

Engineering and Software patents

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Former Controller of Patents &
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Drafting of Engineering Patents

The present discussion is on Engineering Patents excluding Software Technology.

How many branches of Engineering Courses are offered?

- Computer Science and Engineering. ...
- Electronics and Communication Engineering.
- Mechanical Engineering.
- Electrical Engineering.
- Civil Engineering.
- Chemical Engineering.
- Biochemical/ Biomedical Engineering.
- Aerospace/ Aeronautical Engineering, may be few more additions

Drafting of Engineering Patents

What type of inventions are expected from the above branches of Engineering?

In broad classification, under Patents Law, we have only two kinds, viz.,

- PROCESS PATENTS, [includes Methods, Systems] &
- PRODUCT PATENTS [may include process]

Therefore, any invention from any branch of Engineering must be either product or process or both. [needs to look at claims]

Note: Application claims, per se, are not allowed in India.

Application, if any, shall be related either to process or to a product.

Drafting of Engineering Patents

Further the alleged invention shall pass the 4 criteria test, namely;

- PRESENCE OF NOVELTY
- PRESENCE OF INVENTIVE STEP or NON-OBVIOUSNESS
- PRESENCE OF INDUSTRIAL APPLICABILITY, &
- SHALL NOT FALL UNDER STATUTORY EXCLUSIONS

On understanding the above requirements one has to draft accordingly to obtain a Patent in India.

Note: The definitions *prima facie* appear to be same in all the member countries of PCT but in reality different interpretations do exist. Hence drafting a Patent application for National and International may have different approaches.

Drafting of Engineering Patents

Sections 3 & 4 of the Indian Patents Act defines on which inventions are not considered for patent protection despite passing other 3 tests.

Relevant Sub-sections applicable to Engineering patents are;

3(a) frivolous OR anything contrary to well-established natural laws

3(b) contrary to public order or morality causing serious prejudice to human, animal and plant life or health or to the environment

Drafting of Engineering Patents

3(c) mere discovery of a scientific principle

3(f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way

3(o) topography of integrated circuits

3(p) traditional knowledge

4 atomic energy falling within the 20 of (1) of Atomic Energy Act, 1962.

Drafting of Engineering Patents

Specification contents in general;

- Field of the invention & brief explanation of alleged invention
- Problems associated with prior art [solved/unsolved]
- Identification of the problem to be solved
- Brief description of the invention
- Drawings and their references
- Detailed description with deriving support from drawings
- Proven applications of the alleged invention
- Claims & abstract

Drafting of Engineering Patents

Mechanical Engineering patent applications as filed are up to 30% of the total filings.

Inventions are best explained through drawings.

Description generally explains about structural elements, assemblies and their interactions and functional elements.

Same is applicable for Biochemical/
Biomedical Engineering and Aerospace/
Aeronautical Engineering.

Example-published application

Title of the invention:

SMART CHAIR FOR RELIEVING BACK PAIN

Application number: 201811045484

Preamble:

The present invention relates to a chair; and more particularly to provide relief from back pain, spine pain and leg pain.

SMART CHAIR FOR RELIEVING BACK PAIN

BRIEF DESCRIPTION

In an embodiment, the disclosure relates to a chair for relieving back pain of a user, with a seat surface and a backrest, wherein the backrest supports the upper body of the user, **wherein the backrest is arranged, in such a way, that it can be moved by the user in order to obtain a desired support of the upper body at a predefined backrest angle while the user is in the intended sitting position.**

DESCRIPTION OF THE INVENTION

In an embodiment, the backrest angle can be adjust forward or backward.

In an embodiment, the seat surface and back rest are utilized along with one or more arm rests, one or more arm handles, one or more head rests, one or more support links, a stand, one or more caster wheel cases and one or more caster wheels.

In an embodiment, the steel, fabrics, cushion, plastic and cast iron are used for the chair manufacturing.

In an embodiment, the locking means are configured for releasably locking the armrest at selective pivotal positions.

In an embodiment, the one or more hand grips are provided on the arm rests.

In an embodiment, the head rests are adjustable by the user.

