

India & Brazil: a comparative table

The patent offices of India released in August 2015 re-examination manual for computer-implemented inventions program. The possibility of granting this area are enlarged compared to 2013. In 2013 Manual the method implemented by software on general-purpose computer was not considered invention: *"The question Therefore, is Whether the computer program loaded on a general purpose computer known 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 handsome to the how is the novel integrated hardware with the computer program. The computer program Which may work on any general purpose computer known does not meet the requirements of the law. "* [1] In 2015 exam guide such passages were deleted [2]: *"For being Considered patentable, the subject matter shouldnt involve either - a novel hardware, or - a novel hardware with a novel computer program, or - a novel computer program with a known hardware Which goes beyond the usual interaction with such hardware and Affects a change in the functionality and / or performance of the existing hardware. "*

With this examination guide India approaches substantially with the guideline of the INPI of Brazil [3] (adopted in practice exam, already submitted to public consultation but not yet made official through a resolution) and most countries.

Brazil / INPI	India	Comments
<p><i>. The LPI, in its Article 10, not considered to be inventions or utility models "</i> <i>mathematical methods;schemes, plans, principles or business methods, accounting, financial, educational, publishing, lottery surveillance; computer programs themselves;</i></p>	<p><i>The Patents (Amendment) Act, 2002 Also Introduced explicit exclusions from patentability under section 3 for Computer Related Inventions (CRIs) under the: (k) the mathematical or business method or a computer program per se or algorithms;</i></p>	<p><i>In Brazil and India the expression per se only applies to the computer program. There is no reference to algorithms in Brazilian law. The reference to per programs and algorithms appears to confer a greater exclusion in Indian law</i></p>
<p><i>It is considered as algorithm a sequence of logical steps to be followed for resolving certain problem. According to this definition, an algorithm consists of a method or process and must therefore be claimed as such. For the invention it is necessary that such a method or process does not meet the clauses of Art. 10</i></p>	<p><i>The term "algorithm" is not defined in Indian statutes and hence, for interpretation of this term, the general dictionary meaning is being used. The Oxford Advanced Learners Dictionary defines "algorithm" as "the set of rules que must be Followed When solving a particular problem". [...] Algorithms in all forms including but not limited to, the set of rules or procedures or any sequence of steps or any method expresso by way of a finite list of defined instructions, Whether for solving a problem or otherwise, and Whether Employing the logical,</i></p>	<p><i>The definition of the algorithm is essentially the same in both cases. While the PTO allows patents for algns algorithms, Indian law prohibits patents on all algorithms</i></p>

	<i>arithmetical or computational method, recursive or otherwise, are excluded from patentability.</i>	
<i>The computer program itself, referred to in item V of Art. 10 of the IPL, refers to the literal elements of creation, such as source code, understood as an organized set of written instructions in natural or coded language. The computer program itself is not considered an invention and therefore not patent protection object to be mere expression a technical solution, being inherently dependent on the programming language</i>	<i>The term computer program Has Been defined in the Copyright Act 1957 under section 2 (ffc) the "computer program means a set of instructions expresso in words, codes, schemes or in any other form, including machine readable medium, capable of Causing a computer to perform a particular task or Achieve a particular result</i>	<i>While in Brazil the program definition itself is the same as that conferred by copyright in India this definition of copyright is granted to the computer program and not exactly the program itself</i>
<i>The computer program, what are the copyright object, it is not considered an invention and therefore is excluded from patentability. However, an industrial design (process or product associated with the process) implemented computer program that solves a problem encountered in technical and reach technical effect which do not relate solely to how this computer program is writing can be considered the invention.</i>	<i>The term "per se" is not defined in statutes including the Indian Patents Act, 1970 and hence, for interpretation of this term, the general dictionary meaning is being 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.</i>	<i>The interpretation of India given a System implemented by software on the matter relating to the program itself is not under patent, which approaches the Brazilian approach</i>
<i>A creation is considered invention when the resources used for the solution of problem being solved are not included in a field in sections of Art. 10 of the IPL. In accordance with the AN 127/97 is necessary that the invention is inserted in the technical sector (item 15.1.2 c), solve technical problems, constituting the solution to such problems, (item 15.1.2.e) and having technical effect (item 15.1.2 f).</i>	<i>Since patents are Granted to inventions, Whether products or processes, in all fields of technology, it is important to ascertain from the nature of the Claimed CRI Whether it is of a technical nature Involving technical advancement the Compared to the existing knowledge or having economic significance and is not subject to exclusion under Section 3 of the Patents Act</i>	<i>The technical aspect is required in both cases, however the Indian manual refers to "economic significance" and "technical progress" two aspects that are not in the Brazilian guideline</i>
<i>To patent application case of the invention implemented by computer program, framework of the patent application object in the exceptions of the items Art. 10 independent</i>	<i>Computer Programmes are Often Claimed in the form of algorithms the method claims or claims system with some "means" Indicating the functions of flow charts or process steps. It is well-established que, in</i>	<i>Where the analysis is independent of the claim category, although in no time the Brazilian guideline refers to "substance" of invention</i>

