



SWARIT

A D V I S O R S

SOFTWARE PATENT – AN OVERVIEW

It is a property right that safeguards computer programs or any computer performance from computer programs. A Software Patent is like a Utility Patent with no actual legal definition. [Software Patent](#) is different from a Software Copyright. Software Patent and Copyright both safeguard the product, but a Copyright only covers the expression of an idea.



WHAT IS THE HISTORY OF SOFTWARE PATENTS?

Initially, the USPTO (United States Patent & Trademark Office) avoided granting Patents to the invention that used computers. In 1968, they formed some guidelines stating that computer programs were unpatentable. But, through a long series of court cases, the point of view steadily changed. The guidelines are constantly changing as an outcome of cases in the Federal Court of Appeals & the Supreme Court. Guidelines issued in 2013 gave direction on both Software Patents and Hardware Patents. One of the main objectives of the guidelines is to assist the USPTO to decide whether specific inventions are eligible for Patents.



WHAT IS A SOFTWARE?

Software is a set of instructions, data, programs or commands used to run computers and implement specific tasks. Software is a generic term used to mention scripts, applications, and programs that operate on a device. It can be thought of as the changeable part of a computer, while the hardware is the unchangeable part.



SOME RULES REGARDING SOFTWARE PATENT REGISTRATION

The Patent (Amendments) Act, 2002 regulates the procedure of [Patent Registration](#).

This Act came into effect on 20th May 2003. Following are the elements that are not a part of this Act:

- 1. Any work related to music, art, drama, or aesthetic creation comprising TV productions & cinematography work;**
- 2. Topography of integrated circuits;**
- 3. Simple rule or scheme for executing mental Acts or a way of playing a computer game.**

ISSUES LINKED WITH SOFTWARE PATENTS

1. In the international market, there is no such big recognised difference between patented and non-patented Software. For e.g., in the European Union, Software cannot receive Patents.

2. Lawful and technical programs can hinder innovation & patentability.

3. Although US Law states that conceptual ideas cannot be protected by Patents, this is not the case everywhere.

GETTING A SOFTWARE PATENT

Consider whether you require a Patent

When anyone creates or develops Software, then it already has a protection measure. So it is necessary to get Patent Registration.

Step 1

Specify your Software

If you want to get a Patent for your Software or a piece of Software, be able to specify or describe the overall design of your invention clearly.

Step 2

Do Proper Research

The Patent Search helps you to decide if the effort it takes to get a Patent is worth it.

Step 3

Work on the Patent Application

First the system explanation, second is a flowchart that gives an overview of how the Software will work and more flowcharts that provide much information regarding how your Software will reach its objective.

Step 4

Depend on your Attorney

Hire an expert who will guide you throughout the Patent application process. Your attorney is beneficial when you are drafting your application.

Step 5

VALIDITY OF SOFTWARE PATENTS

Software Patents remain valid for twenty years from filing. The Patents for Software come under the technology category. The software coding methods are distinctive and vital. Hence, it becomes vital to protect such Software & codes via Patents. Patents are the best way to safeguard the helpful factor of the Software. However, to apply for a Patent Registration, the program should be a technical invention. According to the *Patent Act, 2002 (Section 3(k))*, all computer programs cannot be patented because they are code lines.



SOFTWARE CONTRACTS



SOFTWARE

Software Contracts are also regulated by the Indian Contract Act, and such Software Contracts can be in the form of a license or agreement or maybe sale. In case software fits into the explanation of goods as per ***Sale of Goods Act***, this comprises any movable property intangible or tangible shall be governed by the provisions & principles of Sale of Goods Act. For example, in ***TCS vs. State of Andhra Pradesh (271 ITR 401)***, Supreme Court considered Software to be good, moreover stating that irrespective of the Intellectual Property of a Software, Computer Software can be deemed as goods & is accountable for taxes.

WHY SWARIT ADVISORS?

Swarit Advisors is a technology motivated platform establishing the specialized legal & Intellectual Property (IP) services in India.

We are dedicated to helping startups and MNC in solving legal, compliances, IP issues related to starting and running their business around the world.

Our goal is to offer one-click access to individuals & industries for all their legal & professional desires!



EXPERIENCE

10+ Years of
Experience in IP
Services Banking and
Insurance laws

FOCUS

*Dedicated Team with
Prior Experience in
Regulation*

COMMITMENT

*90% Success in
RBI/SEBI/IRDA/IPR
Matters*

RESPECT

*We work like
Co-Founders
with our clients*

OPENNESS

*Innovative and
Strong Project
Plans*



Contact Us

Reach out to us for inquiries
or comments.



Phone Number

For Call: +91-9354924744

For WhatsApp: +91-9354924744

Email Address

For Sales: ho@swaritadvisors.com

For Complaints: care@swaritadvisors.com

For Careers: hr@swaritadvisors.com

Website

www.swaritadvisors.com



THANKYOU

**Prepared by:
Karan Singh**