

FFII UK response to

Gowers review of Intellectual Property - call for evidence

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1 Introduction

FFII UK is the UK volunteer group of the Foundation for a Free Information Infrastructure, a pan European organisation which seeks a positive environment for the development of information goods based on copyright, free competition and open standards. Representing 650 members, 3000 companies and 90,000 supporters, FFII UK welcomes the opportunity to respond to the call for evidence for the Gowers review of Intellectual Property.

2 Balancing rights and the burden of proof

Intellectual property is a monopoly which should be assumed (a priori) to have costs. Such monopoly privileges should only be granted where necessary and when clear benefits that outweigh their costs have been shown. In this respect it is the mirror image of property rights in tangibles such as land where the default is the grant of such rights.

Once a particular IPR has been granted it is very difficult to remove or rescind. Thus changes in IP regimes tend to be one-way. In a system that must seek balance this creates an inherent bias towards too much IP and this should be counteracted by requiring a high threshold of proof of benefit before a new right is introduced or an existing one extended.

Lobbying on IP will often show distinct asymmetries as direct beneficiaries and customers of a system of IP grants, usually current or potential rights-holders, will often be more vocal in their representations to law and policy makers than those who suffer the associated economic costs of exclusion and litigation - for example the innovators of the future or those within small to medium sized enterprises.

These problems are made worse by inequality of access to information: those seeking extensions in the reach and scope of IPR are usually those already in possession of similar existing rights. As such they usually possess much of the data relevant to making an informed decision about the costs and benefits of such monopoly rights. Thus locating the burden of proof on those seeking extensions induces disclosure of the very data necessary for an evidence based decision by policy-makers.

FFII UK fully supports the Royal Society of Arts Charter on Innovation, Creativity and Intellectual Property which explicitly calls upon policy-makers and governments to ensure that:

- *There must be an automatic presumption against creating new areas of intellectual property protection, extending existing privileges or extending the duration of rights.*
- *The burden of proof in such cases must lie on the advocates of change.*
- *Change must be allowed only if a rigorous analysis clearly demonstrates that it will promote people's basic rights and economic well-being.*
- *Throughout, there should be wide public consultation and a comprehensive, objective and transparent assessment of public benefits and detriments.*

3 General questions - Software Patents

The vast majority of small to medium enterprises concerned with the extension of patentability onto software in Europe, have clearly and repeatedly expressed their view that copyright is a straightforward, affordable and functional means of protecting their investments, businesses and ability to innovate.

To give one example a survey by the German Ministry of Economics, released in March 2005, showed industry consensus clearly against the extension of patentability to software. In the report 1011 companies (83%) indicated they lack the means and expertise to discover whether or not their products infringe on patents. 915 companies (75%) fear that due to software patents they won't be able to effectively compete in the market anymore. The full publication of the results from all 1200 participants confirmed nearly unanimous opposition to software patents among German companies in the ICT sector, based on detailed knowledge of the problems.

The conclusions of a report by the US Federal Trade Commission, published in Oct 2003, bear out this concern with software patents ability to hamper innovation. Specifically, that they:

- *impede follow on innovation and access to technology*
- *increase the costs of entry to market*
- *introduce cost and uncertainty to investors concerned about infringement*
- *lack of ability of the system to deal with questionable patents*

More worryingly, research conducted by James Bessen of the Boston University of Law and Robert Hunt of the Federal Reserve Bank of Philadelphia, published in March 2004, found:

"...evidence that software patents substituted for R&D during the 90s. [...] Maturing firms with diminished competitive advantage from technology might choose to harvest patent royalties from their past research in lieu of further R&D, especially if legal changes make patents more cost effective[...] Our results are difficult to reconcile with the traditional incentive theory—that granting more patents will increase R&D investments. Rather, if legal changes have encouraged strategic patenting, the result might well be less innovation."

