



From <http://www.enn.ie>

BUSINESS

UK software patents get green light

20-03-2008

by [Charlie Taylor](#)

IN ASSOCIATION WITH
 Fujitsu Siemens

A landmark ruling on software patents in the UK is good news for developers in Ireland, according to a leading patent attorney.

Earlier this week, the High Court overturned a prior decision by the Intellectual Property Office (IPO) to refuse a patent application. That application was regarding a Symbian program that makes accessing dynamic link libraries (DLL) used by more than one application on a device more stable.



Michael O'Connor, Cruickshank

In his judgment Mr Justice Patten observed that the IPO's decision in this case illustrated a conflict which exists between the UK-IPO and the European Patent Office (EPO) about how the patentability of inventions involving computer programs is assessed. The case highlights differences between the two organisations because while the IPO rejected Symbian's patent application, the EPO granted a patent for the invention.

What is patentable in the UK is determined by the Patents Act 1977 which is aligned with the European Patent Convention (EPC). Among other things, this states that patents are not available for computer programs as such. Therefore, while it is possible to get patents in the UK for some inventions involving computer programs, it is not possible to get patents for innovations which are seen to be solely computer programs, such as an improved word processing program.

The way that the IPO decides if an invention is patentable is different from that used by the EPO, but the two approaches should generally give the same answer.

As with all High Court decisions the judgment is binding on the IPO until such time as it is overtaken by the judgment of the Court of Appeal.

The IPO has said that it believes that when deciding whether Symbian's computer implemented invention was patentable, Mr Justice Patten failed to properly apply the "Aerotel/Macrossan" test -- a 2006 case which led to a new, four-step test to check applications. Given this, it is intending to appeal the judgement with a view to seeking clarification from the Court of Appeal, because it believes that the new judgement has created uncertainty about how the Aerotel/Macrossan test should be applied.

Law firms in Britain have claimed that this week's ruling is a huge boost for the native software industry and, according to Michael O'Connor, patent attorney at the Irish patent and trademark solicitors, Cruickshank, the ruling is also good news for software developers in Ireland.

O'Connor, who recently warned that Irish firms may not be fully capitalising on their ideas by failing to patent their software in Europe, told ENN that as Irish law often takes British judgements into consideration, local developers will be better protected.

"The practice of the Irish Patents Office won't change significantly following the ruling because it doesn't have the same examination capacity as the UK IPO would have," said O'Connor.

"However, UK decisions, although not binding in the Irish courts, can be very persuasive, so it will have an effect. In the unlikely event that the Irish Patents Office should refuse a patent in this field, then those decisions will be quite convincing if brought before an Irish court," he added.

O'Connor also added that the ruling would likely have an impact from an enforcement point of view both in Irish courts and elsewhere.

"The UK is obviously a major market so the judgement brings the UK closer in line with other European jurisdictions, and [it] also sends a signal to software developers that they'll be able to enforce the patent decisions in Britain if necessary."

Not everyone is likely to be so overwhelmed by the UK decision and its implications for software developers, though.

When the proposed Computer-Implemented Inventions directive was put forth by

the European Commission back in 2005, IrishDev and KDE.ie, who at the time claimed to represent more than 20 percent of software developers in Ireland between them, voiced opposition. They argued that the proposed directive would stifle competition and innovation in the software industry.

The proposed directive, which sought to harmonise existing patent legislation by removing barriers to trade in patented products within the EU, was eventually rejected during its second reading.

Got Your Firefly?

The PIN protected mobile phone that gives parents peace of mind

Used Motorbikes - Ireland

Buy directly from previous owner. No middle man means a better deal.