In an embodiment, the chair is vertically adjustable

In an embodiment, the chair is provided to provide relief back pain of a user. The chair is equipped with the seat surface and a backrest. The seat surface is used by the user for keeping hip portion of the body, lying legs below the seat surface and placing the back portion (lower shoulder portion or spine) on the back rest.

In an embodiment, a movable means such as a button or lever is provided to be operable by the user to move the back rest and set the back rest at desired angle. For example, upon pressing the movable means the backrest can be set at any acute angle, right angle or obtuse angle with respect to the seat surface. Accordingly, the seat can be adjusted backward or forward.

DESCRIPTION OF THE INVENTION

In an embodiment, different other components can also be configured for various purposes. The components may include more arm rests, one or more arm handles, one or more head rests, one or more support links, a stand, one or more caster wheel cases and one or more caster wheels. The castor wheels enables the smooth dragging of the chair.

In an embodiment, the locking means are configured for releasably locking the arm rest at selective pivotal positions. The arm rests are utilized by the user for resting the hand and mentally relax. The hand grips are provided so that the user can arrange their hands and do not slip or fell down from the hand rests.

In an embodiment, the head rests are adjustable by the user. Such adjustment can be performed in horizontal direction and/or vertical direction. The heights of different people are different thereby such adjustment aids the user to sit comfortably.

In a similar fashion, the chair height can also be adjusted for different height people so that spine and back rest can be comfortably positioned and thus avoid any backache issue.

In an embodiment, the electronics can be equipped with the chair. Such electronics can be equipped with power optimization mechanisms.

Applicant Name : G. L. Bajaj Institute of Technology and Management, Vinod Kumar Yadav
Application No.

No. Of Sheets: 03
Sheet No.: 01



Figure 1: Backrest

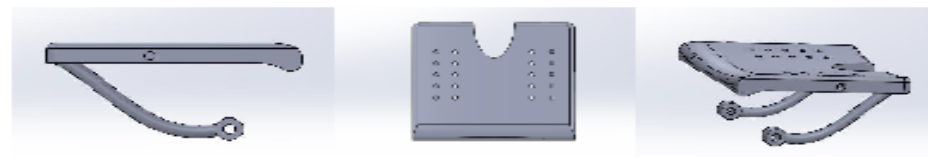


Figure 2: Sitting portion



Figure 3: Arm rest

Dated this 2nd December 2018


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Agent for the Applicant





Handwritten signature

CLAIMS

1. A chair for relieving back pain of a user, with a seat surface and a backrest, wherein the backrest supports the upper body of the user, wherein the backrest is arranged, in such a way, that it can be moved by the user in order to obtain a desired support of the upper body at a predefined backrest angle while the user is in the intended sitting position.
2. The chair of claim 1, wherein the seat surface is utilized by the user for sitting.
3. The chair of claim 1, wherein the backrest is utilized by the user for lying the back portion of the spine.
4. The chair of claim 1, wherein the backrest angle can be adjust forward or backward.
5. The chair of claim 1, wherein the seat surface and back rest are utilized along with one or more arm rests, one or more arm handles, one or more head rests, one or more support links, a stand, one or more caster wheel cases and one or more caster wheels.
6. The chair of claim 1, wherein the steel, fabrics, cushion, plastic and cast iron are used for the chair manufacturing.
7. The chair of claim 1, wherein the locking means are configured for releasably locking the armrest at selective pivotal positions.
8. The chair of claim 1, wherein the one or more hand grips are provided on the arm rests.
9. The chair of claim 1, wherein the head rests are adjustable by the user.
10. The chair of claim 1, wherein the chair is vertically adjustable.

STATUS AS ON 26 MARCH 2022

- Application Details
- APPLICATION NUMBER 201811045484
- APPLICATION TYPE ORDINARY
- APPLICATION DATE OF FILING 02/12/2018
- APPLICANT NAME: **1 . G. L. Bajaj Institute of Technology and Management**

2 . Vinod Kumar Yadav

TITLE OF INVENTION: SMART CHAIR FOR RELIEVING BACK PAIN

- FIELD OF INVENTION: BIO-MEDICAL)
- PRIORITY DATE: NA
- REQUEST FOR EXAMINATION DATE: --**YET TO BE FILED**
- PUBLICATION DATE (U/S 11A) 28/12/2018
- APPLICATION STATUS: **Application Published**

DRAFTING OF SOFTWARE PATENTS

Why Software patents are so special?

