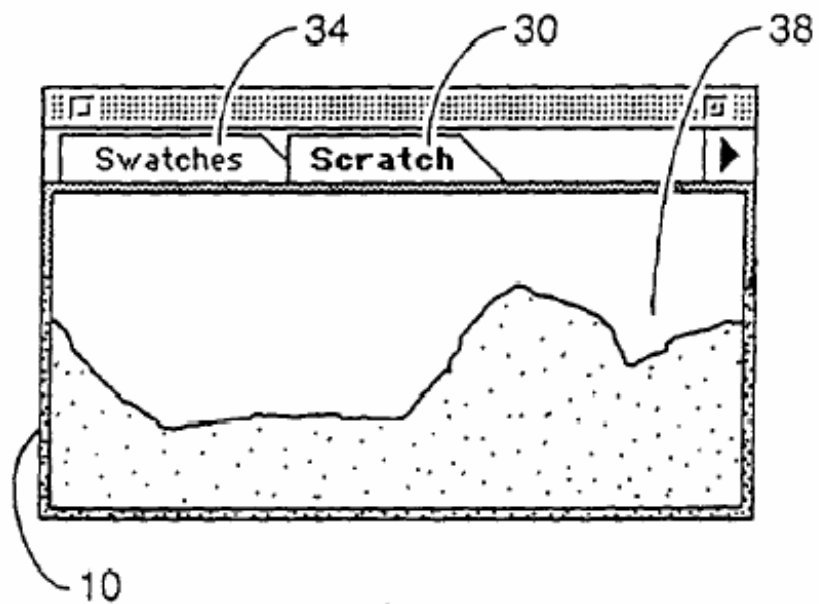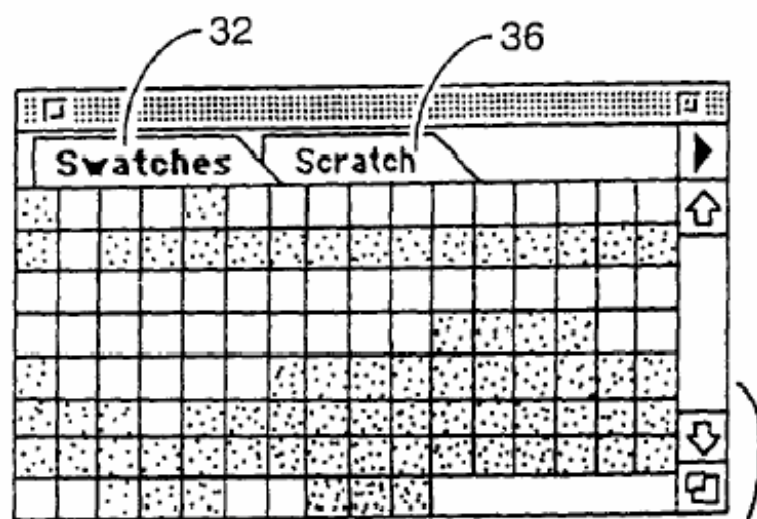
FIGURE 3

FIGURE 6

34   30   38

Swatches   Scratch   ▶

10

40

FIGURE 7

32   36

Swatches   Scratch   ▶

What was the problem?

- Patent was trivial
  - Too obvious "invention" and probably already in use somewhere
- Patent was granted to software
  - "The following in particular shall not be regarded as inventions ... schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers"
- Everyone should now know the existence and scope of this patent and not infringe it!

Who claims sw patents?

