



# *The Fifth Scenario*

## **"Software and Silicon"**

**The future of patents and the patent system in the new Digital Society**

by Pieter Hintjens  
President of the FFII,  
CEO, iMatix Corporation

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# Class struggles

*I use the phrase "rich man's poker" very deliberately as this is a game much better suited to companies with long pockets than to the small.*

Alison Brimelow, President, EPO

# Public opinion?

*If a civil engineer, or any other professional gives an opinion like that, they have a liability if they are wrong. The EPO can do far more damage, but has no liability for when it's wrong.*

Anonymous comment  
The Register, 4th July 2007

# What happened?

The Digital Revolution is what happened

Software and Silicon changed the world

New digital societies

New digital economics

New digital politics

# New digital societies

On-line communities

Diverse, independent, and competitive

Aggregations of diverse opinion

VS

Traditional top-down expertise

# New digital economies

Serving the on-line communities

The new Digital Cities

The demise of Industrial Capitalism

The rise of Digital Capitalism

# Did the patent system adapt?

USA: allow patents on software

EU: allow patents on "CIIs"

No protection for software components  
but rather for "machines"

More of the same, not adaptation

It fought Digital Society... which fought back

# And the result...

*Chemical / pharma ++*

*Software --*

Jim Bessen, Boston University

# The Digital Society hates...

## Patents

**Slow** - takes years

**Analogue** - everything done by hand

**Expensive** - no competitive market

**Broad** - covers problems, not solutions

**Unfair** - serious ethical concerns

**Not scalable** - quantity = disaster

# The Digital Society loves...

## Domain names

**Fast** - search, register, pay online

**Digital** - everything is bits

**Cheap** - €11.00/year (many registrars)

**Narrow** - reasonably precise

**Fair** - reasonable meritocracy

**Scalable** - millions? billions!

# Don't forget old friends

Copyright

**Fast** - instant and automatic

**Digital** - it's all become bits

**Cheap** - zero point zero Euro

**Narrow** - extremely precise

**Fair** - absolute meritocracy

**Scalable** - the more the better

# Scalable?

3,000,000,000+ people now take part  
in the Digital Society

That is a lot of entrepreneurs

Most of them are very small  
Any property system must work for them

Or, be(come) irrelevant

# Ethics = sustainability

- All must be equal before the law
  - No "rich man's game"
- The law must be made by the state
  - Not as a by-product of administrative decisions
- The law must work to benefit society at large
  - Not special interest groups
- The state must be run democratically
  - The worst system except for all the rest

# A political theory

Just Societies stem from the middle classes

Entrepreneurs don't discriminate  
They deconstruct political systems  
and they fix them

Political elites try to stop this process  
using any tools at hand

The patent system is such a tool

# The future

*I am not clear that we will ever get ourselves back to the position that can be regarded as "healthy balance".*

Alison Brimelow, President, EPO

# Pandora's Box

Software patents are Pandora's Box

Nightmares have been unleashed

Europe's place in the Digital Society is at risk

Humanity's technological future is at risk

# A less pessimistic opinion

The patent system could survive  
the Digital Revolution

It could even help

But some *big* changes are needed

# Essential steps

Step back from dogma

Return to first principles

Understand the Digital Society

Stop granting software patents

New property for the Digital Society

# The Digital Patent

Technically, it's easy

Protect real value

Reward disclosure

Create security

Aggregate knowledge

Work with, not against Digital Society

Fast, digital, competitive, cheap, narrow, fair, scalable

Politically... well, :-)

# Making wise laws

Patent office are in the regulatory business

Banish dogma, embrace diversity

Develop policies regionally

Aggregate centrally

Transparency

Ethics

# Thank you

Contact:

Pieter Hintjens

**ph@imatix.com**

eupaco.org -- ethipat.org -- ffii.org