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26th July 2013

Shri B. P. Singh   (via email: birendrap.singh@nic.in)
The Office of the Controller General of Patents, Designs and Trademarks
Bhoudhik Sampada Bhavan,
Antop Hill, S.M. Road,
Mumbai-400037.

Reg.:   Draft Guidelines for Examination of Computer Related Inventions
Published on: 28th June 2013

Respected Sir:

5   The Office of the Controller General of Patents, Designs and Trademarks is thanked at the outset for the efforts to bring uniformity and consistency to the examination of Computer Related Inventions (CRI), and for inviting comments on the Draft Guidelines for Examination of Computer Related Inventions (CRIs) (hereafter '**DRAFT GUIDELINES**').

10   The below comments are respectfully offered for consideration in finalizing the guidelines, and they supersede material submitted earlier by the Undersigned.

I. Summary

Some critical facts (that did **not** find mention in the DRAFT GUIDELINES) are pointed to, as a basis for showing that interpretation under principles of India Laws, makes 15   CRIs patent eligible (not subject to exclusion) under the Patents Act 1970 (as amended), without some of the restrictions in the DRAFT GUIDELINES.

In particular, it is shown that the amendment to section 3(k) in Patents (Amendment) Ordinance, 2004 (No. 7 of 2004) (hereafter **"2004 Ordinance"**) merely **clarified the pre-** 20   **existing state of law**, and therefore **did not attempt to widen** the scope of patent eligibility of CRIs by amendment to section 3(k). For this reason alone, it concluded that the amendment to section 3(k) in the Patents (Amendment) Act, 2005 (No. 15 of 2005) (hereafter **"2005 Amendments"**) did not diminish patent eligibility of CRIs, contrary to the conclusion in the DRAFT GUIDELINES.

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It is further shown that the amendment to section 2(1)(ja) introducing the requirement of 'technical advancement' further confirms the **basic structure of the Patents Act** that

computer programmes having technical character are patent eligible under the Patents Act 1970, as amended.

Based on the above, it is urged that the interpretation of section 3(k) be revisited and the guidelines be revised accordingly.

The below commonly presented practical scenarios are also briefly addressed:

(A) there is no basis in the Patents Act to conclude that 'computer readable medium' (CRM) claims are excluded from protection under section 3(k) or otherwise;

(B) claims presented as both 'methods' and 'apparatus' should be accepted if the subject matter otherwise is found to satisfy the requirements under the Patents Act; and

(C) the Patent office is urged to accept claims for CRIs under the three forms (CRM, methods and apparatus) noted above so that the Patentees/inventors enjoy all the rights contemplated under section 48 of the Patents Act, for the same mental/intellectual contributions.

II. Detailed Comments

1. Many material provisions of the DRAFT GUIDELINES are premised on the position in the statement, "Therefore, the re-instatement of the original phraseology of section 3(k) clearly indicates that the legislature intended to retain the original scope of exclusion and did not approve its widening under this sub-section as attempted through the ordinance" (Page 6 of the DRAFT GUIDELINES, hereafter '**CENTRAL POSITION**').

2. It is submitted that the conclusion is erroneous in not having properly considered the entire applicable legislative context, as required by the appropriate principles of statutory interpretation.

3. As to the applicable principles of statutory interpretation, attached as **Annexure A** are Pages 311-314 of a book entitled, 'Principles of Statutory Interpretation', 12th Edition 2010, By Justice GP Singh (hereafter "Justice Singh"), which explains the applicable legal principles on interpretation of statutes, when a statute is amended.

4. As explained by Justice Singh, "…when the terms of the enactment in the new shape are sufficiently difficult and ambiguous, the _**consideration of its evolution in the statute book is justified as a proper and logical course**_." (Page 312). Justice Singh further explains, "Change in language is not, however, always indicative of a change in construction [41] … _**addition of words may be to make clear a meaning which was already implied**_ [44]" (page 313, _**Emphasis Added**_).

5. The CENTRAL POSITION is based on the conclusion that the 2004 Ordinance

'widened' the scope of protection of CRIs. Review of the legislative history confirms that there was no such attempted widening, and in fact it was merely 'to make clear a meaning that was already implied' in accordance with the above quoted principles from Justice Singh.