Notably much discussion has concerned the negative effects of increasingly prevalent and wide reaching litigation, as the *Eolas Vs Microsoft*, *Ebay VS MercExchange* and *Rim Vs NTP* cases, among others, have shown. In Europe we have been spared the negative economic effects of this largely because Article 52 of the European Patent Convention specifically excludes software and business methods from patentability and, as a result, patents for software ('computer implemented inventions') granted by the European Patent Office are of dubious validity as evidenced by their frequent rejection at the national level. Indeed this exclusion was recently clarified at length in the UK High Court CFPH judgement:

"The reason why computer programs, as such, are not allowed to be patented [...] is because at the time the EPC was under consideration it was felt in the computer industry that such patents were not really needed were too cumbersome (it was felt that searching the prior art would be a big problem), and would do more harm than good. [...] it is worth noting that the software industry in America developed at an astonishing pace when no patent protection was available. Copyright law protects computer programs against copying. A patent on a computer program would stop others from using it even though there had been no copying at all. "

Justice Prescott Q.C. - in CFPH

It is FFII UK's view, and the view of its supporters, that for all practical intents software patents are relevant to the majority of UK SMEs only in so far as they threaten to block, exclude, prevent and impinge the development of their original work and products. Thus, at least in the software sector, data on the application and granting of software patents, rather than being a useful means of innovation, is if anything more likely to be a measure of inhibition of innovation.

In the field of software, even the smallest company can potentially turn a great idea into a successful product because the capital requirements are relatively small. Software patents increase risks surrounding research and development for small companies and may force them to obtain patents themselves, thereby artificially inflating the capital needs of software development. Small companies can't effectively use patents against large incumbents but always have to fear that a much larger competitor or patent "troll"¹ will cause serious harm to them using software patents. The ownership of either a huge patent arsenal or a number of strategically relevant patents therefore becomes a requirement to effectively compete in the marketplace but SMEs have no chance of ever acquiring patent portfolios of that size. The "critical mass" of such a patent portfolio is in the hundreds or thousands, so that it is not realistic for your competitors to even want or be able to re-search them.

SMEs lose shareholder value to patent harassment. The largest commercial players can have their own problems with product-less patent trolls but, typically, they can settle any such issues by making a lump-sum payment. In areas where software patents are enforced SMEs are very often forced into revenue-sharing deals under which they have to give a certain percentage of their sales and/or profits to a patent profiteer. *If a company with a 20% pre-tax margin on sales has to give 2% of its sales to a product-less patent holder, then it cedes one tenth of its profits.*

The focus on initial costs of acquiring a software patent is only one measure of the positive or negative economic effect of broadly granting monopoly rights in a fast developing and highly and incrementally innovative sector such as software. Clearly, changing the enforceability and scope changes the economic balance of power and can increase the scope for anti-competitive abuses. In turn correcting anti-competitive abuses using competition law can take decades and in a field as fast moving and interdependent as software development this is slow, inefficient and costly: the equivalent to shutting the door after the horse has bolted.

When it comes to challenging IP whether domestically or internationally there are fundamental reasons related to "free-riding" and "pass through" why this will never work well. Given the complexity of the issues and the sums involved IP litigation will always be an expensive proposition (and for good reason). Therefore for most companies it is in their interest to enter into a licensing deal to avoid litigation and its cost burden and gain access to monopoly benefits however inadequate and poorly granted the patent is.²

¹ Patent Troll: An entity that broadly assert specious patents across an industry for the purpose of generating nuisance value settlements. Instead of actively developing a technology, a "troll" would acquire or register a patent in order to enforce the patent against potential infringers and pursue opportunities for license agreements. Where the "patent troll" is unable to reach a licensing agreement with a company, it might threaten to sue for patent infringement.

² See Farrell, Joseph and Merges, Robert P., "Incentives to Challenge and Defend Patents: Why Litigation Won't Reliably Fix Patent Office Errors and Why Administrative Patent Review Might Help". Berkeley Technology Law Journal, Annual Review of Law and Technology, Vol. 19, No. 1, 2004

A monopoly such as a patent or copyright is an economic right whose value is dependent not simply on its scope or term but also upon the ease with which it can be enforced particularly when, unlike property rights in tangibles, patents and the like are much fuzzier objects with much greater uncertainty in their scope and validity. One cannot therefore so easily separate transactional issues from the question of what should and should not be patented. If patents are being granted in areas where they are actually harmful to innovation or patents are being granted with too broad a scope, strengthening these monopoly rights, for example by making them simpler and easier to enforce etc, can actually be damaging.

“...the EPO, beyond having certain limited powers to revoke patents it granted itself, has no jurisdiction over the patent law of the U.K. The EPO is not the European Court of Justice, and Parliament has not seen fit to confer such powers upon it. On matters of patent law the role of the EPO is persuasive, not prescriptive. The EPO is not equipped with a staff of expert economists who are competent to decide if the patenting of business methods, or computer programs, would be good for our country and even if it was it would still be for our Parliament to decide. So, although we should pay careful attention to EPO decisions, and the decisions of other Convention courts, we are not bound to follow them blindly.”

