IJCSC International Journal of Computer Science & Communication Vol. 1, No. 1, January-June 2010, pp. 39-41

Software Patents and the Current Trends

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ABSTRACT

A patent is a set of exclusionary rights which are granted to the holder of patent by a state with the protection scope from replication for a maximum of 20 years. But the software patent does not have a universally accepted definition. Different countries are having different standards for granting software patents. The finding of this paper reveals the different standards followed by developed and developing software industries as well.

Keywords: Software, Patents, Innovation, Patent Laws.

1. INTRODUCTION

To increase the digital economy in different countries many firms engage in costly R & D activities to develop innovative software application for achievement of competitive benefit. This paper covers eight countries the most developed software industry in the world US and than after Europe, UK, Japan, Australia, South Africa, Malaysia, India, and Israel. These countries are having its own standard to grant software Patents, the laws followed by these countries are simply outlined one by one.

The Criteria Followed by the Developed Country:

1.1. United States

The some of landmark decision of the most developed software industry were Diamond v. Diehr, In re Alappat, In re Lowry, State Street Bank &Trust Company v. Signature Financial Group, In re Wait, etc. At present the law in the US is "an abstract idea by itself never satisfies the requirement of the Patent Law. However an abstract idea when practically applied to produce a useful, concrete and tangible result satisfies it."

The United States Patent and Trademark Office (UPSTO) has now one chapter on Patent Business Methods and for business methods and data analysis it's granting Patents to software techniques if they are useful. Single click to order goods in an online transaction like famous Amazon.com.

1-click patent, An online system of accounting, In line rewards incentive system, On-line frequent buyer programme, programmes letting customers set their own price for hotel booking etc.

Fig. 1: The Figure 1 Shows the Growth of Patents in US.

1.2. Europe

Under the European Patent Convention (EPC) 1973 and particularly in its article which specifically states that "discoveries, scientific theories and mathematical methods; aesthetic creations; schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers; (emphasis added), presentations of information will not be regarded as invention and excludes from patententability. The same law is followed by member countries of EPC where computer programs and business methods can not be patented. Well however practically its not so.

EPC formed an organization named European Patent Office which doesn't work for under the European Commission. There is lack of consistent practice among EPO and the number of patent offices of the EPC's member countries in granting patents and there's been a good deal of uncertainty whether software patents are even enforceable. To harmonize the practice, a draft was proposed by European Commission on the subject in 2002 but the text was never agreed upon. Some feared that in Europe there is much more regime liberalism as

compared to US which on the other hand others feared that they would lose the patent protection that they already have and enjoyed. Ultimately the proposal got defeated in European Parliament on July6, 2006, which makes clear that the inconsistent practice that caused the commission to seek to clarify the law is still continuing.

1.3. UK

The effects of EPC are followed by United Kingdom Patent Law such that "programs for computers" are not patentable to the extent that a patent application relates to a computer program as such. In Feb 2008 In re Astron Clinica Ltd., it concerned six application that claimed to be 'a method of doing' and 'device of doing it' by running a suitably programmed computer on the device. Effectively, the program that carries out a method (related to Astron clinica case). United Kingdom Intellectual Property Office (UKIPO) rejected these applications.

As per UK laws 'An invention is considered as an invention if it provides contribution that is not excluded and which is also technical. A computer program which implements industrial process may well be considered as an invention but the program implements business process is not considered to be an invention'.

1.4. Japan

The country which is next to US and Europe is Japan in net exporter of intellectual rights. The standards for granting software patents were revised in 1993. The software patent law in Japan are much lenient. Software related invention are patentable. As per the patent law in Japan the nature of invention is defined as ' a creation of technical ideas utilizing a law of nature'. As per Japan guidelines claims can be patented if 'utilization of nature law in information processing performed by software' and 'invention using hardware resources'.

Cause of lenient guidelines the software which can not be patented in Europe can be patented in Japan. So it is the second country which registers number of software patents after US.

1.5. Australia

In Australia, if the methods of doing business are pure or abstract then they are not considered to be patentable, but if the method is implemented using a computer, it avoid the exclusion business methods.

The Court referred to National Research Development Corporation v. Commissioner of Patents[13], as being the leading authority in Australia[14], where the High Court said "a process, to fall within the limits of patentability . . ., must be one that offers some advantage which is material, in the sense that the process belongs to a useful art as distinct from a fine art . . . - that its value to the country is in the field of economic endeavour.+"

The criteria followed by developing countries:

1.6. India

As Indian patent law 'a mathematical or business method or computer program par se(standing alone, in itself or by itself)' or algorithms is not invention for purposes of the Patent Act. It was further modified 'a computer programme per se other than its technical application to industry or a combination with hardware' can be patented.

