

Software Patents

Plea for a Clear Concept of Technical Inventions

ESR Pollmeier GmbH

ZVEI WG "Communication in Industrial Automation"
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Dipl.-Ing. Stefan Pollmeier
ESR Pollmeier GmbH

Should we patent inventions?

- Yes

Should we make an exception for computer-implemented inventions?

- No, as inventions they should be patented

Should we patent calculation rules?

- No

Should we make an exception for computer-implemented calculation rules?

- No, as calculation rules they may not be patented

The actual question is:

- What is an **Invention**?
- What is a **calculation rule**?

Should we patent EP 1 195 779?

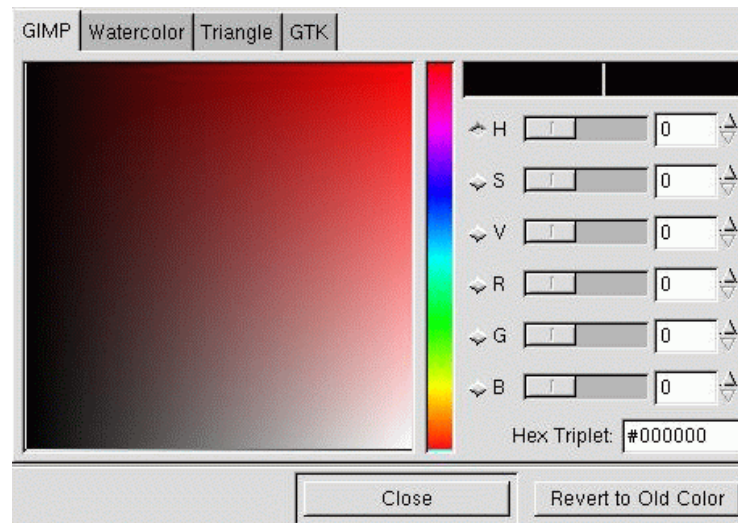
- Rare-Earth sintered magnet and method of producing the same



- EPC/EPO 1978: This is an **Invention**
- CEC/EPO 2002: This is an **Invention**

Should we patent EP 0 689 133?

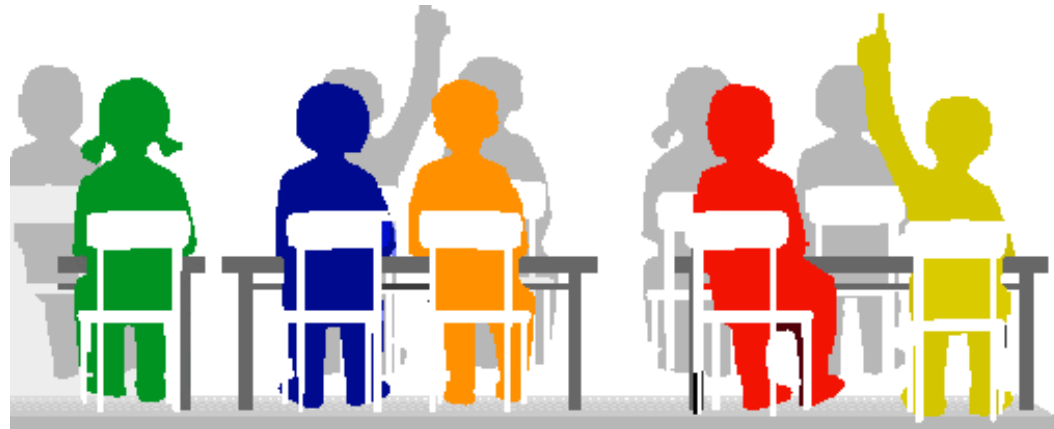
- Tabbed palettes



- EPC/EPO 1978: This is a **Calculation Rule**
- CEC/EPO 2002: This is an **Invention**

Should we patent EP 0 664 041?

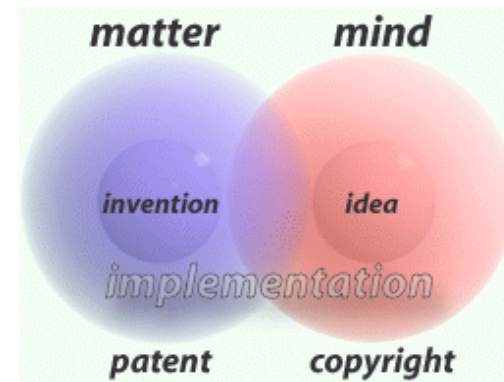
- A computer based system for school exams



- EPC/EPO 1978: This is a **Calculation Rule**
- CEC/EPO 2002: This is an **Invention**

What is an **Invention** and what is a **Calculation Rule**?