5   6. In support of such an assertions, the below excerpt from Annexure I page 1 of the 'Record of the discussion of the meetings of the Group of Ministers, held on 24.9.2004 and 25.10.2004…" (**Annexure B**) is pointed to in further support of such an assertion:

10.	3(k)	To bifurcate the provision as under: 3(k)(i) A computer programme *per se* other than its technical application to industry or combination with hardware 3(k)(ii) a mathematical method or a business method or algorithms	To clarify the provision so as to allow patent for software related inventions when they have technical applications.

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10   7. It is therefore submitted that the proposed amendment in the 2004 Ordinance was merely for clarification, and did not widen the scope of protection for CRIs, contrary to the conclusion reached in the CENTRAL POSITION of the DRAFT GUIDELINES.

15   8. It accordingly follows that that the law existing prior to 2004 Ordinance control the interpretation of section 3(k) at least as of post-2004 Ordinance, consonant with the principles enunciated by Justice Singh. The evolution in the statute book of section 3(k) and attendant provisions as related to CRIs, are examined next.

20   9. In the "Report Of The Joint Committee" on The Patents (Second Amendment) Bill, 1999, (Presented To The Rajya Sabha On The 19th December, 2001) and (Laid On The Table Of The Lok Sabha On The 19th December, 2001), (hereafter "**2001-report**") it was noted:

25   In the new proposed clause (k) the words **''per se" have been inserted**. This change has been proposed because sometimes the computer programmes may include certain other things, **ancillary thereto or developed thereon**. **The intention here is not to reject them for grant of patent if they are inventions.** However, the **computer programmes**

30   **as such** are not intended to be granted patent. This amendment has been proposed to clarify the purpose. (Clause 4 on Page 6 of 168, of the Joint Committee Report, **Emphasis Added**)

35   10. The above object implies patent eligibility when computer programmes satisfy the criteria 'developed thereon' or 'ancilliary thereto', but 'computer programmes as such' are excluded from patent protection. The understanding of these three terms is explained below next.

11. The term 'developed thereon' in computer industry generally connotes areas normally classified as system or infrastructure software. This type of software operates as a 'base' for various higher level functions (e.g., execution of other software, assisting other software/ hardware in providing additional functionality) of other components. In that sense, the classes of software are utilitarian for other machine components such as software and hardware (not directly to the human senses for understandability of the information).

12. The term 'things ancilliary' to computer programmes noted above implies other classes of CRIs when software programs control hardware (e.g., Robotics) or merely monitor/ measure or make more efficient the technological features implemented in software or otherwise, are also patent eligible.

13. The 'computer programmes as such' exclusion noted above is understood to mean that the patents act, **as a threshold matter**, does not provide protection if an applicant merely provides a 'program listing' or 'object code' as a specification with the patent application. Rather the specification would be required to state the functional and inventive aspects in accordance with the other provisions of the Patents Act.

14. Whether the term 'computer programmes as such' of section 3(k) requires more to be excluded, is left to further interpretation. In that respect, it may be observed that European Patent Practice uses a similar term and has evolved to be interpreted as requiring the equivalent of 'technical advance' introduced into the definition of invention under section 2(1)(j/ja). Accordingly, practically, the requirements under the Patents Act for patent eligibility of CRIs, is aligned with European practice, as was the approach followed by several Controllers during the past several years.

15. The statement of Dr. S.K. Pal, Assistant Controller of Patents and Designs on May 13, 2002 (see **Annexure C**) that, "Computer programs per se are protected by copyright law and therefore excluded from patent protection" is consonant with the above advanced comments. Under the statement of Dr. S.K. Pal, the denial of patent protection under 'per se' exclusion needs to be limited to those aspects covered by the copyright law. As best understood, copyright law protects literal copying (i.e., software code from one medium/CD/Floppy to the other), but does not normally protect 'functional/ technical aspects' that are subject of the Patents Act. It thus implies that section 3(k) of the Patents Act was intended to grant patent protection for CRIs having technological/ functional nature.