Justice Prescott Q.C. - in CFPH

Patents for software and business methods would be bad for the UK and European economy. It is therefore an error to allow them and no amount of tinkering with the mechanisms for administering IP, particularly in the area of challenge and enforcement, can correct that error. It must be addressed head-on. It is therefore essential to provide greater certainty by clarifying excludable subject matter in national and European law. The EPO's current slide towards a US-style system of unfettered software and business method patentability represents a serious risk to the innovation and competitiveness of the UK and European economy and to our chances of achieving the Lisbon agenda goals.

4 Community Patent and European Patent Litigation Agreement

Currently proposals for the introduction of either a Community Patent or European Patent Litigation Agreement are being discussed at European and member state levels of the EU. FFII have responded to this discussion and a full copy of our position accompanies this submission.

Community Patent

A stronger institutional role of competition policy authorities provides checks & balances to the patent system. Patents are restrictions on competition in order to promote innovation when this would be welfare improving. The current administrative rule of the patent system does not take into account anti-competitive effects but usually sides with the interests of the users. Competition policy authorities should also be enabled to file invalidation lawsuits or oppositions against questionable patents which distort competition, especially where affected individual market players cannot afford to oppose them (opposition market failure) which are of negligible use on a fast moving field.

Currently, patent policy is determined by:

- *The patent offices.* Especially in case of the European Patent Organisation, the situation is worrying. Its Administrative Council can change the "Implementing Regulations", as well as Parts II to VIII and Part X of the European Patent Convention, thereby taking on the role of legislator. Additionally, the Boards of Appeal of the European Patent Office have, in the view of FFII, changed the interpretation of the European Patent Convention. These internal, not independent, chambers have been able to do this since there is no independent court above them. (The current discussion on extending TBA judges' terms to lifetime in order to improve their independence, clearly demonstrates the existing problems.)
- *Civil servants* with close ties to the patent system. In general, the people sitting on the EPO's Administrative Council are also involved with the member state patent offices, and are also the primary advisors to legislators regarding patent law (e.g. most of these people sit on the Council's "Working Party on Intellectual Property (Patents)" where they draft legislation, and they also advise governments how to vote on the proposals they write).
- *The largest customers of the patent system*, who keep trying to push the boundaries of what is patentable and what is not further and further, and even sit on the "Standing Advisory Committee" to the EPO (SAPECO). The Commission proposal on the software patents directive was also written in close cooperation with these companies and their representative organisations, without the balancing involvement of others.

Therefore it is FFII's position that the best way to take into account the public interest in the adoption of any Community Patent or Litigation Agreement would be to:

- Clearly separate the legislative, judiciary and executive tasks in the patent system. As a consequence, do not adopt Community law based on case law developed by an executive office with its own judiciary, which cannot be appealed to a Community Court (because that executive office is not part of the Community).

- Move away from judicial governance to economic governance with full respect of a legislative mandate. In particular, certain decisions such as whether or not software patents should be granted, should not be seen as a legal-technical issue which can be handled by the executive or even the judiciary and consequently codified in law, but should be considered as policy decisions to be handled by the legislative powers. See e.g. the US Supreme Court, in re *Musgrave*, 20 November 1972 : “It may be that the patent law should be extended to cover these programs, a policy matter to which we are not competent to speak.”
- Open up patent policy making process. Strengthen transparency of the Council working group. Strengthen oversight of competition policy authorities.
- Keep in mind that the patent system is but one tool available in innovation policy making, and one which should only be applied when appropriate and not at will (“more patents” is not the same as “more innovation”, various situations can actually result in less innovation).
- Encourage more independent and empirical economic research.

Addressing the issue of translation costs does not remove the the danger of either ruinous litigation costs for small and medium sized enterprises or the problems of anti-competitive behaviour. Community accession to the EPC should be based on reinforcing the clear exclusion of software and business methods from patentability while addressing the problems of accountability and separation of powers. According to the draft texts, Community Patents will be Community titles (Council Text, consideration 7, page 7), issued by the EPO, a non-Community organisation. Accordingly there will be no appeal possible against granting these Community titles before a Community court (Commission proposal 2.4.5.2 page 15), or any other independent court. Further still the Community will have no influence at all on granting these Community titles and as a result, from the Community perspective, these titles are unaccountable. The Community Patent proposal makes the EPO’s Enlarged Board of Appeal the highest authority on granting practice. In turn the Community Patent Court / European Court of Justice will be the highest court in infringement / invalidity cases respectively. As a result two separate legal systems are created, allowing different interpretations of the European Patent Convention. This gives one organisation the right to grant patents, and another the right to invalidate them.

