INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

 ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

 ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

 ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

 ISSN: 2582-6433

SUSTAINABLE INTELLECTUAL PROPERTY ECOSYSTEM FOR COMPUTER RELATED INVENTION IN RELATION TO PATENTING THE SOFTWARE TECHNOLOGIES IN INDIA.

AUTHORED BY - MR. PRATYUSH PANDEY[1]
& DR. ANSHUMAN MISHRA[2]

ABSTRACT

The transformation of disruptive technologies has led to evolve the Computer Related Inventions. Computer Related Inventions are those inventions which involve computer as a medium to achieve the result. These inventions are used in various industries such as healthcare, automobile, agriculture, finance, education, telecommunication etc. In India, in order to get patent, these inventions have to fulfill the criteria of patentability. Section 3(k) of the Patent Act puts a bar on the inventions in respect of mathematical or business methods, computer program *per se* or algorithms. In relation to the software technologies where Computer Related Invention is involved, section 3(k) holds a great importance for the grant of patent. The term *per se* used under section 3(k) of the Act, limits the scope of the patentability of the Computer Related Inventions. However, the term *per se* itself is not defined under the Act. Guidelines for Computer Related Invention issued by the Office of the Controller General of Patents, Designs and Trademarks, 2017 has assigned dictionary meaning to the term *per se*. Therefore, there persists an issue as to what is the scope of section 3(k) in relation to Computer Related Invention. Whether the computer program is patentable or it is excluded completely from the patentability criteria. This paper examines and explores this issue in the light of various judgments, laws of different jurisdictions and the guidelines for the Computer Related Inventions.

Keywords: Computer Related Invention, Patentability, Guidelines for Computer Related Inventions, and Patent Act.

[1] Research Scholar, Faculty of Law, University of Allahabad. (Email: pratyush1211@gmail.com, Mob: 7376748533)
[2] Associate Professor, Faculty of Law, University of Allahabad. (Email: anshumanmishra73@gmail.com)

 ISSN: 2582-6433

INTRODUCTION

21st century is witnessing the drastic technological transformation. These technologies lead to innovation by using computer related invention and software. Such computer related inventions further become the subject matter of the patent. However, in India and other jurisdictions as well, a computer related invention must pass the threshold of the patentability criteria. In India, the legislature has defined certain non-patentable subject matters which are although invention but can't be patented. One of the sections that excludes the invention from granting the patent is section 3(k) of the Patent Act. It deals with the patentability criteria of computer related inventions. It basically excludes the computer program *per se* from the patentability. This section that excludes the computer program itself posed certain issues as to what is the meaning of the term *per se*? This terms itself has not been defined in the Act. Thus, in order to understand the meaning of it, one has to either take its dictionary interpretation or the meaning assigned by the judiciary in different jurisdictions. The interpretation of Section 3(k) of the Indian Patent Act, particularly concerning the exclusion of "computer programs per se," has been a subject of significant debate and legal scrutiny within the realm of intellectual property law. At the heart of this debate lies the meaning and scope of the term "per se" as applied to computer programs, raising fundamental questions about the patentability of software innovations in India.

Section 3(k) of the Indian Patent Act prohibits the grant of patents for inventions that are "computer programs per se." This statutory provision has generated considerable ambiguity and controversy regarding the extent to which software-related inventions qualify for patent protection. The phrase "per se" has emerged as a focal point of legal analysis, as its interpretation holds profound implications for innovation, competition, and technological progress in the digital age.

The term "per se" denotes something considered in itself, inherently, or as a matter of its own essence, without any additional or accompanying elements. In the context of Section 3(k), the inclusion of "per se" raises questions about whether patent eligibility hinges solely on the nature of the software itself, independent of any specific technical context, application, or inventive contribution.

This introductory section sets the stage for an in-depth exploration of the issues surrounding the meaning of "per se" in the context of computer programs under Section 3(k) of the Indian Patent

 ISSN: 2582-6433

Act. It highlights the significance of clarifying the scope and boundaries of patent eligibility for software innovations to foster innovation, encourage investment, and strike a balance between promoting technological progress and safeguarding public interests.

Against this backdrop, this research aims to dissect the legal and policy dimensions of the "computer programs per se" exclusion, analyze judicial precedents and administrative guidelines, evaluate competing interpretations and arguments, and offer insights into the implications for India's software industry, innovation ecosystem, and broader intellectual property landscape. By shedding light on the nuanced nuances of this contentious issue, this research seeks to contribute to a deeper understanding of the challenges and opportunities inherent in regulating software patents in India's rapidly evolving digital economy.

