

## *SOFTWARE PATENTS IN INDIA*

Unlike many countries computer softwares still are not included in the definitions of patentable inventions in India. In other words computer softwares are still including in the definition of not patentable invention under Indian Patent Law. Though Indian Govt. in April 2005 brought an ordinance to include computer softwares imbedded in hardware like computer, mobile, televisions etc. and having industrial application under the definition of patentable invention by amending the clause (k) of section 3 under chapter II of Indian Patent Act, 1970 but under pressure of the software professional lobby did not enacted the same. The relevant provision under the Indian Patents Act reads as under:

### *CHAPTER II INVENTIONS NOT PATENTABLE*

*3. What are not inventions.- the following are not inventions within the meaning of this act,--*

*.....*

*(k) a mathematical or business method or computer programme per se or algorithms;*

But still a number of applications relating to inventions pertaining to the computer software are filed every year in India and by clever camouflaging of the words these applications are successfully proceeded to the stage of grant of patents.

Indian Patent law technically bars grant of patents pertaining to the inventions relating to computer softwares, so if the invention is shown relating to a computer hardware or some form of generic hardware the same is patentable.

There is still strong likelihood of Indian Government relenting to include the computer softwares under the category of patentable inventions as a large number of computer softwares now days are invented by the Indian software professionals. Further one by filing patent application in India in relation to software inventions can hope that in near future Indian Government enacts the desirable changes to grant patents to inventions pertaining to the computer softwares.

Therefore anyone interested in filing a PCT application national phase or Convention application has to more careful at the time of filing original application for the first time in a foreign country. The language of specification as well as claims has to be accordingly modified at the time of filing of original application.

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