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Technical requirement for obtaining computer program patents in Singapore?

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In 1995, Singapore removed computer programs from a list of non-patentable subject matter in the *Singapore Patents Act*. However, does this really mean that computer programs are considered patentable subject matter in Singapore? There are no guidelines set by the Singapore Registry of Patents on computer software inventions.

In *First Currency Choice Pte Ltd v Main-Line Corporate Holdings Ltd [2008] 1 SLR* 335, the Singapore Court of Appeal held that the patent in suit was valid because the claimed invention was found inventive. The patent relates to a credit card system that extracts information from a card, compares the extracted information with a reference table and then allows the relevant and correct currency to be calculated and ascertained. The trial court found that the patent was novel and inventive, and that the defendants were liable for patent infringement. Unfortunately, while the court assessed obviousness of the claimed invention and sufficiency of disclosure, the court did not take the opportunity to address the question of whether computer programs or computer–implemented inventions were considered patentable subject matter in Singapore. The reason for this was because patentable subject matter was not an issue that was introduced in court.

In Europe, the Directive on the patentability of computer-implemented inventions suggests that in order for such inventions to be patentable in Europe, a computer program or computer-implemented invention must have technical character, must solve a technical problem, and must make a technical contribution to the state of the art, which involves an inventive step. In other words, such inventions must be a 'technical effect' that goes beyond the usual interaction between software and hardware.

It was recently reported that the European Patent Office president has referred to the Enlarged Board of Appeal a number of questions in relation to the patentability of computer programs under the European Patent Convention. The questions are meant to determine what technical character or 'technical effect' is required in order for the claimed subject matter to be allowed.

'Technical contribution' also appears to be required in the UK. In *Symbian v Comptroller General of Patents [2008] EWCA Civ* 1066, the UK Court of Appeal decided that computer software or computer-implement invention must have a technical character or technical contribution. The court held that "a program which makes a computer operate on other programs faster than prior art operating programs enabled it to do by virtue of the claimed features" had a 'technical contribution'.

The US had been more liberal in deciding on the patentability of computer program inventions. In *State Street Bank & Trust Co v Signature Financial Group, 149 F 3d 1368 (1998)*, a patent for such computer programs or computer-implemented inventions may be obtained if there was a "useful, concrete and tangible result." The decision in this case led to an increase in the number of computer programs and business method patent applications being filed in the US. However, it appears that this position may change. More recently, *In re Bilski, 545 F 3d 943, 88 USPQ 2d 1385 (2008)*, the US Court of Appeals for the Federal Circuit set aside State Street and adopted the 'machine-or-transformation' test. It reaffirmed the rejection of the patent claims because the claims are not tied to any form of technology.

As such, it appears that the US may be leaning towards the European position of requiring computer program patents to have a technical character.

If these decisions are adopted by the Singapore courts, we may also expect that a computer program or computer-implemented invention is patentable if the program has a technical character and is capable of bringing about a technical effect.

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