COMPUTER RELATED INVENTION AND INDIAN PATENT LAW

In India, the Patents Act of 1970 excludes "mathematical or business methods, computer programs, or algorithms" from patentability under Section 3(k).[3] The addition of "computer programme per se" in 2002, as recommended by the Joint Parliamentary Committee (JPC) Report of 2001, indicates a legislative intent to grant patents for inventions extending beyond mere computer programs.[4] The JPC report clarified that while computer programs may include additional elements, patents should not be denied if they represent genuine inventions. However, the lack of a clear definition of "computer programme per se" in the Act and the evolving guidelines of the Indian Patent Office have led to inconsistent patent practices. Some controllers have insisted on including novel hardware features in claims related to Computer Related Inventions (CRIs), despite no such requirement in the Act or the Patents Rules of 2003, causing difficulties for applicants.[5]

According to the Patent Act, computer software itself cannot be patented, leading to differing opinions among supporters and opponents of software patents. It could be argued that this clause implies that only software integrated into a larger invention, meeting the Act's patent criteria,

[3]The Patents Act, 1970, s. 3 (k).
[4]The Parliament added the words per se after accepting the proposition which was introduced in section 3(k) enacted by the Patent (Amendment) Act, 2002. I.A. No. 6735/2014 in CS (OS) No.1045/ 2014 at 151.
[5] See also, Ravindra Chingale and Srikrishna Deva Rao, "Software Patent in India: A Comparative Judicial and Emperical Overview", 20 Journal of Intellectual Property Rights, July 2015 at 212

 ISSN: 2582-6433

could be considered for patenting. This clarifies that standalone software is not patentable under Indian law. Since software requires hardware to function, software running on a general-purpose computer is ineligible for patents. Simply incorporating standard data processing equipment into a software application does not transform it into an invention. Only when the software application is part of a broader system that meets patent eligibility criteria can the entire invention be patented.

In Section 3(k) of the law, it is explicitly stated that computer programs are inherently not eligible for patents. Now, what exactly does this "per se" signify? Should we rely on dictionary definitions or interpretations from legal precedents such as those set by the ECJ or US courts? It is imperative that the scope of "per se" be clearly delineated.

The rationale behind introducing "per se" was elucidated in the report of the Joint Committee on the Patent (Second Amendment) Bill, 1999.[6] The addition aimed to address scenarios where a computer program might encompass additional elements or developments. The intention was not to deny patents for inventions that incorporate such elements, but rather to clarify that standalone computer programs were not intended for patent protection. This clarification was proposed to bring clarity to the law.

The ruling of the Delhi High Court in the *Ericsson v. Intex*[7] case underscored that computer-related inventions with a technical contribution or effect are patentable in India, aligning with decisions made by courts in the EU and the UK.

Understanding this exception requires reference to relevant sections of the Manual of Patent Office.[8] Section 08.03.05.10 of the Manual clarifies that mathematical or business methods, computer programs per se, or algorithms are not considered inventions and therefore cannot be patented.[9]

The Indian Patent Office (IPO) initially released a draft version of guidelines for computer-related inventions (CRI) on June 28, 2013. After gathering feedback from various stakeholders, the final

[6]Parliament of India Rajya Sabha The Patents (Second Amendment) Bill, 1999 Report of The Joint Committee, 2001.
[7]I.A. No. 6735/2014 in CS(OS) No.1045/ 2014.
[8]Manual of Patent Office Practice and Procedure Version 01.11 As Modified on March 22, 2011, Published By: The Office of Controller General of Patents, Designs & Trademarks.
[9]*Ibid.*

 ISSN: 2582-6433

guidelines were issued on August 21, 2015. This final version was more permissive compared to the draft. However, on December 14, 2015, the final guidelines were suspended via a public notice, without clear explanation for the change. Subsequently, a revised set of guidelines, stricter than the previous ones, was issued on February 19, 2016. Stakeholders dissatisfied with the restrictive terms appealed to the Department of Industrial Policy and Promotion (DIPP) and the IPO for reconsideration. The latest iteration, released on June 30, 2017, reflects a return to the more lenient approach. These guidelines are based on recommendations from an expert committee established by the DIPP, which thoroughly reviewed various inputs and conducted extensive consultations with stakeholders.

As per the 2016 CRI Guidelines, examiners are instructed to follow a three-stage test when examining CRI applications: first, accurately interpret the claim and determine the actual contribution; if the contribution is solely a mathematical or business method or algorithm, reject the claim; if the contribution involves computer programming, ascertain if it's accompanied by novel hardware and proceed with other patentability assessments. The guidelines emphasize that computer programs themselves are not patentable. If the contribution solely resides in the computer program, the claim is to be denied. However, if the contribution involves both the computer program and hardware, further patentability assessments are warranted.

