Section 1 - Basic principles and features of the patent system

1.1 Do you agree that these are the basic features required of the patent system?

1.2 Are there other features that you consider important?

1.3 How can the Community better take into account the broader public interest in developing its policy on patents?

It is fundamental that the patent system provides an overall benefit to society. Most of those currently involved assume that it does without any empirical evidence. Most of the actual studies on the economics of it, suggest that the patent system is either neutral or an actual impediment to innovation. The community can best take public opinion into account by listening to the public, not just to Patent Lawyers and the large corporations.

The patent system in general may or not do more good than harm overall, but it is clear to nearly everyone involved in the IT industry that expanding the sphere of patentability into abstractions like software, algorithms and business processes, will have, and is having, a very negative effect. Under a copyright regime, anyone can write software with only a tiny investment and distribute at very low cost. It is very clear what their own property is, and they know when they have infringed by copying others work without permission. They can compete effectively with much larger organisations.

Under a patenting regime the writing of software becomes an activity fraught with risk, that can only effectively be done by large entities with lots of money and a legal department. The small player has no way of telling if they are infringing or not, and a great deal of cost is injected into the system for no overall gain. This would be a public policy disaster, but is exactly the route that the EPO is taking us down, and the Commission has been following.

The results are become more visible every day in the U.S. and it should be clear now that this is not the way to go in Europe.

This consultation seems to be focussing on trying to reduce costs in the system. That is a reasonable goal, but is a secondary issue to the fundamental ones of patent scope and patent quality. There is no point making patents cheaper to get if they are doing active harm in some areas, indeed it would simply make the problem worse.

Before trying to reduce costs we _must_ have a proper public policy on what is and is not patentable. Only when patentability has been restricted to areas where there is a clear public and economic benefit should attempts be made to streamline the process and make them more easily available.

Section 2 - The Community patent as a priority for the EU
2.1 By comparison with the common political approach, are there any alternative or additional features that you believe an effective Community patent system should offer?

We want to see the excesses of the EPO reigned in. They have been issuing what are quite clearly patents on software under a tortuous set of legal decisions about 'technical effect' and claiming that 'software as such' is not software. The fundamental problem is that there is no feedback in the system. The EPO does not feel any pressure from the negative effects of issuing broad patents or expanding the scope of patentable subject matter. It needs democratic oversight, and/or wide public input into the issuance and prior art searches. The current system is broken, as clearly evidenced by the steady expansion of patent scope into areas where it has no benefit, and very dubious legality.

Section 3 - The European Patent System

Questions

3.1 What advantages and disadvantages do you think that pan-European litigation arrangements as set out in the draft EPLA would have for those who use and are affected by patents?

It very much depends exactly what law they enforce. If they enforce existing EPO TBA case law then it would be a disaster - the unwillingness of most national courts to do this is the only thing keeping Europe from sinking in a sea of Software Patent cases, as the US is doing. If an independent body such as the European Court of Justice was responsible for enforcing the EPC as written, then things ought to be much improved and we could finally start to bring some proportionality into the system.

3.2 Given the possible coexistence of three patent systems in Europe (the national, the Community and the European patent), what in your view would be the ideal patent litigation scheme in Europe?

The most important feature is that it must always be possible to appeal to a court which is not bound by case law of the executive (the various patent offices), since such judicial independence is a basic requirement of our justice system.

Section 4 - Approximation and mutual recognition of national patents

Questions

4.1 What aspects of patent law do you feel give rise to barriers to free movement or distortion of competition because of differences in law or its application in practice between Member States?

Software and business method patents give rise to significant trade barriers
and distortions of competition within the EU. In some member states, such as
Poland, these patents are not granted and appeals to rejections based on
subject matter are consistently turned down by courts. In other member
states, such as the UK, granting practice and case law follows the EPO
practice more closely. This puts British companies operating in Poland at a
competitive disadvantage and acts as a trade barrier when Polish companies
try to enter the UK market.

4.2 To what extent is your business affected by such differences?

Our business is affected in that we do not know whether our products and
services are "legal" in other member states, so we are exposed to a
significant risk when exporting. This is not yet a serious problem within
the EU, but threatens to become one is any of the factors restraining
litigation of issued software patents changes.

We have some innovative software products which are entirely our own work,
but which very probably infringe on issued EU patents (which are owned by
non-EU companies). This is iniquitous, and we want to see software removed
from the scope of patentable subject matter so that we can trade freely and
without risk within the EU.

