



Free Software Movement of India

Sy. No. 91, Greenlands colony, Beside CGG, Gachibowli, Hyderabad, Telangana - 500032
Ph No. : 040 23001268 email : ask@fsmi.in

September 7th, 2015

Press note on new guidelines for patenting Computer Related Inventions (CRIs)

The new Guidelines for Examination of Computer Related Inventions, released by the Indian Patent Office on August 21, 2015, are illogical, and violate the spirit and law contained in the Patents Act of 1970 (as amended), and could pose a grave threat to innovation in our country.

These Guidelines enhance the scope of patentability of software by permitting applicants to merely show innovation in the software portion of their application, rather than in both software and hardware, as required previously. The Guidelines also increase the scope of patenting for mathematical and business models, thereby indirectly permitting software to be patented (for instance methods of encoding / decoding).

Legislative history and the language of Section 3 (k) of the Patents Act make it clear that software as a stand-alone is not considered patentable. It is settled law that only software as a part of a larger invention can be considered for a patent. Accordingly, an innovation can only be granted a patent if it can show novelty in both the software and hardware portions, when taken together - not in the software alone. Further, a mathematical method, a business method or a mathematical algorithm cannot be patented at all, irrespective of whether it is embodied in software or not.

It is globally recognised that software patents are one of the biggest threats to innovation. Not only do software patents restrict technological progress and encourage monopolization, they massively enhance costs through the creation of patent thickets and through the diversion of funds from productive R&D towards litigation and discovery/licenses. Permitting software patents through the backdoor, will severely restrict the innovative capabilities of the Indian economy, and the creative/entrepreneurial spirit of millions of Indians.

The Free Software Movement of India accordingly requests the Patent Office to immediately amend the Guidelines of August 21, 2015, to bring the same in consonance with the letter and spirit of law as contained in the Patents Act.

The Free Software Movement of India further calls on all programmers, entrepreneurs and interested citizens to raise their voices against the continued attempts to restrict the innovative capabilities of Indian citizens by creating artificial barriers to knowledge access.

Y. Kiran Chandra
General Secretary
Free Software Movement of India.

Prabir Purkayastha
Vice President
Free Software Movement of India