

COMPUTER PATENTS – PRODCUTIVITY COMMISSION OBSERVATIONS

Whilst we understand copyright may protect any copying of the software code, it will not stop a competitor seeing how our product operates and then replicating the inventive and commercially valuable features of our product.

The only way we can hope to stop that occurring is by relying on patent protection.

Without the availability of patent protection for the inventive features of our software we simply could not commit the considerable capital to develop our product and our business. It would also be much harder to source and secure venture capital, unless our invention was protected.

We need patent protection for our software to help us achieve that and protect our investment.

We believe software patents are extremely important in encouraging new and valuable innovation.

My patent is an example of the type of process that must remain. I created this over many, many years because my ability as a lateral thinker, who could assess related industries objectively and work out the evolution of compatibility. These industries included, clothing manufacture, wholesale, and retail, image consulting and styling and modern day online ecommerce.

While computer algorithm innovation will still occur, no matter what your findings are. It is neither right nor fair to discourage someone from creating something that could be copied immediately, without just reward. A system that does this will discourage ambition, from small operators or individuals, who know their ideas can be copied by larger organizations with greater resources.

The government has a state school system because it allows the less-fortunate the opportunity to an education. The government should look to protect the less-fortunate (lack of resourced) innovators.

Below are a number of observations.

8.1 Protection of BM&S

Para 1 No mention of **scientific discovery**, that could only occur and then be commercialized through a new computer algorithm.

What about physical processes that were only ever done physically, but can now be done via a computer?

The process of creating this system online is an invention, which may include scientific discovery or reference and a new algorithm.

Para 3 '*New forms of BM&S are typically enhancements of prior generations of innovations*'. This maybe the case but it is not always the case. Upgrades should not be *considered as a patent*.

If it is proven to be a new algorithm, idea, discovery or process, which has used computers as the tool to create, and the tool to provide the new product or service, there should be no difference between it and a physical product or service.

FIG 8.1 and 8.2 demonstrate a consistency with Australia's population compared to the rest of the world.

Is there a percentage of these international companies that will still have the ability to charge a fee, because their system is interwoven in with the Australian version?

8.2 What is the nature of patent protection afforded to BM&S?

It states in this paragraph that '*In order to be patentable, an invention must be a 'manner of manufacture'..... the Federal Court attempted to clarify the meaning of manner of manufacture by establishing a physical effect test:*

A physical effect in the same sense of a concrete effect or phenomenon or manifestation or transformation is required.

Therefore if a computer program can create a system (working of a method) whereby the reaction of the user is a physical act, that creates a physical effect or transformation of a human, it is *properly subject to letters patent*.

Para 2 P239 states – '*Due to the high economic stakes associated with such new business methods and the expansion of e-commerce in our society, the debate on the feasibility of patenting business methods has continued at various fora. (2015d)*

What if Australia creates a system the world wants to use for ecommerce?

8.3 Are patents for business methods and software effective and efficient?

Other countries have wound back BM&S patentability

1. *In the case of those countries that have excluded elements of software out of patentable subject matter, a choice between two alternatives had to be made. The first was that computer programs should be excluded entirely from inventions, and so leave the 'invention minus the program' for patent examination. The second approach was to take the invention as a whole — including any computer program contained within — for examination. Most countries with legislated exemptions have come down in favour of the second, 'whole–contents' approach (Sherman2015). Recent legislative efforts in New Zealand provide a window on the considerations made as part of employing the second approach (box 8.1).*

It is important that Australia do the same as most countries, because my patent is a classic example of the invention needing to be considered as a whole.

What approaches or tests could be used to differentiate between inventions where the contribution of embedded software is trivial and inventions where the contribution of embedded software is genuinely deserving of patent protection? Should such tests be implemented in law or patent examination practices?

Invention - is a pathway to evolution. Ideas, creativity and invention have no boundaries, it occurs across all industries and all facets of industry. Considering the world is forever changing and evolving, setting something like this in law will only serve to slow the evolution of invention. Patent examination should be our determining body.

I could help the Commission create the answers, however I don't have time, right now, I need to get back to making my patent materialize. If you would like to contact me – there maybe something we can do.

Cheers