These guidelines clarify that subsection 3(k) of the law excludes mathematical methods, business methods, computer programs per se, or algorithms from patentability. Computer programs are typically claimed in the form of algorithms in method claims or system claims, with certain "means" indicating functions via flow charts or process steps. It's stressed that the focus in establishing patentability should be on the essence of the invention rather than its specific claimed form.

In reference to these guidelines, the 2016 Special 301 Report from the USA notes that India has introduced uncertainty for patent applicants through the issuance of CRI patentability guidelines following a non-transparent process for gathering comments.

It's important to highlight that the criteria of 'further technical effect' and 'technical advancement', previously emphasized in the guidelines, have been entirely eliminated in the 2016 Guidelines. Instead, a comprehensive new test has been introduced under Regulation 4.2. Patent applicants will now need to convincingly demonstrate that their invention exhibits either technical

 ISSN: 2582-6433

advancement or economic significance compared to existing inventions in the respective field. Additionally, it's noteworthy to consider the observation that "the updated CRI guidelines are expected to restrict the global reach of Indian software firms, which have traditionally relied heavily on software-enabled services. The growth trajectory of Indian software companies, including numerous dynamic startups, will hinge on their capacity to develop patentable innovations to tap into the international market."[10]

Critiques of the 2016 guidelines prompted the introduction of new guidelines in 2017 for CRIs. The most significant change in the recent guidelines is the abandonment of the three-step examination process outlined in the prior guidelines. The latest document omits any reference to novel hardware as a prerequisite for patent approval. The revisions have been meticulously executed, with even subtle or implicit mentions of hardware being expunged. For instance, paragraph 4.4.5 of the 2016 guidelines contained two instances of the term "implementation" of claimed inventions, which have now been replaced by the term "performance".[11] While "implementation" implies hardware, "performance" does not. Analogous to traitors in Ancient Rome or the intelligentsia in Stalinist Russia, the requirement for novel hardware appears to have been eradicated and forgotten, removed entirely from official discourse.[12]

The official stance of the Indian Patent Office, as reported by PTI regarding the 2017 guidelines, asserts that the new guidelines simply clarify the patent office's earlier directives. There has been no change in the policy regarding the granting of patents for CRIs.

"The language used in the guidelines issued in February 2016 may have given the impression that the 'novel hardware' clause was obligatory for obtaining patents for CRIs, which was not the case. However, the Indian Patent Office has revised those guidelines and clarified that this clause is not mandatory."

Section 4.5.4 of the 2017 Guidelines for Examination of Computer Related Inventions (CRIs), issued by the Office of the Controller General of Patents, Designs, and Trademarks, addresses claims related to "Computer Programme per se." Such claims, which focus solely on computer programs, are not eligible for patent protection. This includes claims directed at computer

[10]Ashish Bharadwaj, Patents on software: India's CRI Guidelines Create Impractical Situation, available at: http://www.financialexpress.com/opinion/patents-on-software-indias-cri-guidelines-create-impracticalsituation/424635/ (last visited on 23/03/2024)
[11] Guidelines for Examination of Computer Related Inventions available at https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1_83_1_Guidelines-for-Examination-of-CRIs-19-2-2016.pdf
[12]*Ibid.*

 ISSN: 2582-6433

programs, sets of instructions, routines, and/or sub-routines, as well as claims targeting "computer programme products," "Storage Medium having instructions," "Database," or "Computer Memory with instruction" stored in a computer-readable medium.

Upon thorough examination, it appears that while the recent CRI guidelines, although somewhat ambiguous, seem to adopt a stance akin to that proposed by the Court of Appeal of England and Wales in Aerotel/Macrossan's regarding the exclusion of "computer programme per se" under Indian patent law. As previously mentioned, the test entails four steps: (1) Interpret the claim accurately; (2) ascertain the genuine contribution; (3) determine if it falls exclusively within the excluded subject matter; and (4) assess whether the actual or alleged contribution possesses a technical nature.

JUDICIAL PRONOUNCEMENTS

Over the years, judicial rulings have added to the complexity for applicants by challenging the restrictive stance taken by the Patent Office. Notably, decisions by the erstwhile Intellectual Property Appellate Board (IPAB) in cases like *Enercon India Ltd. v Aloys Wobben*[13] and *Accenture Global Service GMBH v The Assistant Controller of Patents & Designs*[14] have provided some clarity on the patentability of Computer Related Inventions (CRIs), offering a method to distinguish patentable computer-related applications from what constitutes "computer programme per se".[15]

In the Accenture case, the Patent Office initially rejected a patent application concerning a system and method for developing an internet-hosted business application composed of web services, citing Section 3(k).[16] They applied a two-pronged standard to assess the invention's patentability, aiming to determine whether: The invention pertained to a hardware configuration executing a novel function.

