

Patents Bill to benefit software cos

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New Delhi: In a move that could prove beneficial to software companies, the Patents (Third Amendment) Bill proposes to clarify that mathematical or business methods or algorithms will not be patentable. This, in turn, could pave the way for the patenting of applications that use such algorithms.

This clarification is being introduced in the Bill after a representation was made by the Ministry of IT and Communications.

According to an industry analyst, such a clarification is in line with the laws that exist in Europe, where the algorithms, when implemented into a system, become patentable.

When contacted, the Nasscom President, Kiran Karnik, declined to comment on the issue, but said that the software association felt that there was a need for a strong patenting regime with a strict enforcement.

Legal experts feel that bringing about a clarification in the ensuing amendment would enable Indian companies to build their own portfolio of patents.

Tracing the history of the software patents in India, Pravin Anand, an intellectual property lawyer, recalled that the amendment in the patent regime in 2002 had stated that software per se was excluded from patentability.

"We feel this meant that if the software has a technical character, then that software invention can be patented. But the four patent offices were not following uniformity of practice. This called for a clarification," he said.

According to Vaibhav Parikh of the law firm Nishith Desai Associates, "If the Government clarifies its stance on the issue, it will be a step in the right direction. A clarification will make it easier for the examiner to grant patents. We need to be in tune with the worldwide practices."

He said that the industry was of the view that while mathematical formulae, by themselves, should not be patentable, when applied in specific fields like software and hardware, the system or the method should be patentable.

Currently many players go in for copyrighting of their software for protection.

For instance, Eastern Software Systems (ESS) has copyrighted its product - ebizframe. However, Anand opines that copyrighting is a "weak protection mechanism."

"It only protects against reproduction and is effective in curbing piracy," he said.

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"The Indian software industry, as compared to other fields like biotech, nano technology, has had a competitive advantage over other countries. There is a need for a full-blown protection for our own software companies who come out with new products that can be patented," Anand said.

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