4.3 What are your views on the value-added and feasibility of the
different options (1) – (3) outlined above?

4.3 - We notice that the "subject matter" criterium is missing from the
list in point 1. Subject matter is a critical criterium, since it is on
this basis that the EPO has granted tens of thousands of software and
business process patents. The three options 1-3 are all unclear with
respect to the rules on subject matter, and the question of whether EPO
TBAs' case law overrides the EPC and interpretations of national courts, or
not.

Regarding option 3 in particular, mutual recognition by patent offices of
patents granted by another EU Member State opens the possibility that
applicants start to shop around to find the patent office that most readily
grants their applications. The Community Patent is intended to reduce forum
shopping, but this option would actually increase that problem.

A recodification of EPC 52 substantive patent law exclusions and further
clarifications are needed to

* prevent the enforcement of software patents and business method
  patents
  granted by the EPO within the European Community.
* enable control of the European Union over the EPO patent pratice
  which
  will be forced to review its policy
* reinstall political governance of the patent system

4.4 Are there any alternative proposals that the Commission might
consider?

All proposals must come back to the basic question: does the system
guarantee good patents, transparency, and accountability?

Further the EU has to prevent the EPC 52 exclusions being weakened by
further international substantive patent law harmonisation, trilateral
diplomatic negotiations or TRIPs reform. Therefore the European Union has to make sure that parliaments may exercise their full control over diplomatic negotiations by the EU or member states.

As long as the problem with EPO software patents prevails the EU shall seek to strengthen Interoperability by legislative safeguards to indemnify affected software producers and E-Commerce.

Section 5 - General

We would appreciate your views on the general importance of the patent system to you.

On a scale of one to ten (10 is crucial, 1 is negligible):

5.1 How important is the patent system in Europe compared to other areas of legislation affecting your business?

1 (it is difficult to give a number for this. We are not interested in patents at all for the furtherance of our own business, _except_ in so far as they pose a threat to said business by giving others a mechanism to ambush us and extort payment for our own ideas and work).

5.2 Compared to the other areas of intellectual property such as trade marks, designs, plant variety rights, copyright and related rights, how important is the patent system in Europe?

1 (in terms of it's utility to us).

5.3 How important to you is the patent system in Europe compared to the patent system worldwide?

How can I answer this with one number? We sell our products worldwide. We would prefer it if we were outside the scope of the patent system in all jurisdictions. We will be safer, and so will our customers, in jurisdictions where software patents are not an issue. This currently favours the EU, but only so long as the many dangerous patents issued by the EPO remain difficult to enforce.

Furthermore:

5.4 If you are responding as an SME, how do you make use of patents now and how do you expect to use them in future? What problems have you encountered using the existing patent system?

We do not use patents at all. We have no intention of using patents in the future if we can possibly avoid it. They are expensive (currently entirely beyond our means) and (at least in the area of software) fundamentally unjust. Our business model requires the unimpeded exchange and use of ideas, and cross-fertilisation of expertise. Trying to regulate this with a system where each idea is registered with the government before it may be exchanged and a toll imposed on the exchange, and where the possibility of simply refusing to exchange the idea at all is allowed, seems ludicrous to us; and provides no overall benefits to business or society.
5.5 Are there other issues than those in this paper you feel the Commission should address in relation to the patent system?

(1) If you would like the Commission to be able to contact you to clarify your comments, please enter your contact details.

(a) Are you replying as a citizen / individual or on behalf of an organisation?

On behalf of Aleph One Ltd

(b) The name of your organisation/contact person:

Mr Wookey, Technical Director, Aleph One Ltd

(c) Your email address:

wookey@aleph1.co.uk

(d) Your postal address:

The Old Courthouse, High St, Bottisham, CAMBRIDGE, CB5 8RS

(e) Your organisation’s website (if available):

http://www.aleph1.co.uk/

(2) Please help us understand the range of stakeholders by providing the following information:

(a) In which Member State do you reside / are your activities principally located?

UK

(b) Are you involved in cross-border activity?

Yes, we sell worldwide.

(c) If you are a company: how many employees do you have?

2-5 depending on current activity levels.

(d) What is your area of activity?

IT consultancy and electronics manufacture.

(e) Do you own any patents? If yes, how many? Are they national / European patents?

No, none.

(f) Do you license your patents?

N/A

(g) Are you a patent licensee?

No
(h) Have you been involved in a patent dispute?

No

(i) Do you have any other experience with the patent system in Europe?

We have followed the debate on Software Patents within the EU assiduously as we perceive serious threats to our business if things carry on the way they have been, as well as a general sense that the system has run out of control and needs reform for the general good.

Wookey

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