



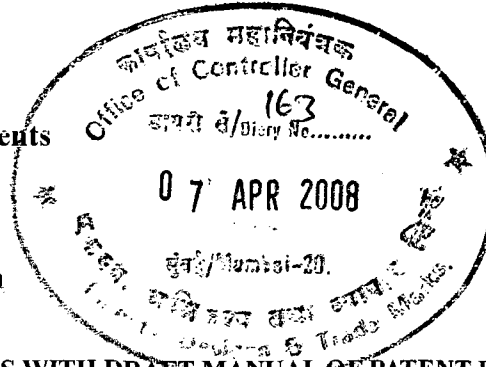
ENTRE FOR EXCELLENCE IN E-GOVERNANCE

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**Sub: SUGGESTIONS AND ISSUES WITH DRAFT MANUAL OF PATENT PRACTICE AND
PROCEDURE - PATENT OFFICE, INDIA (2008)**

Sir/ Madam,

Based on my analysis and discussions with other experts, I would suggest that the following changes are made to the draft manual in order to preserve the interest of the country and the software industry, especially the nascent firms which will become the Infosys's of the future.

1. Please refer to section 4 of the Draft Manual. At the very beginning it states that “*a mathematical or business method or a computer program per se or algorithms;*” are not inventions as per section 3(1) of the Patent's Act. However, it seems that section 4.11 of the draft manual is re-interpreting this part of the act.
2. Please refer to section 4.11.3. This section stated the following: “ If the patent application relates only to a machine i.e., hardware based invention, the best mode of operation may be described along with the suitable illustrations. However, in the case of a process related inventions , the necessary sequence of steps should clearly be described so as to distinguish the invention from the prior art with the help of the flowcharts. The source/pseudo/object codes may be incorporated in the description optionally.”

This sub-section implies that software with a hardware implementation can be patented. This is against the spirit and letter of the Patents Act. Moreover, this will be devastating for the Indian software industry as it this provision will allow backdoor patenting of software.

In case this sub-section refers to only hardware inventions with no reference to software, then the sub-section itself should be removed as it has no place under section 4.11 which refers to only software. Keeping section 4.11.3 will be misleading and confusing.

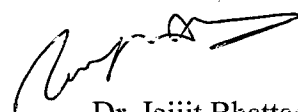
3. Similarly sub-section 4.11.4 refers to hardware implementations and talks about obvious issues of how inventions with prior art cannot be patented. This sub-section should also be removed from under section 4.11 as it is confusing and misleading.
4. Sub-section 4.11.6 refers to conditions under which softwares and software methods can be patented. This again goes against the spirit and letter of the Patents Act. The example of signal processing from seismic transducers has no implication whatsoever on allowing softwares to be patented. The two are orthogonal issues. This import of this sub-section is therefore not obvious and should therefore be re-framed to bring out clarity or should be deleted altogether.
5. Sub-section 4.11.7 refers to hardware inventions and are therefore out of context for section 4.11. Also, it seems to hint that if data is stored as per the hardware invention then that can be patented. New media invention for storing data can possibly be considered for being patented but definitely any software helping in data storage cannot be patented as per the Patents Act and rightfully so. This sub-section should be removed from Section 4.11.
6. Sub-section 4.11.8 has the following sentence at the end “An invention consisting of hardware along with software or computer program in order to perform the function of the hardware may be considered patentable. e.g., embedded systems. “

The software referred above cannot be patented as per the Patents Act. This statements is attempting to re-interpret the act inaccurately. The hardware may be considered for being patented but the software component of the hardware cannot be patented. The above sentence should be removed from section 4.11.8
7. Sub-section 4.11.9 appears to be missed out.
8. Sub-section 4.11.10 implies that a mathematical method cannot be patented but its application to a specific technical field (eg. the image processing in the Vicom case) can be patented. By extending this logic, all mathematical methods can be patented by simply linking it to a technical field. This will help large companies as they can afford to put in hundreds of patents for hundred of technical fields by extending each mathematical method to these fields. This is again against the Patents Act. This sub-section should be removed.

I would request your office to consider the above suggestions with appropriate gravity and to make the necessary modifications to the draft manual of patent practice and procedure.

Thanking you,

Yours sincerely



Dr. Jaijit Bhattacharya