Patentable Invention
= Technical Invention
= Technical Contribution



- Art. 52 EPC: **not patentable Inventions are** (as such)
Mathematical methods, abstract plans and rules, programs for computers, presentation of information etc
- BGH e. g. 1980 ABS (referring "Red Pigeon"): **patentable is**
Plan-conformant use of natural forces to immediately achieve a causally overseable effect (software too within the scope of this definition)

Technicity as defined in the EU Directive Proposal

(woolly definition which makes every software patentable)

■ Article 2 Definitions

For the purposes of this Directive the following definitions shall apply:

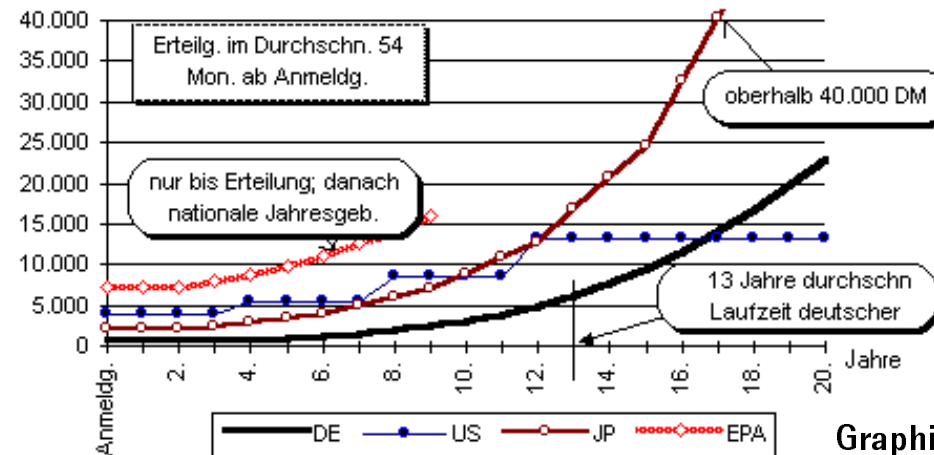
- (a) "computer-implemented invention" means any invention the performance of which involves the use of a computer, computer network or other programmable apparatus and having one or more prima facie novel features which are realised wholly or partly by means of a computer program or computer programs;
- (b) "technical contribution" means a contribution to the state of the art in a technical field which is not obvious to a person skilled in the art.

■ Article 3 Computer-implemented inventions as a field of technology

Member States shall ensure that a computer-implemented invention is considered to belong to a field of technology.

Cost of Patents

Risk in case of litigation e. g.
Schneider vs. Opto 22
 Cost for Opto 22 several Mio \$



Graphics: BMBF

From an Interview: Is it expensive to get patents granted in several countries? von Lieres: This is easy to estimate: until a patent is granted in ten countries – e. g. four in Europe, three in Asia and three in America – you have to pay about 30.000 EUR for official fees and fees for representatives as well as an additional 10.000 EUR for internal processing costs.

Pictures of the Future, Spring 2002

Pro EU Directive: Patent Industry, Large Companies

- Cold War around New Inventions (Article company journal)

Patents are the best weapons on the world market where fierce battles are being fought: Legally protected know-how yields profits running into millions and may checkmate opponents fast.

Patent attorneys are generals of the industrial age: Their language is similar to those of military leaders: Troops are lined up and enemy territory is investigated, alliances are forged and battles are to be fought. They are going to bluff and to threaten, they prepare an ambush and demand toll. "Nothing describes our profession better than military analogy", says the head of the patent division (150 people) of a German electronics concern. "There is a simple reason: Unlike using products to wrangle for customers favour, companies use patents to go for their competitors."

New World issue IV/98

Contra EU Directive Proposal (Germany, Europe)

- DIHK (German Chamber of Commerce)
- FDP, Greens (SPD, CDU critical but undecided)
- 120.000 signatories at petition.eurolinux.org
- FFII
- many small and medium software enterprises
often wrongly subsumed under "open source movement"
- some large companies
- economic studies
- ...

Criticism worked during the proceedings since 1997

Critics should comment on the proposal!

To do at ZVEI (FV Automation)

- Information of members
- Target definition: what do ZVEI members expect from changes in patent law? e. g. ESR Pollmeier:
 - traditional invention concept (clear, classic technicity definition)
 - keep freedom to innovate with calculable risks and costs
 - more transparency in patent law, patent practice
 - better patent quality (term "quality" to be defined)
- Examine EU proposal, alternative proposals, and patent practice using examples
- Develop statements and proposals

EU schedule should be taken into account!

Dipl.-Ing. Stefan Pollmeier, e-mail gl@esr-pollmeier.de

ESR Pollmeier GmbH
Lindenstr. 20
64372 Ober-Ramstadt
Germany

Phone +49 6167 93 06-0

Fax +49 6167 9306-77

www.esr-pollmeier.de/swpat/index_en.html