16. The legislative intent behind the 2002 amendments is understood to be based on a recognition that: (1) the innovation process in software is no different than in other technology areas; (2) software and hardware are interchangeable in many circumstances; (3)

the innovations pre-dominantly are in software based inventions recently; and (4) there is no practical reason for treating CRIs any different than inventions in other areas of technology (e.g., mechanical area).

17. Now turning to the events after the 2004 Ordinance, the amendment of section 3(k) to prior text (of 2002 amendments) needs to be understood in the context of **absence of any amendment to section 2(1)(ja) (defining inventive step) in the 2004 Ordinance**, but insertion of the requirement of 'technical advance' in 2005 Amendment. Therefore, the 'technical character' requirement was simply **moved into the definition of invention** (in the 2005 amendment) under section 2(1)(ja) from section 3(k) of the 2004 Ordinance.

18. The changes from 2004 Ordinance to 2005 Amendments again simply confirm that CRIs having technical character are patent eligible, and the events of 2004/2005 did not change the basic **overall structure of the Patents Act** in entitling CRIs for patent protection.

19. From the above, it is observed that the 2004 Ordinance did not widen the scope of protection under section 3(k) of the Patents Act, contrary to the conclusion reached in the DRAFT GUIDELINES. Therefore, the reversal to pre-2004 version of section 3(k) cannot be said to alter the patent eligibility of CRIs. Similarly, the changes between the 2005 Amendment and 2004 Ordinance did not in any way diminish the patent eligibility to CRIs having technical character.

20. It therefore follows (contrary to the conclusion in the DRAFT GUIDELINES) that the entire Patents Act **has been consistent from inception of section 3(k)**, in making eligible the below categories of subject matter under section 3(k) of the Patents Act to the extent they are inventions (with technical advancement/character requirement under sections 2(1)(j/ja) of the Patents Act, as Amended):

(A) computer programme having technical application to industry; and

(B) computer programme in combination with hardware.

21. From the above, it is respectfully urged that the interpretation of section 3(k) be revisited taking into consideration the legislative history noted above, and the examination guidelines for CRIs be framed consistent with such an understanding.

22. We further concur with the definition of 'Technical Advancement' (for purpose of section 2.1.ja) as being coexistent with 'technical effect' (see Section 3.16 of the DRAFT GUIDELINES), thereby in effect bringing the examination guidelines closer to those developed under EPO law. In particular, section 3.15 of the DRAFT GUIDELINES defines the term technical effect as "… solution to a technical problem, which the invention taken as a whole, tends to overcome." The EPO guidelines appear to interpret such technical effects to

be outside of the ambit of 'computer programs as such' exclusion, consistent with the interpretation advanced above.

23. It is a suggestion to expand the list in section 3.15 of the DRAFT GUIDELINES to address the cutting edge technology areas such as cloud/ grid computing (where arguably general purpose computers provide a different computing environment with the assistance of software), infra-structure software (which provides a 'platform' for hosting other programs, e.g., virtual machines), software tools for generating additional software programs, computer to computer communications (networking), software components which reduce processing/ memory requirements tailored to specific environments, virtualization software, soft-ware plug-ins/utilities which provide additional technical advantages to their environments, inventions targeted to mobile computing, software as a service (SAAS), infra-structure software facilitating big-data analytics, performance monitoring applications, etc.

24. With respect to section 4.3 of the DRAFT GUIDELINES concluding that 'computer program product' is 'computer programme per se', appears to be based on a misunderstanding of the relevant principles. While section 3(k) operates to deny protection against literal copying of software code that the medium embodies/ stores (the domain of Copyright laws), such interpretation in no way means that the Patents Act (section 3K) prohibits protection of 'functional aspects' embodied in software form and stored on a storage medium, especially given that the storage medium causes the machine to be a 'new machine' (similar to in other areas of technology where patent eligible components cause machines to operate in a technologically new manner).

25. The protection as 'computer program product' is a practical necessity for protection of technologies in several scenarios, given the specific form of rights conferred under section 48 of the Patents Act to Patentees. As an illustration, the sale of a medium storing the pertinent software instructions would constitute infringement under sub-section 48(a) if the computer program product is eligible for patent protection. In the absence of such protection as 'computer program product', the inventors may be left without remedy at law in case of unlawful export of software (covered by method or apparatus claims) by selling CD type medium since sub-section 48(b) may not protect the patentee if the patented method will be performed only outside of India (when the software will be eventually executed).