The novel feature of the invention was either embedded within a set of instructions tailored to prompt the hardware to execute specific operations without requiring hardware customization, or they were incorporated into alterations made to the hardware itself (innovative hardware). The Patent Office determined that without innovative hardware, the invention did not meet the criteria

[13]W.P.No.20165 of 2010
[14]IPAB, OA/22/2009/PT/DEL, 28th December, 2012.
[15]*Ibid.*
[16]*Ibid.*

 ISSN: 2582-6433

for patentability outlined in Section 3(k). In a subsequent appeal to the IPAB, Accenture argued that the standards applied by the Patent Office were not specified in the Act or the Manual of Patent Office Practice and Procedure. The IPAB concurred, noting that the inclusion of a 'novel hardware' element is not obligatory to meet the requirements of Section 3(k). Consequently, the case was referred back to the Patent Office. Upon review, the Patent Office approved the application, recognizing that the invention led to advancements in web services and software, thus falling outside the scope of "computer programme per se" as delineated in Section 3(k) of the Act.

RECENT TRENDS IN INDIA

Despite court rulings and guideline revisions, the current stance on the patentability of CRIs in India remains plagued by inconsistent application by the Patent Office. This inconsistency has unfortunately resulted in the unjust dismissal of deserving applications. When compounded by arbitrary rejection orders – those lacking analysis or detailed reasoning – applicants find themselves in a difficult situation, unsure of the Patent Office's position regarding CRI patentability. This issue was recently addressed in the High Court of Delhi's verdict in *Microsoft Technology Licensing, LLC v Assistant Controller of Patents and Designs*.[17] In this case, Microsoft submitted an application concerning a two-tier authentication system utilizing distinct cookies. This technique aims to enhance user authentication while accessing network sub-locations, thwarting potential intrusions by malicious users attempting to obtain cookies illegally from other users. However, the controller, in rejecting the application, deemed the subject matter as pertaining to a "computer programme per se," with the inventive step lying within non-patentable subject matter under Section 3(k) of the Act. Microsoft challenged this decision, arguing that the controller's interpretation of Section 3(k) was flawed. Citing precedents such as the Ferid Allani and Intex cases, Microsoft contended that the invention should not be classified as a "computer programme per se," as it addresses a technical process and resolves a technical issue of data security on a network. In response, the Patent Office countered the appeal, asserting that Microsoft had misunderstood the legislative intent behind Section 3(k), and the controller rightfully rejected the application, as the invention predominantly involves a set of instructions implemented on a "computer programme per se."[18]

[17] 2023:DHC:3342
[18] *Microsoft Technology Licensing, LLC v Assistant Controller of Patents and Designs*, 2023:DHC:3342

 ISSN: 2582-6433

The High Court of Delhi extensively deliberated on three major issues:

(i) The inception and development of Section 3(k) of the Act;

(ii) The legislative intent behind incorporating "per se" into the Act; and

(iii) The guidelines concerning Computer Related Inventions (CRIs) issued by the Patent Office.[19]

Furthermore, it explored the concepts of technical effect and reviewed legal stances in the US and the EU regarding the patentability of CRIs. Underlining the necessity of establishing a precise definition of "per se" for proper legal interpretation, the court asserted that "per se" unequivocally denotes that "computer programmes as such" are not eligible for patents. Consequently, inventions demonstrating a technical effect and offering a technical solution to a technical problem, even if grounded in software, may qualify for patents. Reiterating the legal principle established in the Ferid Allani case[20], the court emphasized the critical role of understanding and applying technical advancement and technical effect in assessing the patentability of CRIs. The court clarified that a technical effect or contribution can be evident in an invention if it addresses a "technical problem, enhances a technical process, or provides some other technical benefit." It asserted that the mere inclusion of a mathematical method or computer program per se does not automatically render the invention non-patentable under the Act. Expressing dissatisfaction with the Patent Office's stringent requirement of novel hardware for CRI applications, the court maintained that patent applications should be evaluated in light of established judicial precedents, Section 3(k) provisions, existing CRI guidelines, and other relevant legislative frameworks. Additionally, the court urged examiners to scrutinize each application individually, focusing on the essence of the invention rather than solely on its claims, to ensure that deserving applications featuring technical advancement and offering real-world solutions receive patent protection.