EPLA

All appointments to any special court tasked to deal with European wide patent litigation must to be based on the principle of independence from the administrative body responsible for issuing the patents, whether at a national or European level. Therefore any draft statute which would allow current or former Technical Board of Appeal EPO judges to qualify is clearly unacceptable.

The EPO patent system must be replaced by an EU patent system. We recommend specifically that the Community should take over European Patent Organisation’s legislative role. The European Patent Office should be turned into a Community Agency and in addition, a European Patent Court should be a Community court.

Taken together with the creation of a separate Community Innovation Office that would coordinate various innovation policy measures, this would protect the balance essential to the instrument of patent policy as well as Europe’s competitive framework.

5 IPRED2 - legal sanctions on IP infringement

FFII UK understands that the European Commission intends introducing a directive on criminal measures aimed at ensuring the enforcement of intellectual property rights in the European Union (or IPRED2 (2005/0127 COD)). In the list of IP rights taken into account by the directive proposal, it is mentioned that patent infringements among other forms of IP could be treated as criminal acts.

FFII UK have serious concerns about the impact of these measures. As we have stated: It is, in practice, impossible to write and sell software products and services with any certainty of not infringing upon one of the many thousands of software or business method patents granted by the European Patent Office and against article 52 of the European Patent Convention's clear exclusion software from the field of patentability.

Patent infringement has always been a matter for civil litigation. The current proposal will force Member States to make patent infringement a crime, and to criminalise incitement to infringement. The initial consequences of criminalisation of patent infringement will be a reluctance of firms to invest in new software products in Europe. Anyone requiring new software systems will prefer to import the software from outside Europe. This will damage the EU software industry and cause loss of jobs, even though this industry is well able to compete on the global market.

The directive will give patent litigants great powers to harass software producers, seize documents and freeze assets. We would see criminal law being used to enforce monopolies that are already highly controversial. The cost of these monopolies will result in higher prices, less innovation, and serious damage to EU economies as they lose the ability to compete in the world market.

Lastly, the use of criminal law, instead of civil law, makes patent 'trolling' much cheaper. Today, a patent speculator needs significant funds in order to sustain the cost of litigation until a market accepts the need to license a particular patent. However, in a criminal matter, the state bears the full costs of litigation. We will see the use of "criminal liability" as a tool for blackmail: while a CEO may be willing to fight unfair patent claims in court, it is a different matter when the police and state prosecutors are involved.

In conclusion, the criminalization of patent infringement will punish innovators, damage confidence in the IT sector, worsen the software patent problem, and promote the use of patents as a tool for extortion, rather than investment. The consequences would be severely damaging for the EU economy, in terms of jobs, investment and ability to compete.

Appendices: Testimonials from UK small and medium enterprises

As the owner/manager of a small company employing 10 people I can not afford to do a full patent search every time I have an idea for a software product. As a small company our strength is in being fast and flexible. We can not be either if every time we need to put together a bespoke solution for a client we would need to spend months putting together systems for our clients that avoid any software patent issues.

Alok Agarwal — Agarwal Associates Ltd

We are a small software company with 5 employees. We have spent many years and several hundred thousand pounds in developing a suite of software that operates in the Windows environment. Because of that environment you are restricted in the tools you use and the ways screen designs look and as such you might say that their is no single item or function in the software that would be unique. However in its overall capability as a whole we think that our product offers something special. We are very much aware that another organisation could replicate what we do, but at the end of the day, having the tools to do the job is not the same as having the skills to do the job, so a good part of what we offer as the total product is unique to us. We don't mind copy cats and competition, what we would mind is some large organisation pointing to an isolated range of functions and saying "Our product does the same as this in that area so you cant do it". This is unfair and would kill the majority of small developer companies stone dead and leave the market only open only to large Monopolies and corporations.

Steve Haynes — FDI Technology Ltd

My company makes and deploys Internet database applications - content and asset management systems. It is almost inevitable that attempts will be made to patent techniques and systems that we use, and have used for years. I believe Oracle are trying to do just this in the United States right now. If these applications are successful, we will be liable to law suits that will put us out of business, and see my 17 employees on the streets. Additionally, the freedom of choice, and competition (what little of it there is) that the market enjoys today will be killed.