26. **Annexure D** provides an example of how a patentee may be left without protection in the absence of recognition of computer program product claims. Assume a person is merely exporting by way of a thumb-drive, copies of software which provides the capabilities following from the subject matter of claims 1, 2 and 3. The patentee could be in precarious situation given that sub-section 48(a) may not protect the patentee based on claim

3 since that claim requires assembly of the software in a transceiver (which is being performed outside of India). Sub-section 48(b) may similarly not protect the patentee since the steps would be performed outside of India. The Patentees thus require the option of 'computer program product' for protection of their interests in this context.

27. It is also urged that the DRAFT GUIDELINES be clarified to permit protection of the apparatus claim 3, if method claim 1 is considered patentable meeting all the requirements for grant of a patent. The transceiver of claim 3 contains a component (receiver) operable in a novel way (a property). It appears there is no basis in the Patents Act to discriminate between the method claim 2 and apparatus claim 3 of Annexure D, once the subject matter otherwise satisfied the requirement of being an invention.. The patentees stand to benefit from the different protections afforded under sub-sections 48(a) and 48(b) for the same creative mental contribution, which ought to be permitted by the Patent Office in the absence of a showing of clear prohibition in the Patents Act. It is therefore urged that the Patent Office consider accepting all the three forms of claims noted in the Annexure.

28. Section 5.4.6. of the DRAFT GUIDELINES refer to a 'general purpose known computer'. The definition of that term should be ideally added to 'Section 3. Terms/definitions'. The term is normally understood to mean a machine that has nothing more than basic processor, input and output features. Under such an interpretation what is excluded is 'routine data processing applications' (as opposed to system software, which are infra-structure software for execution of other applications, and therefore better technological products, etc.), which can execute on any general purpose computer system.

29. Section 5.4.6. of the DRAFT GUIDELINES further states, "For considering the patentability of computer programme in combination with hardware features, the hardware portion has to be something more than general-purpose machine." This statement appears to exclude patent eligibility of below two categories of subject matter, and appropriate clarification/confirmation is helpful:

(a) subject matter in the areas such data compression, admittedly having technical effect (see the list of section 3.15 of the DRAFT GUIDELINES), but the operation merely entails operation of software instructions in a novel way; and

(b) subject matter in which it is only software instructions which makes 'known hardware components' operate in a new way.

30. The Guidelines may further clarify when a claim constitutes a 'business method' vs. when the claim is merely a tool making a portion of a business more efficient (e.g., tractor vs. agriculture, selling to consumers vs. a new point of sale device) not excluded from patent protection under 'business method' prong of section 3(k).
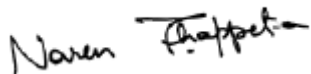
31. It would be helpful to the prospective applicants to have specific illustrations of granted patents for CRIs (similar to illustrations for excluded subject matter in the DRAFT GUIDELINES), where there is continued and consistent agreement in the Patent Office, that the granted claims are not ineligible for patent protection under section 3 of the Patents Act.

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The undersigned may be contacted if there are any questions or comments.

Respectfully submitted

Naren Thappeta

10   Naren Thappeta
Patent Agent/Advocate
For: Law firm of Naren Thappeta

III. Annexures

Annexure A

Pages 311-314, 'Principles of Statutory Interpretation', 12 Edition 2010
By Justice GP Singh

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Syn 4]   *Reference to Other Statutes*   311

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It is no doubt true that after a statute is amended, the statute thereafter is to be read and construed with reference to the new provisions and not with reference to provisions that originally existed.[32] Further the wisdom of the warning given by LORD WATSON cannot be doubted that it is an "extremely hazardous proceeding to refer to provisions which have been absolutely repealed in order to ascertain what the Legislature meant to enact

