

# Revised patent norms for software could impact tech start-ups

Revised guidelines say software that demonstrates a technical application or improves hardware may also be patented, widening the scope of patents



Some warn the guidelines will promote a storm of patent litigation. Photo: Priyanka Parashar/Mint

**Bengaluru:** Srikant Sreenivasan, co-founder at Mumbai-based cloud technology company CloudLeap Computing Pvt. Ltd, spent four months re-engineering something his company had already built after realizing that they had unknowingly infringed on a patent filed by a multinational company.

CloudLeap had to reinvent the wheel since it was catering to clients in the US, where the patent law protects all software, unlike in India, where software was so far patented only if it was used in conjunction with an embedded chip or system.

However, Srinivasan's plight may now be many others' too, with India's apex patent office saying the law protects software here as well.

According to revised guidelines issued by the Indian Patent Office on 21 August, software that demonstrates a technical application or improves hardware may also be patented, vastly widening the scope of patents.

The revision has split opinion in the software products industry. Influential organizations such as iSpirt, a software product makers' think tank, and the Software Freedom Law Center (SFLC), a non-profit foundation that represents many of the world's leading free software developers, are opposing the changes. They say software is based on mathematics, and algorithms and computer programmes may not be patented as they are expressions of abstract ideas and that since software is anyway protected under copyright law, it need not necessarily be patented.

On the other hand, some product companies say patents are necessary to deter clone companies and give them incentives to try new things—the same argument that owners of patented drugs have against generic makers.

Aneesh Reddy, chief executive officer of Capillary Technologies Pvt. Ltd, said the change is good, to some extent. "After our Series A (round of fund-raising) we had five people getting funded `2 crore each to build the same thing that we were doing. They never caught up, but I think some of that has to go. I've always believed that India is a very high-nuisance competition market. But a new regulation should not make it easy for patent trolls to sue genuine innovations and increase the nuisance level further," said Reddy, whose company holds multiple patents.

Patenting is crucial to the industry's growth, said Gourav Chindlur, co-founder, Vizury, an analytics firm. "If intellectual property rights were not respected, companies would never spend as much on research and development. This would have resulted in sluggish growth in technology," he said.

In the US, filing a patent typically costs around \$15,000, which many start-ups find difficult to pay. Enforcing a patent costs even more. Because of this, it is feared that only large corporations that can afford expensive lawyers will gain a monopoly in the market, at the cost of small businesses' growth.

Hatim Baheerwala, founder of Truss, a communication platform to help small businesses refer clients, echoes this fear. "Any patent regime serves larger companies than smaller companies," he said, adding that if Indian companies aggressively enforce patents, it would hurt small companies and ultimately deter innovation.

Some warn the guidelines will promote a storm of patent litigation. "The rise in patent litigation and the growth of patent trolls (companies that produce nothing, but acquire software patents with the objective of suing others and milking these patents for revenues) has been a serious challenge for software entrepreneurs in the US. At a time when the practice of issuing software patents has come for intense criticism,

especially in the US, it is surprising that the IPO is bringing in software patents through the backdoor,” said Venkatesh Hariharan, a member of iSpirt’s software patents expert team.

Patents are granted by the patent office, according to guidelines that are revised periodically. Section 3(k) of the Patents Act, 1970, says that “a mathematical or business method or a computer programme per se or algorithms are not patentable”.

Despite this, the revised guidelines suggest otherwise.

In 2005 too, an amendment on similar lines was sought, but both houses of Parliament rejected it, saying such an amendment would benefit multinational companies the most and may hurt Indian companies.

“One major issue here is the patent office cannot change what the legislature has done. These changes in the guidelines are problematic and are a complete reversal of the stance earlier,” said Prasanth Sugathan, counsel for SFLC India.

However, there is still some hope for companies if they have to go to court, according to Vaibhav Parikh, partner, Nishith Desai Associates, a law firm.

“This is the interpretation internally by the office. If the court has to look at that particular law, it does not necessarily look at what the manual or guidelines are saying, it will look at what the Act and rules say.”