Marcus Dyson — Eleventeenth Ltd

As we develop software we are more and more aware that we need to check and ensure that the code we are writing has not in some accidentally triggered a patent infringement.

This is not an easy task as there is no clear way to check all patents. And even if it were technically possible it would take too much time and cost. We estimate that software patents could add 3-5% additional to our costs and may result in our eventual withdrawal from this activity.

Aidan McGuire — Blue Fountain Systems Ltd

I'm creative: I am named as inventor or co-inventor for a series of patents relating to a form of highly automated telephone directory services - it was a requirement of the contract. Yet most of the stuff I work on, I don't patent. Why?

Software is too young to be covered by patents. The result of permitting software patenting will be that even very simple programs will require extensive research into the obfuscatory jargon of patents, far in excess of the research required to develop the ideas. When the costs of checking for patent breach exceeds the development effort, I tend to the belief that patents suppress innovation, rather than increase it.

The societal and political goal of patents is to increase taxable revenue, through growing the economy. The fundamental idea is that inventors will share their ideas if they can profit from them, under the protection of the state. This requires that the idea significantly contributes to the value of a product being sold by or under license to the inventor.

Where the costs of discovery exceed the value of invention, patenting becomes an obstacle to taxable revenue growth rather than a contributor. This removes the societal and political value of software patenting.

Jeremy Chatfield — Merjis Ltd

The wide-spread patenting of software would inevitably only be of any benefit to large organisations and institutions — ones that can afford the teams of lawyers and advisers to search for possible infringement and meanwhile to threaten widely individuals and SMEs.

Individuals and SMEs, where a great deal of innovation occurs, would not be able to take any effective advantage of the Patent process due to lack of resources and finances, and the distractions from the day-to-day needs to keep the activities "afloat" and productive.

Prof. David Rees — Hovemere Ltd.

I work for a small UK software company specialising in software for fixed and mobile telecoms operators that employs less than 100 people.

My company has become exceptionally successful in our field and are market leaders for service provising in Europe and have significant share in Asian markets. Indeed we are doing very well across the globe.

In our recent Company Day, our CEO proudly pointed out our successes on an atlas of the world. To Egypt, to Bulgaria, to Japan, to Switzerland to China etc. But in his presentation, North America was simply labelled "Here be dragons"!

Thats how our company views the US. A nation which we darent touch. Where we've seen our competitors burn themselves in mitigating legal cases. We've penetrated Communist China on the other side of the planet, but we daren't visit our next door neighbours a mere pop over the ocean.

Jeffrey Lake — Tertio Telecoms Ltd

As a lawyer, it might seem strange that I am against software patents (after all, everyone agrees that software patents will benefit at least one sector of the economy - the legal sector).

At Moorcrofts, our clients are predominantly knowledge-based industries, particularly software and media companies, and creativity is the single most important activity these companies undertake.

All creativity is based on previous work. No human creative work exists in a vacuum, and creatives need access to the previous body of work to create. On the other hand, if there was no intellectual property protection, then creatives would have little incentive to create if their work was immediately going to be pinched.

It is vital, therefore, that intellectual property laws provide sufficient protection to the creatives (and not necessarily the rights owners!) to encourage them to create, while making the previous body of work available to them as a spring board to enhance their creativity. The criterion is maximising creativity, not maximising the wealth of a few vested interests.

Generally, intellectual property laws already go too far in this regard (in duration and in breadth) and there is simply no evidence that the introduction of software patents would encourage and increase innovation. I have never had a client who has said to me "I would have created X [item of software] if I could have patented it, but I won't bother now". (Incidentally, in the interests of balance I have to say this not the case across all fields of endeavour outside software).

However, I have had plenty of clients who, when I point out to them the dangers of software patents held by others (and especially the patent regime in the US) are seriously disincentivised to develop, especially since they perceive the US market as too dangerous to approach.

The introduction of software patents would benefit only big corporations with large patent portfolios for whom the system has the effect of raising a huge barrier to entry for SMEs and individuals.

It would be immensely damaging for the economy as a whole for their scope to be increased.

Andrew Katz — Moorcrofts Corporate Law

[Software patents] would add massive legal uncertainty, implying huge costs, to any program I wrote for myself or for my clients, as well as potentially fatally disrupting the open source software that I use every day in my work.