27. *State of U.P. v. Radhey Shyam,* AIR 1989 SC 682, pp. 689, 690 : 1989 (1) SCC 591.
28. *Ibid.* **See further** *V.M. Salgaokar & Bros. Pvt. Ltd. v. Commissioner of Income-tax,* JT 2000 (4) SC 473, pp. 493, 494 : (2000) 5 SCC 373.
29. *Bharat Ins. Co. Ltd. v. CIT, Punjab,* AIR 1934 PC 45, p. 49. But alteration immediately following a decision cannot be overlooked as of no import: *Union of India v. V.M. Salgaonkar and Bros. (P.) Ltd.,* AIR 1998 SC 1367, p. 1371 : 1998 (4) SCC 263.
30. *Felix v. Thomas,* (1966) 3 All ER 21, p. 27 (PC).
31. *Bhimaji Shankar v. Dundappa Vithappa,* AIR 1966 SC 166, p. 169 : 1966 (1) SCR 145.
32. *Venkata Subamma v. Ramayya,* AIR 1932 PC 92; *Shamrao V. Parulekar v. District Magistrate, Thana,* AIR 1952 SC 324, p. 326 : 1952 SCR 683; *Ramnarain v. Simla Banking & Industrial Co. Ltd.,* AIR 1956 SC 614, p. 621 : 1956 SCR 630; *Laxmi Devi v. Mukund Kanwar,* AIR 1965 SC 834, p. 837 (para 14) : 1965 (1) SCR 726; *Onkarlal Nandlal v. State of Rajasthan,* (1985) 4 SCC 404, p. 415 : AIR 1986 SC 2164; *Orient Paper Industries Ltd. v. State of Orissa,* AIR 1991 SC 672, p. 682 : 1991 Supp (1) SCC 81; *Yadlapati Venkateswarlu v. State of Andhra Pradesh,* AIR 1991 SC 704, p. 709 : 1992 Supp (1) SCC 74; *State of Maharashtra v. Vithalrao Ganpatro Warhade,* JT (1998) 7 SC 177, p. 187 : 1998 (5) Scale 603 : (1998) 8 SCC 284.

in their room and stead".[33] However, "when it is contended that the Legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the statute can be taken to effect the change that is suggested as intended",[34] and similarly, when the terms of the enactment in the new shape are sufficiently difficult and ambiguous, the consideration of its evolution in the statute book is justified as a proper and logical course.[35] It is an example of the application of this principle that the Supreme Court "on historical evolution of section 21 (Penal Code, 1860), adopted as an external aid to construction" held that an M.L.A. was not and is not a public servant as defined in that section.[36] Legislative history of separate and distinct provisions giving benefit of total or partial exemption from income-tax to those who were engaged in running poultry business was taken into account in holding that the provisions which provided incentive to industrial undertakings engaged in the business of manufacturing or producing articles or things did not apply to those engaged in the business of hatcheries which in this context could neither be termed industrial undertaking nor engaged in the business of producing articles or things.[37] And in dealing with the expression 'injury to health' in section 79 of the Environmental Protection Act, 1990 used in the context of statutory nuisance the abatement of which can be directed by a local authority, the Court of Appeal traced its legislative history beginning from the Public Health Act, 1875 and referred to the decisions under the earlier Acts and came to the conclusion that it had been always understood in the sense of

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33. *Bradlaugh v. Clarke*, (1883) 8 AC 354, p. 380. **See further** *Mohanlal Tripathi v. District Magistrate, Rai Bareilly*, AIR 1993 SC 2042, p. 2049 : (1992) 4 SCC 80.

34. *Abdur Rahim v. Syed Abu Mahomed Barkat Ali Shah*, AIR 1928 PC 16, p. 18 : 55 IA 96.

35. *Tumahole Bereng v. King*, AIR 1949 PC 172, p. 176 : 50 Cri LJ 642; *ITO, Sitapur v. Muralidhar Bhagwandas*, AIR 1965 SC 342, p. 346 : 1964 (6) SCR 411; *ITO, I, Salem v. Short Brothers*, AIR 1967 SC 81, p. 84 : (1966) 3 SCR 84; *Pacific Motor etc. v. Motor Credits*, (1965) 2 All ER 105, p. 113 (PC) (Heredity of a section as useful guide); *Armah v. Government of Ghana*, (1966) 3 All ER 177, pp. 181, 203 (HL) (use of statutory antecedents of the Act); *Beswick v. Beswick*, (1967) 2 All ER 1197, p. 1202 (HL) (Antecedents of a section); *Owen Thomas Mangin v. IRC*, (1971) 2 WLR 39, p. 42 (PC); *General Electric Co. v. General Electric Co. Ltd.*, (1972) 2 All ER 507, p. 518 (Legislative history of the Trade Marks Act, 1938 over the previous 63 years and the state of the Common Law as it existed before the first Act to alter it was passed nearly 100 years ago were considered); *Mohanlal Tripathi v. District Magistrate, Rai Bareilly*, AIR 1993 SC 2042, p. 2049 : (1992) 4 SCC 80.

