

Conclusion of the Analysis „Softwarebezogene Patente und die verfassungsrechtlichen Eigentumsrechte der Softwareautoren aus Art. 14 GG“¹ Written by RA Rasmus Keller and Fundamental Reasons

The granting of software-related patents is in violation of Article 14 of the German Grundgesetz (GG)

1. The copyrighted exploitation rights of the authors to their computer programs are property within the sense of Art. 14 (1) of the German Grundgesetz.
2. The granting of a software-related patent gives the holder of the patent a temporary monopoly. The programs which fall under a software-related patent may not be used by third parties within the scope of protection of the patent without the consent of the holder of the patent. The authors of the pertinent computer programs are to this extent prevented from utilising or selling their programs themselves commercially or for commercial purposes.
3. The exploitation rights to the computer programs covered by a software-related patent correspondingly lose their commercial value.
4. The granting of software-related patents therefore represents a serious encroachment on the property rights, which are protected by the constitution, of the software authors to their programs.
5. The characteristics of the software itself as well as the copyright and competition law protection of computer programs and software-related operating secrets provide adequate protection from the take-over of software-related problem solutions. At the same time, copyright laws make it possible for all authors to exploit their computer programs and the underlying problem solutions commercially.
6. Due to constitutional reasons, the encroachment on the exploitation rights of the authors cannot be justified because:
 - a) The protection of software-related problem solutions under patent law is not necessary.
 - b) Owing to the guarantee of property rights under the constitution, the legislator must assure “[...] *the fundamental attribution of the asset results of the creative effort to the creator* [...]” (BVerfG, File no.: 1 BvR 765/66 of 7 July 1971, BVerfGE² 31, 229 [240-241]).
7. Section 1, Subsection 3, No. 3 in conjunction with Subsection 4 of the German Patent Act and Art. 52, Subsection 2 c) in conjunction with Subsection 3 of the European Patent Convention must therefore be interpreted to mean that software-related patents may no longer be granted.

¹ Sierke-Verlag, ISBN 13 978-3-86844-119-2

² Collected Decisions of the Federal Constitutional Court