- Typically well financed multinational firms
  - Sw patents may be claimed for reputation purposes or in the hopes of securing financing (hidden assumption: patents mean commercial credibility)
    - Even in bigger companies, there may be no sw patent licensing or usage policy at all
  - Some patents are possibly claimed for novel and innovative technology, usually in connection with hardware innovation
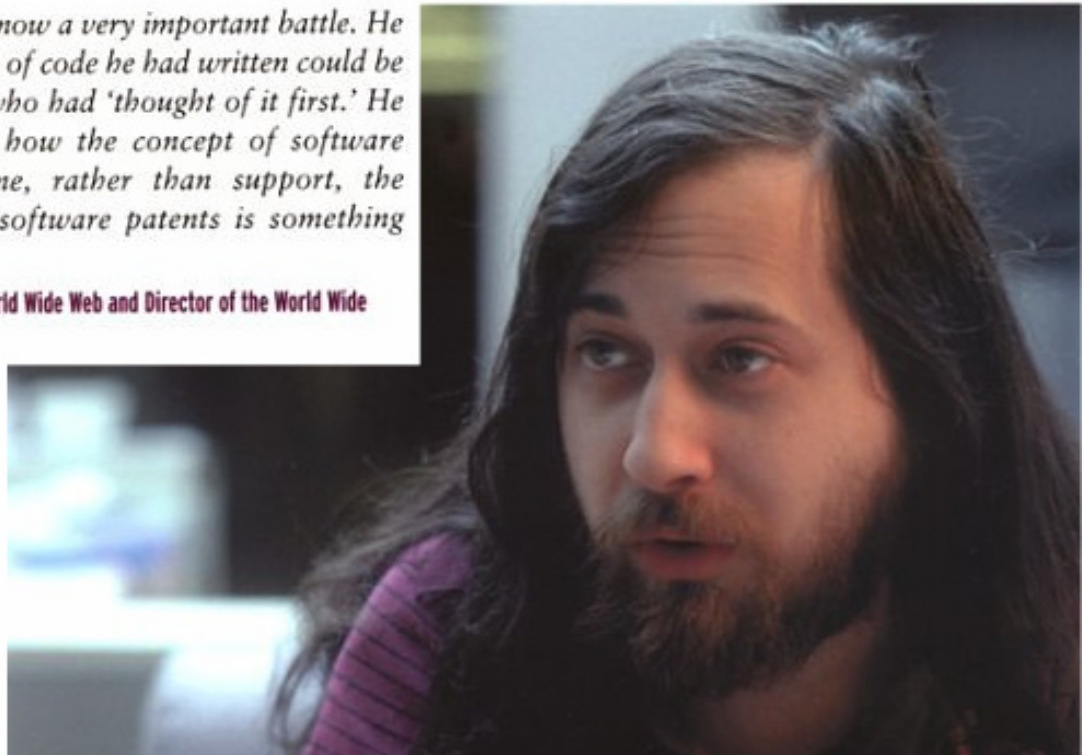   - "Defensive" and "attacking" patenting strategies..

Who opposes?

- Free software / Open Source developers
  - http://swpat.ffii.org/, http://petition.eurolinux.org
- Small and medium-size companies
  - But not all, e.g. VC funded start-ups may be eager to seek patents
- Academia
  - But not all, e.g. some professors of economics oppose copyright extensions but question whether patents are that bad after all...
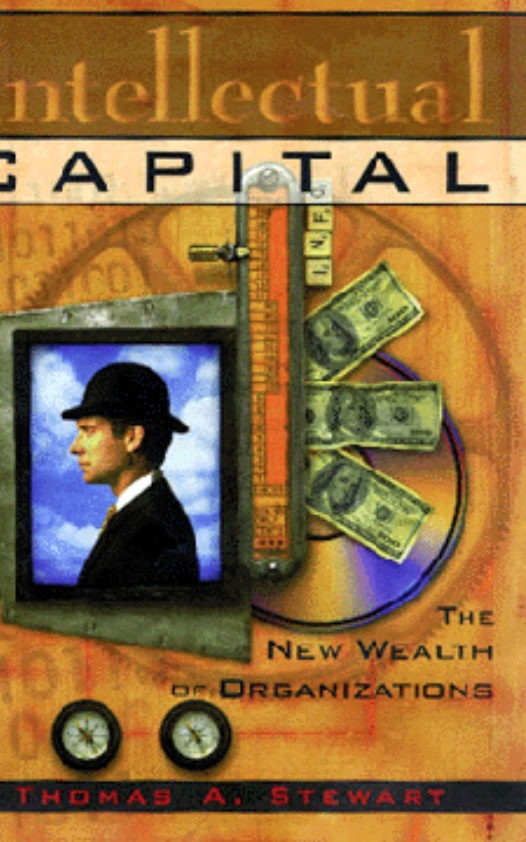
FREE AS IN FREEDOM

RICHARD STALLMAN'S
CRUSADE FOR FREE SOFTWARE

"Richard was the first to take up what is now a very important battle. He declared ridiculous the notion that a line of code he had written could be claimed as belonging to someone else who had 'thought of it first.' He was an early, lone voice warning of how the concept of software intellectual property could undermine, rather than support, the programmer. The current crisis over software patents is something Richard foresaw long ago."