36. *R. S. Nayak v. A. R. Antuley*, (1984) 2 SCC 183, p. 223 : AIR 1984 SC 684.

37. *Commissioner of Income-tax Bangalore v. Venkateshwara Hatcheries (P.) Ltd.*, JT 1999 (2) SC 338, pp. 343, 344 : AIR 1999 SC 1225, pp. 1228, 1229.

risk of disease or illness, and so it could not be interpreted in section 79 to include risk of physical injury from the state of residential premises.[38]

An amending Act is construed in a way which does not result in its misfiring or in denying its efficacy[39] but without straining its language or rewriting or adopting it to cover cases other than those to which it clearly applies.[40] Change in language is not, however, always indicative of a change in construction.[41] The alteration in language in or by a later statute may be the result of many other factors. For instance, words may be omitted in a later statute when they were mere surplusage[42] and the natural and ordinary meaning of the existing words indicates no intention of alteration of meaning.[43] Similarly addition of words may be to make clear a meaning which was already implied.[44] Further, the change in wording may be because the draftsman wanted to improve the style.[45] As aptly stated by LORD UTHWATT, no alteration in meaning by alteration in language can result "unless, (1) the requirements of the English language demand it, (2) those requirements permit it and sense of the section demands it".[46] It must also be remembered that for bringing about fundamental changes such as departure from the general system of the law or imposition of new burdens, a clear intention to that effect is necessary and the courts will not

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38. *R. v. Bristol City Council exparte Everett,* (1999) 2 All ER 193 (CA). See the following cases where similar method was applied by the House of Lords: *Cadogan Estates Ltd. v. McMohan,* (2000) 4 All ER 897 (HL) (construction of the word 'obligation' in the Rent Act 1979); *Birmingham City Council v. Oakley,* (2001) 1 All ER 385, pp. 392, 394, 395 (HL) (Construction of the expression 'prejudicial to health' in the Environmental Protection Act, 1990.

39. *Green Cab Service v. Whitfield,* (1965) 3 All ER 695, p. 700 (PC).

40. *Wijesuriya v. Amit,* (1965) 3 All ER 701, p. 703 (PC).

41. *Hadley v. Perks,* (1866) LR 1 QB 444, p. 457; *Lawless v. Sullivan,* (1881) 6 AC 373, p. 383 (PC); *Hopes v. Hopes,* (1948) 2 All ER 920, p. 925; *Redrow Homes Ltd. v. Bett Bros. Plc.,* (1998) 1 All ER 385, p. 390 (g, h) (HL).

42. *Madanlal Fakirchand Dudhediya v. S. Changdeo Sugar Mills,* AIR 1962 SC 1543, p. 1553: 1962 Supp (3) SCR 973; *Bhanupratap Singh (Raja) v. Asstt. Custodian, Evacuee Property, Bahraich,* AIR 1966 SC 245, p. 248 : (1966) 1 SCR 304.

43. *Redrow Homes Ltd. v. Bett Bros. Plc., supra.*

44. *Chandrika Prasad Tripathi v. Shiv Prasad Chanpuria,* AIR 1959 SC 827, p. 830 : 1959 Supp (2) SCR 527; *Mohamed Quasim Larry v. Mohomed Samsuddin,* AIR 1964 SC 1699 : (1964) 7 SCR 419; *Kajari Lal Agarwala v. Union of India,* AIR 1966 SC 1538, p. 1541 : 1966 (3) SCR 141; *Bhagat Ram v. State of Punjab,* AIR 1967 SC 927 : 1967 (2) SCR 165.

45. *Hopes v. Hopes,* (1948) 2 All ER 920, p. 925. Referred in *State of U.P. v. Radhey Shyam,* AIR 1989 SC 682, p. 690 : 1989 (1) SCC 591.

