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Mr. Simon Burns MP
House of Commons
London
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Dear Mr. Burns,

UK response to proposed European Directive on the patentability of software

I am writing to you to ask for your urgent help in pressing the Government to present a sensible position on Europe on the issue of software patenting, something which will affect myself and many other constituents working in the software industry.

As you may be aware, the European Parliament has recently approved the first reading of a proposed Directive on the patentability of software, which set out to clarify the situation in Europe. Few people on any side of this debate dispute that the actions of the European Patent Office have, to date, been inconsistent and at variance with the European Patent Convention, and this is clearly a problem. So much so, in fact, that prior to the vote in the Parliament, I took two days from my own business in providing software development and consultancy to travel to Brussels and speak to a number of the MEPs representing our region about this topic.

Therefore it was a relief to me when the Parliament voted last month for a number of major amendments to the proposed Directive, making it clear that pure software programs, mathematical rules and business methods are not patentable, whilst inventions which incidentally incorporate software remain patentable. This is in accordance with the views of almost all stakeholders in this debate, including software developers, economists and patent experts.

However, from my understanding of the European decision-making process, there will be an important Council of Ministers debate (which I believe will take place on **10th November)**, preceded by a preliminary meeting between stakeholders **this Thursday, 23rd October**. At these meetings, I am concerned that much of the good work done by the European Parliament in ensuring that this legislation protects small and large businesses alike will be undone, and the UK national interest will not be accurately represented. The reason for this is that the UK Government and DTI currently submit entirely to the UK Patent Office's judgement on patent and copyright issues and, whilst the Patent Office are clearly familiar with issues relating to patent law, they are not a disinterested party and are unlikely therefore to present a viewpoint which is representative of the UK's interests as a whole rather than those of the patent and legal community. In fact, the Patent Office has repeatedly grossly misrepresented the results of a consultation on this very subject in 2000, to suit their own agenda. (The results of the consultation showed an overwhelming opinion against the patentability of software, whilst the Patent Office managed to interpret this as "broadly in favour" of software patents; such manipulation of consultation results is quite nauseating and makes a mockery of public consultation).

Software patents threaten to damage innovation, create artificial barriers to market entry and assist the creation of artificial monopolies in the industry which I work in. This is bad for business, consumers and the free market alike. Pure software/business method patents on a plethora of ridiculous trivial concepts such as "gift ordering over the Internet" have already been granted by the European Patent Office and have only failed to retard innovation in Europe as a consequence of the fact that the patent holders in question know that courts would be likely to disregard such patents as having been granted contrary to the European Patent Convention, and have therefore not asserted these patents. Furthermore, many of such ridiculous patents are held by non-European companies and so if these were to be legitimised then European companies would suffer a huge blow and be put at a huge disadvantage since they would be faced with prohibitions on using many fundamental concepts. This applies to both the development work I do myself and the companies I provide services for; the impact on their business could be severe. In the United States, the ability to grant patents on

software and business methods has seen an endless misery of litigation and even the rise of litigation-only companies, whose only "business" is to build libraries of patents on trivial matters and then seek to extort money from genuine software developers in the form of "license fees". Furthermore, economic studies which I have seen from leading institutions have shown that such liberal patenting criteria has served to *retard* innovation rather than encourage it! We surely cannot allow such a situation to become commonplace in Europe.

The first draft of the proposed Directive (before the European Parliament's plenary vote) would have opened the floodgates to trivial software patents and all similar business method patents and unilaterally changed the rules defined in the European Patent Convention. It is important, therefore, that the Council of Ministers adopts a position based on the reasoned judgement of the Parliament rather than the cruder, earlier drafts. In particular, the UK's position at the Council of Ministers should *not* follow the lines of the original Directive proposal from November 2002, which failed to incorporate many crucial safeguards voted for by the European Parliament last month. It is of note that the UK Patent Office *supported* the earlier draft and is therefore likely to do so again. Also, the earlier draft was particularly offensive as it was phrased using patent-legalistic terms which to a layman appeared to limit the patentability of software but to those familiar with patent office terminology, it made clear that skilful phrasing of a patent application (to incorporate a nominal "technical effect") would allow any software patent application to succeed. Given the present, muddled, situation, what we need above all is clear and unambiguous legislation, not opaque "nudge nudge wink wink" posturing.

May I ask you therefore to challenge the Government to present a position in Europe which takes into account not only the narrow views of the Patent Office and the patent/legal community (which benefits from wide patentability and consequent litigation), but the wider needs of software developers, users and society at large by clearly upholding the European Parliament's decision to maintain the clear prohibition of pure software patenting.

Your time and consideration of this matter is greatly appreciated.

Yours sincerely,

Tim Jackson