- India considers writing a software program is a literary work irrespective of outcome upon use of such technology. Literary work is covered under Copy Right in India. The same work cannot be protected under two different intellectual property rights.
- Term of protection are different from one IP to another IP
- Patent provides a strong protection than Copyright. Hence the debate is very hot.

Explicit exclusions from patentability with regard to Computer Related Inventions (CRIs) under section 3:

- (k) a mathematical or business method or a computer programme per se or algorithms;
- (l) a literary, dramatic, musical, or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- (m) a mere scheme or rule or method of performing mental act or method of playing game;
- (n) a presentation of information; ”

TERMS AND DEFINITIONS

The terms/definitions often used while dealing with patentability of computer related inventions are summarized hereunder. The terms which are defined in any of the Indian statutes have been construed accordingly and those not having any statutory definition are construed in accordance with their ordinary dictionary meaning.

TERMS AND DEFINITIONS

COMPUTER:

a) The term “COMPUTER” is defined in the IT Act 2000 (No.21 of 2000) as “any electronic magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network.”

b) The word “COMPUTER” is defined under Section 2(ffb) of the Copyright Act 1957 as “”computer” includes any electronic or similar device having information processing capabilities.”

TERMS AND DEFINITIONS

Computer Network

The term “computer network” is defined in The Information Technology Act, 2000 (No. 21 of 2000) as “ the interconnection of one or more computers through -

(i)the use of satellite , microwave , terrestrial line or other communication media; and

(ii)terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;”

TERMS AND DEFINITIONS

Computer System

The term “computer system” is defined in The Information Technology Act, 2000 (No. 21 of 2000) as “ a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arthimatic, data storage and retrieval, communication control and other functions.”

TERMS AND DEFINITIONS

Computer related inventions:

This phraseology has not been defined in any of the Indian statutes and it is construed to mean for the purpose of these guidelines as any invention which involves the use of computers, computer networks or other programmable apparatus and includes such inventions, one or more features of which are realized wholly or partially by means of a computer program/programs.

TERMS AND DEFINITIONS

DATA

The term “data” is defined in the Information Technology Act, 2000 (No. 21 of 2000) as “ a representation of information , knowledge , facts , concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed , is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts , magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.”

TERMS AND DEFINITIONS

INFORMATION

The term “information” is defined in The Information Technology Act, 2000 (No. 21 of 2000) as "information" includes data , text, images , sound , voice , codes , computer programs, software and databases or micro film or computer generated micro fiche .”

TERMS AND DEFINITIONS

Algorithm

The term “algorithm” is not defined in Indian statutes and hence, for interpretation of this term, the general dictionary meaning may be used. The Concise Oxford Dictionary (tenth Edition) defines ‘algorithm’ as “ a processor set of rules to be followed in calculation or other problem – solving operations, especially by a computer.

Algorithms in all forms including but not limited to, a set of rules or procedures or any sequence of steps or any method expressed by way of a finite list of defined instructions, whether for solving a problem or otherwise, and whether employing a logical, arithmetical or computational method, recursive or otherwise, are excluded from patentability.

TERMS AND DEFINITIONS

Function

The term “function” is defined in the Information Technology Act, 2000 (No. 21 of 2000) as “ ” function ” , in relation to a computer, includes logic, control arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer.”

TERMS AND DEFINITIONS

Software

The term “software” is not defined in Indian statutes and hence, for interpretation of this term, the general dictionary meaning may be used. The Oxford Advanced Learners Dictionary defines “software” as “the programs, etc. used to operate a computer”

TERMS AND DEFINITIONS

Computer Program

The term computer program has been defined in the Copyright Act 1957 under Section 2 (ffc) as

"computer program" means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result;'

TERMS AND DEFINITIONS

Per se

The term “per se” is not defined in Indian statutes and hence, for interpretation of this term, the general dictionary meaning may be used.

