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## DELHI HIGH COURT SETS OUT PARAMETERS FOR PATENTABILITY OF COMPUTER RELATED INVENTIONS

7 January 2020

In *Ferid Allani* (Petitioner) *v Union of India And Ors* (Respondents), the Delhi High Court (Court) directed the Indian patent office to reassess the Petitioner's patent application in light of the Court's observations on patentability of computer related inventions.

The Petitioner's patent application was in respect of a method and device for accessing information sources and services on the web. The patent application consisted of method claims and system claims. The Patent Office upon examination of the patent application concluded that the method claims were a computer program and that the system claims lack novelty as well as inventive step, and on that basis rejected the patent application.

Aggrieved by the rejection of the patent application, the Petitioner preferred an appeal with the Intellectual Property Appellate Board (IPAB). The IPAB held that the patent application did not disclose any technical effect or technical advancement and dismissed the appeal.

Eventually, the Petitioner filed the present writ petition challenging the order of the IPAB. The Petitioner contented that the rejection of the patent application was incorrect as the patent application clearly discloses a technical effect and a technical advancement. To support this contention, the Petitioner relied upon various parts of the patent specification, and various guidelines issued by the IPO in respect of computer related inventions. In this regard, the Petitioner stressed that patentability of computer related inventions ought to be interpreted in context of the guidelines issued by the patent office. The Respondent contended that the Court in its writ jurisdiction need not interfere with technical merits/technicalities of the patent application.

The Court while directing the patent office to reassess the patent application made several observations vis-à-vis meaning of *per se* in Section 3(k) of (Indian) Patents Act, 1970 (Act) and the meaning of technical effect:

### Per se

It is well know that as per Section 3(k) of the Act, *a mathematical or business method or a computer programme per se or algorithms* is not an invention, and consequently not patentable. The Court observed that this bar on patenting is in respect of `computer programs per se….' and not all inventions based on computer program, and that the words 'per se' were incorporated in Section 3(k) of the Act to ensure that inventions based on computer programs are not refused patents.

**Technical effect**

With regard to the meaning of technical effect, the Court referred to the earlier version of the guidelines viz. the 2013 draft guidelines. Further, the Court observed that it is crucial to determine the effect that computer programs produce in products for the test of patentability; and if an invention demonstrates a technical effect or technical contribution it is patentable even though it may be based on a computer program. The Court also stressed that meaning of technical effect is no longer in dispute owing to judicial precedents and patent office practices internationally and in India.

***Comment***

Through the order, the Court clearly sets out that there is no absolute bar on patentability of computer related inventions and to that extent the patent office must enquire into the technical effect or technical contribution of the invention in question. The order also seems to indicate that judicial precedents and practices of other foreign patent offices in addition to guidelines may be relied upon while evaluating patentability of computer related inventions.

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