—Tim Berners-Lee, creator of the World Wide Web and Director of the World Wide Web Consortium

Intellectual CAPITAL

THE NEW WEALTH OF ORGANIZATIONS

THOMAS A. STEWART

Patent Strategy

The Manager's Guide to Profiting from Patent Portfolios

Anthony Miele

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e-Patent Strategies

for

Software, e-Commerce,
the Internet, Telecom Services,
Financial Services, and
Business Methods
(with Case Studies and
Forecasts)

Stephen C. Glazier

GNU licenses and sw patents

- GNU GPL Term 7: "If [...] patent infringement [...] contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot distribute so as to satisfy simultaneously your obligations under this License [...] you may not distribute the Program at all. For example, if a patent license would not permit royalty-free redistribution of the Program [...], then the only way you could satisfy both it and this License would be to refrain entirely from distribution of the Program. [...]"

What does it mean?

- GPL and LGPL licenses are incompatible with sw patents
  - If a firm develops or uses an open source product under GPL it may not use any patents it may have that apply to the program
  - For example Linux, MySQL and many other key open source and free software products are distributed with GPL
- If you have infringing sw patents then either
  - Don't use the GPLed product, or
  - Agree to license your patents for free to anyone
  - Therefore firms should examine their current sw patent portfolio in detail before moving to Linux and open source

Does this save open source?

- Not from patents...
- Other licenses do not have similar terms
- Patents may still be enforced in the court and these license terms may be found unenforceable
  - Still, we have no legal cases on GPL

EU update

- Laws say that ″computer programs as such″ are not patentable
- The current controversy: are product claims for software innovations allowed
    - Method and process claims have been interpreted not no mean ″as such″ (remember Adobe patent above)
    - Instead, product claims have been, until 1998, interpreted ″as such″ and not allowed
- In practise, the same sw innovation (e.g. an algorithm) can in most cases be patented both as a method and product so the above dichotomy has been for a long time been misguided anyway

What's up?

- European Patent Office (EPO) started to accept product claims for software patents in 1998
  - Follows European Patent Convention, not directly under EU directives
- EU is currently drafting a directive for harmonizing patent laws within the EU
  - The big question is if EU member states should be tied to the latest EPO practise or not
  - Open Source activists oppose strongly and try to persuade both the parliament and commission

Finland update

- Finland's Patent Office decided to allow product claims for software patent applications 14.2.2003
  - "Applicants should not be treated differently in Finland and EPO"
  - "Patent scope is not broadening"
- There was no law or EU precedent to support their move
  - Similar moves also in Germany, UK and elsewhere
  - It seems local Patent Offices follow EPO in the interpretation of laws before any EU action

Patents and standards

- Are patents in Internet standards ok?
  - Should patents be licensed to all with non-discriminatory terms? (big firms' argument)
  - Or should they be licensed to all with no royalty at all? (current w3c practice)
  - Or should all standards be completely patent-free? (...sounds impossible)
- GIF, JPG, MP3 etc... all have patents...

What can we do with sw patents?

- Public policy problems:
  - Patents potentially stagnate economy and innovation
  - Patents potentially threat open source developers, both individuals and small firms
- Possible solutions:
  - Open source patent pool (joke)
  - Solve the problem of trivial patents first (difficult)
  - Open source exemption (takes time)

Fact: current fight has a problem

- SW patents are an important topic in social and economic policy debate
  - In this issue, free software and open source activits have their cause
- However, the current fights in the EU are largely based on false assumptions
  - The recent move to allow product claims does not actually change the scope of sw patents in Europe that much
  - Therefore, the fight should be channeled to object adverse effects of sw patents and maybe demand liability exemptions to free software developers

Better argument?

- Software patents have nothing to do with innovation, the whole system does not work
  - Applications do not include source code, nobody learns from patent databases, after five years application process all sw innovation are outdated, there are no break-throughs, even individuals with minimal capital investment can innovate ...
- Instead, just tools for multinational firms to compete and get recognition
  - Therefore we need to revise the system to better reflect its real function

Bill Gates on sw patents

- "If people had understood how patents would be granted when most of today's ideas were invented and had taken out patents, the industry would be at a complete standstill today... The solution is patenting as much as we can. A future startup with no patents of its own will be forced to pay whatever price the giants choose to impose. That price might be high. Established companies have an interest in excluding future competitors"

Linus Torvalds on sw patents

- "I do not look up any patents on _principle_, because (a) it's a horrible waste of time and (b) I don't want to know. The fact is, technical people are better off not looking at patents. If you don't know what they cover and where they are, you won't be knowingly infringing on them. If somebody sues you, you change the algorithm or you just hire a hit-man to whack the stupid git."

Battle rages – choose your side

- Electronic Frontier Finland ry – http://www.effi.org/
  - check the site for latest news and activities
  - join us and buy mechandise!
- Email: mikko.valimaki@effi.org
- Phone: 050 5980498