The Oxford Advanced Learners Dictionary defines “per se” as “‘by itself’ - to show that you are referring to something on its own, rather than in connection with other things”

Claims which are directed towards computer programs per se are excluded from patentability such as,

- (i) Claims directed at computer programs/ set of instructions/ Routines and/or Sub-routines.
- (ii) Claims directed at “computer program products” / “Storage Medium having instructions” / “Database” / “Computer Memory with instruction” i.e. computer programs per se stored in a computer readable medium.

TERMS AND DEFINITIONS

Firmware

The term “firmware” is not defined in Indian statutes and hence, for interpretation of this term, the general dictionary meaning may be used.

The Oxford Advanced Learners Dictionary defines “firmware” as “a type of computer software that is stored in such a way that it cannot be changed or lost”

TERMS AND DEFINITIONS

Hardware

The term “hardware” is not defined in Indian statutes and hence, for interpretation of this term, the general dictionary meaning may be used.

The Oxford Advanced Learners Dictionary defines “hardware” as “the physical and electronic parts of a computer, rather than the instructions it follows”

LEGAL REQUIREMENTS

Under section 2(1)(j) “Invention” means a new product or process involving an inventive step and capable of industrial application;

As per section 2(1)(ja) "inventive step" means a feature of an invention **that involves technical advance** as compared to the existing knowledge or **having economic significance or both** and that makes the invention not obvious to a person skilled in the art;

Further, section 2(1)(ac) states that “capable of industrial application”, in relation to an invention, means that the invention is capable of being made or used in an industry;”

Section 2 (1) (l) defines "New invention"; means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen in public domain or that it does not form part of the state of the art; [=Novelty assessment]

TERMS AND DEFINITIONS

Embedded Systems

An embedded system is a special purpose computer system usually built for dedicated application into a specialized device. An embedded system is designed to meet very specific requirements as compared to a general-purpose personal computer. Examples of embedded systems are ATMs, Graphics Cards, PLCs, etc.

TERMS AND DEFINITIONS

Technical Effect

It is defined for the purpose of these guidelines as solution to a technical problem, which the invention taken as a whole, tends to overcome. A few general examples of technical effect are as follows:

- Higher speed
- Reduced hard-disk access time
- More economical use of memory
- More efficient data base search strategy
- More effective data compression techniques
- Improved user interface
- Better control of robotic arm
- Improved reception/transmission of a radio signal

TERMS AND DEFINITIONS

Technical advancement

It is defined for the purpose of these guidelines as contribution to the state of art in any field of technology. It is important to divide between software, which has a technical outcome, and that which doesn't, while assessing technical advance of the invention. Technical advancement comes with technical effect, but all technical effects may or may not result in technical advancement.

TERMS AND DEFINITIONS

Mathematical methods:

“Mathematical methods” are considered to be acts of mental faculty. The method of calculations, formulation of equations, finding square roots, cube roots and all other methods directly or indirectly involving mathematical methods are therefore, not held patentable. With the developments in computer technologies, these mathematical methods are used for writing algorithms and computer programs for different applications and the claimed invention is often camouflaged as one relating to the technological development rather than the mathematical method itself. These methods, claimed in any form, if in substance relate to mathematical methods are considered to be not patentable subject matter.

TERMS AND DEFINITIONS

Business Methods:

“Business Methods” claimed in any form are not patentable subject matters. The term ‘Business Methods’ involves the whole gamut of activities in a commercial or industrial enterprise relating to transaction of goods or services. With the development of internet technologies, many business activities have grown by leaps and bounds through e-commerce and related B2B and B2C business. Electronic fund transfers have made banking activities more user friendly than ever before. The claims are at times drafted not directly as business methods but apparently with hitherto available technical features such as internet, networks, satellites, telecommunications, etc. The exclusions are carved out for all business methods and, therefore, if in substance the claims relate to business method even with the help of technology, they are not considered patentable.

