

# **EU SOFTWARE PATENTS VIA THE UPC**

**BENJAMIN HENRION, [FFII.ORG](http://ffii.org)**

# LAW

- European Patent Convention (EPC)
- EPC art52.2: Computer programs excluded of patentability
- EPC art52.3: exclusions to be considered "as such"
- European Patent Office (EPO) grants software patents anyhow using the "as such" loophole

# FFII 2006 PREDICTIONS

"In July 2005, after several failed attempts to legalise software patents in Europe, the patent establishment changed its strategy. Instead of explicitly seeking to sanction the patentability of software, they are now seeking to create a central European patent court, which would establish and enforce patentability rules in their favor, without any possibility of correction by competing courts or democratically elected legislators."

# UNIFIED PATENT COURT

- Part-time Judges working for Corporations (Nokia, Airbus, 3M)
- Self-financed = very expensive
- European Patent Convention = not EU law
- CJEU cannot have a say over software patents, like predicted

# A COMMON COURT?

- CJEU's Achmea (2017): EU law removed from National Courts = not a Common Court
- UPC's Roku (October 2025): questions of EU law "common court" being asked in Appeal, complaint throw out in violation of art267(3)tfeu (the Court MUST forward questions of EU law to the CJEU!)
- Complaint via a National Court?