<p><i>if the claim category is the process or product merely defined by its functionality.</i></p>	<p><i>patentability cases, the focus shouldnt be on the underlying substance of the innovation invention, not the particular form in Which It Is Claimed</i></p>	
<p><i>It notes that, to assess the incidence of matter claimed in the Art. 10 of the IPL, the claims should be considered as a whole</i></p>	<p><i>What is important is to judge the substance of claims taking whole of the claim together.</i></p>	<p><i>In both cases should not make an analysis of claim parts but as a whole, the claim as a whole</i></p>
<p><i>A method that solves a unique problem of mathematics (eg, deductions, operations, mathematical equations) is not considered invention, as it focuses on matter excluded by item I of Art. 10 of the IPL. The fact that a mathematical method be implemented by program computer is irrelevant for classification of such a method in item I of Art. 10 of the IPL.</i></p>	<p><i>Mathematical methods are a particular example of the principle que purely abstract or intellectual methods are not patentable.Mathematical methods like method of calculation, formulation of equations, finding square roots, cube roots and all other methods directly Involving mathematical methods are not patentable Therefore.</i></p>	<p><i>Similar criteria</i></p>
<p><i>Thus, a process involving a mathematical concept is not immediately a matter excluded by item I of Art. 10 of the IPL. On examination of the claimed object, if this process applies the concept Mathematical for a technical solution to a technical problem, such process can be considered an invention since the resulting effects are not purely technical and mathematicians.</i></p>	<p><i>However, mere use of a mathematical formula in a claim, to Clearly I specify the scope of protection being sought, would not Necessarily surrender the claim to be mathematical method.</i></p>	<p><i>Similar criteria</i></p>
<p><i>Methods involving encryption or data compression can also be considered invention, still referring to abstract data, by referring to technical problems as data security and hardware resource optimization, and not exactly the method mathematician.</i></p>	<p><i>Some examples Which may not fall under category of "mathematical method" exclusion: Method of encoding / decoding, method of encrypting / decrypting, method of simulation mathematical formulas though Employing For Their operations may not fall under These exclusions</i></p>	<p><i>Similar criteria</i></p>
<p><i>For example, one particular method of numerical integration is not regarded as the invention by presenting purely mathematical results that the integration operation is not being therefore, for patent</i></p>	<p><i>Some examples Which Will Attract exclusion: acts of mental skill. eg The method of calculation, formulation of equations, finding square roots, cube roots and all other mand thods directly Involving mathematical methods like solving equations of</i></p>	<p><i>Similar criteria</i></p>