46. *Lord Howard de Walden v. IRC,* (1948) 2 All ER 825, p. 830 (HL). Referred in *State of U.P. v. Radhey Shyam, supra.*

infer such fundamental changes unless the language used expresses a clear intention to the contrary.[47]

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47. *M.K. Ranganathan v. Govt. of Madras*, AIR 1955 SC 604, p. 609 : 1955 (2) SCR 374; *Empress Mills, Nagpur v. Municipal Committee, Wardha*, AIR 1958 SC 341, p. 348 : 1958 SCR 1102; *Byram Pestonji Gariwala v. Union Bank of India*, AIR 1991 SC 2234, p. 2242 : 1992 (1) SCC 31 (Implied authority of counsel to compromise not altered by CPC Amendment Act, 1976). **See further** *Murugiah v. Jainuddeen*, (1954) 3 WLR 682, p. 687 (PC); *National Assistance Board v. Wilkinson*, (1952) 2 All ER 255, p. 259; *Minet v. Leman*, (1855) 20 Beav 269, p. 278 : 52 ER 606, p. 610; *Beswick v. Beswick*, (1967) 2 All ER 1197 (HL); *Central Bank of India v. State of Kerala*, (2009) 4 SCC 94 para 136 : (2009) 3 JT 216. **See also** Chapter 5 title 8(a1) Principle of legality.

Annexure B

Record of the discussion of the meetings of the
Group of Ministers
held on 24.9.2004 at 12.30 P.M. and on 25.10.2004 at 3.00 P.M.
in Room No.102, South Block, New Delhi

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In pursuance of the directions given by the Cabinet in its meeting held on 25.8.2004 on a proposal for amendments to the Patents Act, 1970, the Group of Ministers (GoM) met twice on 24.9.2004 and 25.10.2004. The first meeting was attended by:-

i.   Shri Pranab Mukherjee, Minister of Defence(Chairman)

ii.   Shri Sharad Pawar, Minister of Agriculture and Minister of Consumer Affairs, Food & Public Distribution

iii. Shri Kamal Nath, Minister of Commerce & Industry

iv.   Shri Ram Vilas Paswan, Minister of Chemicals & Fertilizers and Minister of Steel

v.   Shri Kapil Sibal, Minister of State (Independent Charge) of the Ministry of Science & Technology and Minister of State (Independent Charge) of the Department of Ocean Development.

2.   The second meeting of the GoM was attended by all the members, namely:

i.   Shri Pranab Mukherjee, Minister of Defence (Chairman)

ii.   Shri Sharad Pawar, Minister of Agriculture and Minister of Consumer Affairs, Food & Public Distribution

iii. Shri Kamal Nath, Minister of Commerce & Industry

iv.   Shri Ram Vilas Paswan, Minister of Chemicals & Fertilizers and Minister of Steel

v.   Shri P. Chidambaram, Minister of Finance

vi.   Dr. Anbumani Ramdoss, Minister of Health & Family Welfare

vii. Shri Subodh Kant Sahay, Minister of State (Independent Charge) of the Ministry of Food Processing Industries

viii. Shri Kapil Sibal, Minister of State (Independent Charge) of the Ministry of Science & Technology and Minister of State (Independent Charge) of the