Some examples which will attract exclusion:

- acts of mental skill. e.g. A method of calculation, formulation of equations, finding square roots, cube roots and all other methods directly involving mathematical methods like solving advanced equations of mathematics.

- merely manipulates abstract idea or solves a purely mathematical problem without specifying a practical application.

TERMS AND DEFINITIONS

A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions:

Writings, music, works of fine arts, paintings, sculptures, computer programs, electronic databases, books, pamphlets, lectures, addresses, sermons, dramatic-musical works, choreographic works, cinematographic works, drawings, architecture drawings, engravings, lithography, photographic works, applied art, illustrations, maps, plans, sketches, three dimensional works relating to geography, topography, translations, adaptations, arrangements of music, multimedia productions, etc. are not patentable. Such works fall within the domain of the Copyright Act, 1957.

TERMS AND DEFINITIONS

A mere scheme or rule or method of performing mental act or method of playing game:

A mere scheme or rule or method of performing mental act(s) or a method of playing game(s) are excluded from patentability, because they are considered as outcome of mere mental process. For example,

- a. Method of playing chess.
- b. Method of teaching.
- c. Method of learning.
- d. Method of training.

TERMS AND DEFINITIONS

Presentation of information:

Any manner or method of expressing information, whether visual, audible or tangible; by words, codes, signals, symbols, diagrams or any other mode of representation, is not patentable.

For example, a speech instruction in the form of printed text where horizontal underlining indicates stress and vertical separating lines dividing the works into rhythmic groups is not patentable.

For instance, railway time table, 100 years calendar etc.

Determination of excluded subject matter relating to CRIs

Essentially, all computer programs need a combination with some hardware for its functionality. Does it imply that all such programs can be considered as away from the purview of computer program per se ? The question therefore, is whether a computer program loaded on a general purpose known computer or related devices can be held patentable. Keeping in view the spirit of law the answer is in the negative. In an application for patent for a new hardware system, the possibility of a computer program forming part of the claims is not ruled out.

The examiner is to carefully consider as to how integrated is the novel hardware with the computer program. Further, whether the machine is program specific or the program is machine specific is important to ascertain. This requires critical care of the Examiners.

A computer program which may work on any general purpose known computer does not meet the requirements of the law. For considering the patentability of computer program in combination with hardware features, the hardware portion has to be something more than general-purpose machine. In cases where the novelty resides in the device, machine or apparatus and if such devices are claimed in combination with the novel or known computer programs to make their functionality definitive, the claims to these devices may be considered patentable, if the invention has passed the triple test of novelty, inventive step and industrial applicability.

It is important to note that the term per se has been suffixed to the computer program alone. Therefore, if the invention is relating to mathematical method, business method or algorithm, they are considered to be non-patentable by direct application of law. However, if a claim of an invention is oriented towards a novel, inventive and industrially applicable computer or related device along with the program for defining its functionality, then it may be considered to be patentable.

Further when the issue is related to hardware/software relation, (e.g., when the claims recite 'processor is programmed to... or 'apparatus comprising a processor and configured / programmed to.....) the expression of the functionality as a method, is judged on its substance. It is well established law that, in patentability cases, the focus should be on the underlying substance of the invention, not the particular form in which it is claimed. The Patents Act clearly intends computer programs per se to be excluded, and it is the clear intention of the legislature that the exclusion could not be avoided merely by wording and further saying that different sub-routines are performed in different physical locations e.g. processors.

ILLUSTRATION - 1

TITLE: "A Transaction processing method and system"

Claim: A networked computer system for transaction processing comprising: a server configured to exchange data with a plurality of clients computers; a database operatively coupled to the server and storing chemical product data for a plurality of chemical products; a memory operatively coupled to the server and comprising instructions to configure the server to;

- a) Receive a request comprising a product identifier from a first one of the plurality of client computer;
- b) Query the data base in response to the received request to retrieve product information;
- c) Send the product information to the first client computer; and a formulation means to combine ingredients to form a chemical product.

It was held that although the claims were drafted as a system but in fact they are not more than a method of doing business since the transaction processing in the alleged system is performed by the instructions stored in the memory to configure the server which in turn performs the functions of receiving a request, querying the database and sending the product information.