Whilst I recognise that they could give protection to me as an innovator, I would consider that worthless when placed next to the power they would give to large companies to involve my little company in prohibitively expensive legal action.

I see them as a weapon to be used against me, which I myself am not strong enough to use, and I think their effect will be to give large organizations an unbreakable lock on the software market, whilst destroying the efforts of small companies and individuals to write software

John Aspden — Aspden Ltd (Software Consultancy)

I am the VP of Engineering for Dolphin Medical. We manufacture pulse oximeters and employ sophisticated signal processing algorithms to improve product performance. Our experience with the US patent system has been very negative.

Some of our competitors have invested heavily into IP protection for software algorithms and have successfully received very broad and vague patents from the over worked US patent office.

The unfortunate reality is that in order to successfully defend against an invalid patent, it will typically take several years and millions of dollars in legal expenses which likely cannot be recovered.

Even the threat of an unfounded IP lawsuit against a small startup company can cause investors to withdraw. This provides large companies with a significant strategic advantage, and the market does not reap any benefits from this.

Tom Scharf — Dolphin Medical

Metamilk Limited is a small research and development company, registered at Companies House (Scotland) number 270127, specialising in the development of innovative character creation and animation tools for the interactive entertainment industry.

Software patents would have the following negative effects on the business:

1) Since many basic mathematical concepts and simple methods are covered by US patents, and EU patents which are currently invalid under present legislation, allowing these patents to become valid in the UK would restrict the range of tools that Metamilk could produce, thus adversely affecting profit.

2) Since US and EU patents covering software are so general and trivial, and there is such a large number of them, it is simply not possible to ascertain whether or not an idea, independently thought up, is already covered by a patent. This means that the company would be forever open to the threat of litigation, thus introducing a very high risk factor which might deter potential investors and thus limit future growth.

3) The potential threat of litigation could force Metamilk to abandon several exciting areas of current research, to focus on just producing an end product using technology known to predate the patenting era. Thus innovation would be completely killed off in favour of playing safe with respect to the legal interference of patent issues.

4) In the worst case, allowing software patents to become valid in the UK could force Metamilk Limited to relocate to a jurisdiction in which software patents are still invalid, in order to continue existing.

In addition, software patents would have no positive benefits at all, since the cost of applying for a patent is out of reach of small developing companies, and the cost of prosecuting for suspected infringement would be out of the question. Thus software patents become a tool exclusively for wealthy companies to further dominate and restrict the activities of developing companies, thus hindering innovation and halting any progress towards an egalitarian future for humanity.

Brian Hulley — Metamilk Limited

I am the MD and major shareholder of a small but growing Cambridge based software company providing enterprise support software to the engineering and manufacturing sectors. This is my second start up company. My previous start up was last seen employing several hundred people and generating significant UK tax revenue.

My companies are dynamic and creative providing real customer value and thereby creating wealth and employment. The growth of companies like these has significantly contributed to the local (Cambridge) and national economy for many years.

The fact that I want to stop software patents does not mean that I see the large companies as the creative ones and the small ones as parasitic. In fact the small companies are far more creative in proportion to their size, than the larger ones. The problem is in the implementation.

Large organisation with banks of patent lawyers now fire out a stream of patent applications on everything that they think that they may possibly get a patent on. If they read in the paper that someone has invented the shoe then they apply for patents on putting them on the correct feet, having brown ones and wearing them on public transport. The stupidity of things patented has seriously damaged the electronics industry in recent years and now looks set to do the same damage to software.

I accept that a drug company bringing a new drug to market at very high cost may need market protection to recoup their costs. Software is not like that. Software innovation is spontaneous and comes because the right person is trying to solve the right problem on a specific day. We need copyright to protect the result of our work from direct copying but we do not need patents. The software industry has been vastly creative in the last 25 years without patents. It will not be more creative with them.

Actually what we will get is a maze of opportunistic and parasitic patents on the natural stages of problem solving which will make it impossible to create software without a team of lawyers watching your back and substantial legal fighting fund to fend off the larger neighbours.

Be very careful or you may find that when you want to increase VAT to 18.5% that you have to pay a royalty to some US legal office that has a patent on VAT at 18.5%. If you think that this is flippant then I would advise that the logical equivalent to this is already happening daily in the US patent arena.

Alex Bowden — FTLS Ltd