To: Shri. BP Singh   Submitted by: Law Firm of Naren Thappeta

India Patent Office   26 July 2013

ANNEX- I

[DETAILS OF AMENDMENTS TO BE MADE TO
THE PATENTS ACT, 1970

S.No.	Section No. of existing Act	Nature of Amendment	Remarks
1.	2(1) - New provision	To incorporate definition of Budapest Treaty.	India is a recent signatory to the Budapest Treaty and its provisions are now applicable to India also.
2.	2 (1) (d)	To modify the definition of "convention country".	To align with proposed provision of "convention country" under section 133.
3.	2(1)(g)	To delete the definition of term "food".	Will not be relevant with the proposed introduction of product patent protection for this sector also.
4.	2(1)(h)(iii)	To delete the reference to CSIR	To make a generic provision enabling inclusion of other institutions which are financed wholly or partially by the Government.
5.	2(1(i)	To modify the definition of High Court as High Court of that State/Union Territory having jurisdiction as notified by Central Government from time to time.	With the creation of new States/Union Territories, the jurisdiction of High Court undergoes change, thereby necessitating amendments in the Act. In order to avoid such amendments, a general provision is proposed.
6.	2(1)(l)	To delete the definition of term medicine or drug	Will not be relevant with the proposed introduction of product patent protection for this sector also.
7.	2	To add a definition of "Opposition Board" as referred to in Section 25	An Opposition Board is proposed to be constituted in the Patent Office to enable examination and disposal of post grant opposition matters.
8.	2(1)(m)	To amend the definition of the term 'patent'	To provide interpretative clarity and link grant of patent with inventions directly.
9.	3(d)	To add the word "mere" before "new use"	To provide drafting consistency and exclude grant of patent for mere new use of known substance.
10.	3(k)	To bifurcate the provision as under: 3(k)(i) A computer programme per se other than its technical application to industry or combination with hardware 3(k)(ii) a mathematical method or a business method or algorithms	To clarify the provision so as to allow patent for software related inventions when they have technical applications.

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Annexure C

Vinod Kumar

From: "Patent Office India (Kolkata)" <patentin@vsnl.com>
To: "Vinod Kumar" <vinodkumar@ub.nic.in>
Cc: "Rajeev Ranjan" <rajeevranjan@ub.nic.in>
Sent: Monday, May 13, 2002 5:28 PM
Subject: Reply to question revied through the Office of Dr. Mashelkar, DG,
Reply to Questions received through the office of Dr. Mashelkar, DG, CSIR

Q1.) Yes, it is not an infringement to import into India goods put on the market else where by the patent holder. It is also true that subsequent sale or use of the said goods in India will not be infringement since person importing possessing the goods lawfully.

Q2.) Local manufacturing requirement can not be insisted in view of Art 27.1 of the TRIPs Agreement. Working of the Patent can be through importation also. However importation alone may not able to fulfill public requirement about the patented article or through importation patented article may not be available to the Indian public at reasonable price. In those circumstances compulsory licenses can be granted.

Q3.) Computer programs perse are protected by copyright law and therefore excluded from patent protection.

Dr. S. K. Pal
Assistant Controller of Patents & Designs

Annexure D

1. (Reproduced from Section 4.3 of the DRAFT GUIDELINES) A computer program product for feeding back information from a receiver to a transmitter, the program comprising code which when executed on a processor of the receiver receives signals from the transmitter over a wireless multiple-input multiple- output channel; based on the received signals, transmits a plurality of reports back from the receiver to the transmitter in a periodic sequence of respective time intervals, the reports of each period comprising at least an indication of a pre-coding matrix and an indication of a rank of the pre-coding matrix in response to an event, omits the report comprising the rank indications from one of said periods; determines a subsequent report comprising an indication of a pre-coding matrix on the basis of a predetermined default rank, and transmits that report to the transmitter.

2. A method of feeding back information from a receiver to a transmitter, the method being performed in the receiver, the method comprising:

receiving signals from the transmitter over a wireless multiple-input multiple- output channel;

based on the received signals, transmitting a plurality of reports back from the receiver to the transmitter in a periodic sequence of respective time intervals, the reports of each period comprising at least an indication of a pre-coding matrix and an indication of a rank of the pre-coding matrix in response to an event, omits the report comprising the rank indications from one of said periods;

determining a subsequent report comprising an indication of a pre-coding matrix on the basis of a predetermined default rank; and

transmitting that report to the transmitter.

3. A transceiver comprising:

a transmitter;

a receiver for feeding back information to the transmitter, the receiver being operable to:

receive signals from the transmitter over a wireless multiple-input multiple-output channel;

based on the received signals, transmit a plurality of reports back from the receiver to the transmitter in a periodic sequence of respective time intervals, the reports of each period comprising at least an indication of a pre-coding matrix and an indication of a rank of the pre-coding matrix in response to an event, omits the report comprising the rank indications from one of said periods;

determine a subsequent report comprising an indication of a pre-coding matrix on the basis of a predetermined default rank; and

transmit that report to the transmitter.