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26 July, 2013

To

**Office of the Controller General of Patents,  
Designs and Trademarks (CGPDM)  
Intellectual Property Office.  
India**

**Re: Comments on Draft Guidelines for Examination of Computer Related Inventions (CRIs)**

**Respected Mr. Singh,**

In furtherance to your notification dated 28<sup>th</sup> June, 2013 on Draft Guideline for Computer Related Inventions (CRI) in IPO website, I have prepared comments on some of the guidelines, which require your kind attention. Please find our comments as below:

The software industry is one of the fastest growing industries. Software is protectable under the copyright and patent laws and can also be protected through trade secrets. But despite the legal protection, the jurisprudence on software protection is not well developed in India. As computer software comprise mainly of mathematical algorithms, the requirement of “technical contribution” or the interpretation of the word “invention” to which “technical” may be imminent, needs to be clarified.

The amended Patents Act of 1970 makes computer program per se a non-patentable subject, but in the absence of any official examination guidelines, except the patent manual (legally non-binding) with brief and vague interpretation of section 3(k) and without any explanation/examples of what is patentable; it needs judicial clarification to provide the necessary input on what is and what is not a computer program per se. Because of the lack of case laws and speaking decisions by the courts of India, the growth of software patenting is hampered. Nevertheless, the time has come to interpret computer program per se having “technical effect” deserve patent protection so

that software patents do not get restricted only to embedded software. For that, “technical effect” would require a through explanation.

### **Regarding patentability of Computer Readable Medium claim:**

With the Internet, software is deliverable through the Net anywhere in world. Whereas in the past, software were often sold as an integral part of the computer system, today, software products are commonly marketed, sold or licensed, in the form of computer readable media, for example, diskettes and CD-ROMs or directly over the Internet.

They are commercialized separately from the computer hardware. While incorporated in a floppy disc, hard disc of a computer or a CD-ROM, the item referred to as software is the series of commands that operates the computer. Though the floppy disc, the CD-ROM and the hard disc are each tangible commodities, which could be bought and sold, the software embedded in these media are intangible and fall into a very different category.

However, due to its nature, software cannot be treated on the same footing as other traditional goods. When an item of software is sold, the owner of the software does not complete a sale in the traditional sense. Instead, he assigns or licenses some of his rights in the software in favor of the purchaser. The rights assigned would be very specific in their scope, indicating clearly to the purchaser the actions that he/she is permitted to perform in relation to the software.

Computer software, like biotechnology, is subject to fierce competition with a shorter life cycle and can be easily copied. Because of its nature, the owner will have two problems: (i) economic, i.e., others can access it without payment; and (ii) competition, i.e., competitors can make competing products very quickly. Because software may be copied effectively at no cost, some means of restricting the free copying and redistribution of software work is necessary to preserve an investment in a software product through an appropriate system.

Indian Patents Act of 1970 states that computer program “per se” is not patentable as per section 3(k). However, no where it is mentioned that computer programs implemented on hardware is not patentable. Hence, a novel computer program implemented on a server connected to a network cannot be rejected as being non patentable under section 3(k).

We request the Indian Patent Office to adopt to distinguish a method having no technical application from a method having technical application. In this regard it is stated that in respect of inventions relating to software, software per se can be differentiated from software having technical application in an industry by evaluating as to whether the claim for the same is defined in relation with particular hardware components. If a similar test is applied with regard to algorithm, it can be said that algorithm having no technical application (which is non-patentable) can be differentiated from algorithm having technical application in an industry (which is patentable) by evaluating “whether the claim for the same is defined in relation with particular hardware components”.

**Regarding computer program product:**

A computer program product should not be excluded from patentability, when it is run on a computer, produces a further technical effect which goes beyond normal physical interactions between program (software) and computer (hardware). The things that are "done" are the "further technical effects: for example;

- enhancing a graphic display
- controlling data storage between memories
- -routing diverse calls through a telephone exchange
- allowing a novel and inventive computer-controlled process to operate a robot arm

Hence, the computer program product should not be excluded from patentability.

**Further, we request the Indian Patent office (IPO) to consider the following:**

· On page 10, we request the IPO to add some more technical effects like the following:

- Resource Utilization;
- Communication;
- Cost Saving;
- Time Saving;

- Efficiency; and
  - Quality.
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- We need to ask IPO to provide us with some illustrations on software/computer related invention which are patentable. From the draft guidelines it seems that all inventions relating to software are not patentable.
  
  - On page 13-example 1, claim 1, the preamble of claim 1 is broad. If the computing which is claimed is technical and if the computing address/resolves a technical problem then the said claim has to be patentable. The purpose has to be clearly defined in the preamble and if the claim is technically drafted then this claim should be patentable.
  
  - Many illustrations in the draft guidelines have defined the methods therein as business methods. There is no clarity as to why the inventions have been defined as business method. Example illustration 5, a method of scoring compatibility between members of social network. The said example as per the current definition given by the draft guidelines does not relate to any financial transaction, which is the essence of the business method. Technical effect and advantage to public must be considered.

Truly yours,

(D. MOSES JEYAKARAN)