The current examination guidelines of the Indian Patent Office on software sound similar to the traditional European approach which the European Parliament reconfirmed on 2003-09-24.

1.7. South Africa

In South Africa, the primary objective of a patent system should be to encourage and stimulate innovation. Some strict rules are followed to award of a patent. Firstly the invention must be new – that it must be substantially different from any prior art. Secondly, important, it must be inventive or non obvious – that is- with the same invention no any average practitioner in the field of technology would come up where the patent is awarded. Thirdly, the patent should be useful. These are the regime to grant patents in South Africa and same is followed for the software.

1.8. Israel

In Israeli, patenting of software-related inventions depends on the term "process." In the Rosenthal and United Technologies cases, courts interpreted the term as essentially dealing with a definite physical matter to change its appearance or condition. According to this line of reasoning, Israeli patent laws do not reflect on a computer program to be a process because it does not generate physical changes.

1.9. Malaysia

The existing Malaysia patent law does not have any specific provision for software related inventions. Section 13(1)(a) of the Malaysian Patent Act 1983 specifically excludes from patentable subject material "discoveries, scientific theories and mathematical methods" and paragraph (c) excludes "schemes, rules or methods for doing business, performing purely mental acts or playing games". This is quite alike to the patent law in UK. Malaysia has adopted a modified system in its examination of patent applications that depend on whether the claims have been registered in other

countries. In this manner, software based patents have been granted in Malaysia.

2. THE COMPARISON ANALYSIS

2.1. Developed Vs Developed

We have made two analysis over here, the first one is the difference in approaches of different developed countries According to the analysis made between USA and Europe. The basic difference in approach of these two powerful countries lies in framing the patent claims. In case of Europe, patent claim drafters have been proficient at framing their claims in such a manner that claims are not refused because they are computer programs. Though, many such claims are refused when prior art is considered. In case of United States patent law for is different as the application of a formula is explicitly allowed. The new USPTO guidelines state that if computer-readable memory Influence the way a computer process is carried out, then the patent claim can be awarded. The European approach is much cautious and requires more detail on the nature of the claim.

If we compare the EPO and Japan the guidelines which are followed by Japan are lenient as compared to the EPO. So the software patent which are granted in Japan can be simply granted in Europe also thus the country like Japan comes after United States for granting the software patents.

If a comparison made between EPO and UK practices then EPO, it accept any patent application relating to a computer implementation method is "an invention" on the other hand UKIPO reject an application on the basis that it does not describe any invention if the only contribution provided by the inventor is a computer program. While Australia give preference to computer programs which avoid exclusion business methods.

2.2. Developed Vs Developing

There is no doubt that the software patents are much recognized in developing countries like developed countries. India follows the similar guidelines of the EPO. India has for a long time resisted the calls of patent inflation. Programs for computers are excluded from patentability in Indian law. India follows the EPO guidelines. In Israel the guidelines are modified by UPSTO. The guidelines of South Africa and Malaysia are also similar to EPO to some extent. The value and quality of software patents in developing countries is poor than those powerful countries the reasons behind the situation include inadequate consciousness toward protection of intellectual property, scrawny self-governing innovation capability and lack of independent innovation achievements.

3. CONCLUSION

The developed countries are having very good amount of quality, quantity and value of the patents. Comparing the developing countries they still on progress there is improvement in their quantity but the factors like quality and value are still having a great difference with the low achievement in independent innovation and being the follower of powerful countries which no such self conducting policies. The government of the developing countries must strengthen the patent protection dynamics in favor of its civilians and add some more independent strategies.

4. FUTURE WORK

The paper already revealed the strategy followed by developed countries and how far its works but to find new strategies for developing countries is bit challenging. These countries need the new policies which can improve the software patent protection scenario.

5. REFERENCES

[1] www.swpat.ffii.org/players/us

[2] wikipedia.org/wiki/Software_patent

[3] www.bitlaw.com/software-patent [4]wikipedia.org/wiki/Software_patents_under_United_Kingdom_patent_law

[5] Ditesh Kumar, SoftwarePatents: Background, Discussion 2006.

[6] Patent Protection in Israel, IEEE Journal 2006.