Critiquing the removal of examples and illustrations of patentable and non-patentable inventions from the 2017 CRI guidelines, the court directed the Patent Office to develop 'signposts' and 'indicators' based on case law to guide examiners, promoting uniformity and consistency in the examination process of CRIs, aligning with international practices such as those of the USPTO and the EPO. Ultimately, the court concluded that the claimed invention presents an innovative solution to a security issue by introducing a two-tier authentication process and enhancing the

[19] *Ibid.*
[20] *Ferid Allani v Union Of India and Ors.* W.P.(C) 7/2014 & CM APPL. 40736/2019

 ISSN: 2582-6433

user experience. It found that the controller had overlooked the technical aspects of the invention and instructed the Patent Office to reconsider the application, considering the comprehensive criteria for analyzing computer-related inventions as a whole, including their technical contributions.

CONCLUSION

The latest rulings represent progress, yet the crucial factor lies in how the Patent Office will respond and implement fresh methodologies. Primarily, what's needed is a fairer and more uniform approach, which has long been challenging for applicants. The Patent Office must facilitate deserving owners of Computer Related Inventions (CRIs) to pursue patent safeguarding in India, thereby aiding the Intellectual Property (IP) system in realizing its full capabilities. According to a report released by Nasscom in April 2023, more than half of the new technology patents filed in India during the previous decade originated from either the internet of things or artificial intelligence sectors. The rapid advancement of software technology underscores the necessity for establishing a sustainable intellectual property (IP) environment for inventions driven by technology, with a call for more lenient laws governing the patenting and protection of software technologies in India. The year 2023 commenced with significant rulings from the High Court of Delhi regarding the proper interpretation of Section 3(k) of the law. Alongside the Microsoft case, on March 29, 2023, the Division Bench of the High Court of Delhi, in the Intex v Ericsson case, upheld the conclusions of the Single Bench that an "invention providing a technical contribution or technical effect is not merely a computer program per se and is eligible for patenting."

In the case of *OpenTV Inc. v The Controller of Patents and Designs and Anr*[21], the court determined that inventions demonstrating a technical effect and addressing a technical issue may be excluded from the purview of Section 3(k). The court also referenced the 161st Report of the Review of the Intellectual Property Rights[22] Regime in India presented by the parliamentary standing committee, suggesting that "a considerable number of innovations in emerging technologies, including those by small and medium-sized enterprises (SMEs), startups, and educational institutions, could involve business methods or the application of computing and digital technologies. Consequently, there is a necessity to reconsider the exclusions outlined in Section 3(k) of the Act in light of the burgeoning innovations.

[21]C.A.(COMM.IPD-PAT) 14/2021
[22]ONE HUNDRED AND SIXTY FIRST REPORT Review of the Intellectual Property Rights Regime in India (Presented to the Rajya Sabha on 23rd July, 2021) (Laid on the Table of Lok Sabha on 23rd July, 2021).

 ISSN: 2582-6433

REFERENCE

- Ashish Bharadwaj, Patents on software: India's CRI Guidelines Create Impractical Situation, available at: http://www.financialexpress.com/opinion/patents-on-software-indias-cri-guidelines-create-impracticalsituation/424635/
- Guidelines for Examination of Computer Related Inventions available at https://ipindia.gov.in/writereaddata/Portal/IPOGuidelinesManuals/1_83_1_Guidelines-for-Examination-of-CRIs-19-2-2016.pdf
- Manual of Patent Office Practice and Procedure Version 01.11 As Modified on March 22, 2011, Published By: The Office of Controller General of Patents, Designs & Trademarks.
- ONE HUNDRED AND SIXTY FIRST REPORT Review of the Intellectual Property Rights Regime in India (Presented to the Rajya Sabha on 23rd July, 2021)
- Parliament of India Rajya Sabha The Patents (Second Amendment) Bill, 1999 Report of The Joint Committee, 2001.
- Ravindra Chingale and Srikrishna Deva Rao, "Software Patent in India: A Comparative Judicial and Emperical Overview", 20 Journal of Intellectual Property Rights, July 2015
- The Patents Act, 1970

CASE LAWS

- Accenture Global Service GMBH v The Assistant Controller of Patents & Designs, IPAB, OA/22/2009/PT/DEL, 28th December, 2012.
- Enercon India Ltd. v Aloys Wobben, W.P.No.20165 of 2010
- Ferid Allani v Union Of India and Ors. W.P.(C) 7/2014 & CM APPL. 40736/2019
- Microsoft Technology Licensing, LLC v Assistant Controller of Patents and Designs, 2023:DHC:3342
- OpenTV Inc. v The Controller of Patents and Designs and Anr, C.A.(COMM.IPD-PAT) 14/2021