It was held that the invention claimed was simply an automation of the process of transaction of business by computer program functioning on the basis of instructions to configure the server which prevents a customer from going to a shop and buying appropriate products therefrom. Therefore, the network system which is claimed in the instant application is nothing but a business method in the disguise of a system implemented by a computer program by configuring the instruction given through computer program to complete the transaction of the business.

ILLUSTRATION - 2

TITLE: TYPE CHECKING SYSTEM AND METHOD THEREOF

CLAIM: A method, implemented in a typed checking system (920), of type checking a programming language in a compiler according to one or more type checking rule sets (310) comprising;

Selecting by a type checker (398,400) of the type checking system(920) one or more of the checking rule sets (310) stored in a persistent memory (128) based upon a present stage of compilation; and

Type checking by the type checker (308, 400) of the type checking system (920) the programming language based on the selected one or more type checking rule sets (310) wherein the type checking the programming language comprises type checking each of a plurality of intermediate representations of the programming language; wherein the one or more type checking rule sets (310) comprise one rule set corresponding to weak-type checking, and one corresponding to representation type checking.

It was observed that the invention related to a method and a system for type checking of typed intermediate languages in a manner that the compilation of any kind of programming language is improved, which in turn prevents compiler error and enhances the reliability and robustness of the compiler.

It is necessary to understand what a compiler is? “A compiler is a computer program (or set of programs) that transforms source code written in a programming language (the source language) into another computer language (the target language, often having a binary form known as object code)”. The most common reason for wanting to transform a source code is to create an executable program. Further, a type system is a system used in programming languages to aid in the detection and prevention of run-time errors. A programming language is “type-checking” if it contains a set of types that are declared for objects such as a variables, functions, etc. and these types are checked versus a set of rules during compilation of a program written in the language. If the source code written in the typed language violates one of the type’s rules, compiler error is determined.

A representation of types, type checker, and compiler are provided for checking consistency in various forms of an intermediate language. The type checker and compiler allow use of different types and type checking rules, depending on the source language for a program component and /or the stage compilation. A compiler is provided with a type-checker that constructs one or more sets of rules based on any one, or combination of two or more of numerous criteria.

Therefore, the present invention as claimed in revised claim 1 is a method of type-checking a programming language in a compiler. And another revised independent claim as claimed in claim 8 is also a type checking system for type-checking source code authored in a plurality of source languages in accordance with a type-checker ,wherein the type-checker selects one or more type checking rule sets to apply to the source code at each of a plurality of representation, wherein the plurality of representation include at least one of high-level intermediate representation- mid-level intermediate representation - and low-level intermediate representation - The use of processor unit and the memory in the system claim have no significance but as a generalized use.

In view of above it is observed that the revised method Claim 1 and system claim 8 still fall under sub-section (k) of Section 3 of Patent Act 1970. It is also observed that such claim of method claim is nothing but a system claim since these claims contain only the feature of selecting various types type-checking rules and therefore there is no locus stand to obviate objection of 3(k) of Patent Act 1970 in respect of claims as claimed in claim1 or claim 8 as well as their dependent claims. Therefore, it is concluded that the claims as claimed in revised claims 1 to 12 or original claims 1 to 34, fall under Section 3(k) of the Patent Act 1970 and Patent (amendment) Act 2005 and are not allowable.

ILLUSTRATION-3 –IPAB DECISION

in Yahoo Inc. V. Rediff.com India Limited Case

CLAIM:

A method of operating a computer network search apparatus for generating a result list of items representing a match with information entered by a user through an input device connected to the computer network, the search apparatus comprising a computer system operatively connected to the computer network and the method comprising:

Storing a plurality of items in a database, each item comprising information to be communicated to the user and having associated with it at least one keyword and an information provided and a bid amount;

Receiving a keyword entered by a user through an input device;

Searching the stored items and identifying items representing a match with the keyword entered by the user;

Ordering the identified items using the bid amounts for the identified items and generating a result list including the ordered, identified items;

Providing the result list to the user;

Receiving a request from the user for information regarding an item selected from the result list;

Charging to an account of the information provider associated with the selected item the bid amount associated with the selected item; and

Providing information providers with authenticated login access to permit an information provider to modify at least the bid amount associated with the information provider's listing;

Wherein the computer system sends an indication of the status of the information provider's account to the information provider in response to the occurrence of a predetermined condition.

