August 3, 2013

Preamble:

Patentability is rightly denied to any computer programme under section 3(k) since computer programmes are essentially in machine language and therefore not assessable for the novelty, inventiveness and industrial applicability in that form of expression.

As can be inferred from statutes of several countries which do not grant patents to computer programmes, "per say" ought to just ensure that patent applications are thereby submitted in the "other than machine language".

However, it is noted in the recent released draft CRI guidelines that Indian Patent Office has interpreted "per say" very differently. Patents are refused by (a) trying to 'assess' the hardware on which they reside (b) expecting them to do what a human cannot (b) introducing new conditions like technical effects, etc.

This is causing great anxiety in the minds of Indian innovators. Products spanning from a car brake to tax calculators have become hugely unique but Indian innovators are denied protection.

There are several instances of attempts to camouflage software related inventions so that we fit into interpretations of our Patent Offices. This is sheer non-productive…….

It is difficult to believe that intent of Indian legislation ever was to **narrow down** the software patentability – one of the most significant strengths of Indian innovators.

Above points are elaborated below by picking decisions of few illustrations cited in the draft:

1. **Held : Software which runs on a general purpose machine are not patentable, but are patentable if they are machine specific or embedded.**

Observation: Why the patentability should be decided on this criterion at all, so long as the other criterions are met?

There is higher order inventiveness involved when software is written for a general purpose machine than, when it is written for a specific machine.

To explain by a simple analogy, it shall need far lesser skill (read software) to cut different kinds of vegetables (read computations) with different kinds of specific knifes (read hardware) than to cut ALL varieties with ONE kind.

2. **Held: If all elements of hardware are known in prior art, what has the inventor done?**

Observation: If some element of hardware were changed, one shall any ways get a patent in normal course. Why would one camouflage it with software?

3. **Held: If software does what is doable manually, then it is not patentable.**

Observation: All software work on some or the other computing machine. By the very definition, these machines compute and NOT invent nor THINK. The invectiveness lies in logic building so as to perform such computation, irrespective of whether it is calculation of time left for data download or time required to fire a propeller motor based on temperature.

It is to be NOTED that ALL computations that any computer does is doable manually, however with much larger effort.

The whole concept of computing is based on accuracy and speed and this itself is **inventiveness**, whether it is a technical matter or non-technical one.

4. Held: Only technical advancements are patentable.

Observations: This is vague. Is generating invoices faster and with correct country-wise taxation any less technical than generating correct blood analysis count?

Why are we deviating from the basic inventive principles by releasing such vague demarcations?

Moreover, when technical effect or technical advancements are not the basic criterion for new inventions in other matters, why specifically for software?

Recommendation:

(1) Computer programme be taken out from Section 3(k) and re-worded positively as:

Computer programmes are patentable, except in machine language, provided they meet other patentability criterion.

(2) Please re-visit the legislative intent and national interest.

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