Refusing the application, the Controller held that the invention was only a business strategy and hence was not patentable u/s 3(k) of the Act.

Appealing against the decision of the Controller, the appellant (the applicant) submitted that the technical advancement had been clearly brought out in the response to the office objection and that has been totally ignored by the Controller. Further, evidence of the expert which has been filed at the stage of the appeal which also refers to the technical and non-technical features ought to have been considered by the Controller, especially since there was no serious objection to the Expert's evidence by the respondent. It also referred to the decision in *Symbian Ltd. vs. Comptroller of Patents*, Court of Appeal, (2008) EWCA Civ 1066) where the Court of Appeals had explained how Court should deal with matters when there is a technical advancement in respect of excluded subject.

IPAB analyzed various decisions of foreign courts with regard to 'business method', expert evidence, the appellant's own response and Manual of Patent Procedures 2008. In its decision, the Board held that the invention was falling in the category of "method of doing business", maybe a technically smarter way of doing business. It increases the chance of the higher bidders being closer to the top.

The appellant submitted that the board must place itself in 1998 (time of invention), to decide the patentability and what appears so easy and familiar today was new then. To which IPAB held "even if we go back in time to 1998 the nature of invention is still a method of doing business. That does not change . There are huge innovations in the computers themselves , but the invention claimed is not for the machine but for the method. From whichever point of time we look at it, it still looks to be a business method."

Means plus Function Claim

The claims concerning CRIs are often phrased in means for performing some function such as means for converting digital to analog signal etc. These types of claims are termed as means +function format. The 'means' mentioned in the claims shall clearly be defined with the help of physical constructional features and their reference numerals to enhance the intelligibility of the claims. The claims in means plus function form shall not be allowed if the structural features of those means are not disclosed in the specification.

Further, if the specification supports implementation of the invention solely by the computer program then in that case means plus function claims shall be rejected as these means are nothing but computer programme per se.

Where no structural features of those means are disclosed in the specification and specification supports implementation of the invention solely by the software then in that case means in the "means plus function" claims are nothing but software.

For resolving the cases belonging to the claim category of "means plus function", the claims in means plus function form shall not be allowed if the structural features of those means are not disclosed in the specification.

Further, if the specification supports implementation of the invention solely by the computer program then in that case means plus function claims shall be rejected as these means are nothing but computer program per se.

ILLUSTRATION - 4

TITLE: METHOD, SYSTEM AND A MOBILE COMMUNICATION STATION ADOPTED FOR SELECTION OF AN ACCESS NETWORK

CLAIM: A method of selecting an access network from among one or more access networks capable of providing service to as mobile communication terminal (10) comprising;

Determining (S1) a radio quality (q) from the terminal (10) to each access network,

Determining (S2) for each access network a utilization factor(p) for at least one node,

Determining (S3) for each access network, a user perceived data quality (Qu) based on said determined utilization factor (p) and said determined radio quality (q) for the access network, and

Selecting (S4) at least one of said access networks based on the determined user perceived quality (Qu).

It was observed that no specific hardware components were disclosed in the Complete Specification, which facilitate in achieving the above phenomenon of Reduction to Practice of the method Claim 1 of selecting an access network from among one or more access Networks. In view of the above reasoning, it was concluded /opined that the above method claim 1 is a mathematical method thereby failing to meet the subject matter eligibility requirements as set forth in and thereby the method claims as claimed in claims 1 to 23 fall under the clause (k) of Section 3 of the Patent Act 1970 as amended Patent Act 2005 Act.

it was concluded that Claims as claimed in claims 24 claiming “Means-Plus-Function” were invalid and indefinite because the Means-Plus-Function limitations were not supported by any corresponding hardware structure as disclosed in the Specification and thereby not allowable.

**THANK YOU FOR
THE ATTENTION**