<p><i>protection.</i></p> <p><i>Pleaded if the matter is a method to submit financial, accounting steps, educational, advertising or draw and inspection, then this method focuses on section III of Art. 10 is not considered invention.</i></p>	<p><i>advanced mathematics.</i></p> <p><i>The claims not directly drafted the "business methods" but apparently with some unspecified means are held un-patentable. However, if the Claimed subject matter specifies an apparatus and / or the technical process for carrying out the innovation invention even partly, the claims Shall be examined as a whole. Only when in substance the claims relate to "business methods," They are not Considered to be a patentable subject matter.</i></p>	<p><i>While in Brazil just a financial step to frame every method to finance the Indian manual seems to suggest that this exclusão only be applied when this step is significant in the set as a whole. In both cases the analysis is not related to claimed category. The Brazilian criterion seems more rigid in this case</i></p>
<p><i>It notes that, to assess the incidence of matter claimed in the Art. 10 of the IPL, the claims should be considered as a whole. For example, a method that identifies banknotes for its standard of images, colors and texts, is liable patentability, since it deals with pattern recognition techniques. In this If, despite the mention of bank notes and its application in bank network, the method is not fits in item III of Art. 10 of the IPL.</i></p>	<p><i>However, the mere usage of words such as "enterprise", "business", "business rules", "supply-chain", "order", "sales", "transactions", "commerce", "payment" etc. in the claims should not lead to conclusion of the Computer Related Invention being just a "Business Method", but if the subject matter is Essentially about carrying October business / trade / financial transaction and / or the method of selling goods through web (eg providing web service functionality), shouldnt be treated as business method</i></p>	<p><i>Similar criteria</i></p>
<p><i>The claims can not contain source code snippets to not cause problems dubious interpretation regarding the item V of Art. 10 of the IPL. Program claims computer are not supported, since this essay focuses squarely in item V of Art. 10 of the IPL.</i></p>	<p><i>The computer program per se is excluded from patentability under section 3 (k) apart from mathematical or business method and algorithm. Which claims are directed towards computer programs per se are excluded from patentability</i></p>	<p><i>Similar criteria</i></p>
<p><i>A memory claim or recording medium characterized by containing a program computer is not considered invention for its content focus on Art. 10 of the IPL. Per example, type claims are not accepted, "Recording medium readable by computer having a data structure recorded characterized in said computer program understand the structures A and B "or" Recording media read by featured computer by a computer</i></p>	<p><i>Which claims are directed towards computer programs per se are excluded from patentability, like (ii) Claims directed at "computer program products" / "Storage Medium having instructions" / "Database" / "Computer Memory with instruction" ie computer Programmes per se stored in a computer readable medium</i></p>	<p><i>While India rejects all support claims INPI accepts such claims when the associated method is patentable subject matter.</i></p>

<p>program ".However, a computer readable memory having written instructions for execution on a computer comprising the steps X, Y, Z is considered patentable if these steps do not concern the Art. 10 of the IPL.</p>		
<p>However, an industrial design (process or product associated with the process) implemented computer program that solves a problem encountered in technical and reach technical effect which do not relate solely to how this computer program is writing can be considered the invention.</p>	<p>Therefore, if a computer program is not Claimed by "in itself" rather, It Has Been Claimed in such mannered so to establish the industrial applicability of the innovation invention and fulfills all other criterion of patentability, the patent should not be denied.</p>	<p>Similar criteria, both accept the possibility of methods implemented by computer program being under patent</p>
<p>However, an industrial design (process or product associated with the process) implemented computer program that solves a problem encountered in technical and reach technical effect which do not relate solely to how this computer program is writing can be considered the invention.</p>	<p>Considered for being patentable, the subject matter shouldnt involve either - A novel hardware, or - A novel hardware with a novel computer program, or - A novel computer program with a known hardware Which goes beyond the usual interaction with such hardware and Affects a change in the functionality and /or performance of the existing hardware.</p>	<p>In both cases even when the hardware is the same and the invention is the method implemented by software it is possible to patent</p>
<p>In evaluating the technical effect, is considered the effects achieved over all steps carried out by the invention implemented by computer program. Examples technical effects achieved by inventions implemented by computer program are: optimization (Execution time, hardware resources, the use of memory access a database), the interface processing with the user (not merely esthetic) file management, data switching, among others. Importantly, If the technical effects are derived from changes in the program code computer, not in the method, the creation is not considered invention.</p>	<p>The computer program, when running on or loaded into a computer, going beyond the "normal" physical interactions between the software and the on hardware Which it is run, and is capable of bringing further technical effect May Not Be Considered the exclusion Under These Provisions .</p>	<p>The Brazilian guideline does not refer to the so-called normal interactions, rather, it lists some technical effects that could justify a patent. Similar criteria in practice</p>
<p>In accordance with the AN 127/97 is necessary that the</p>	<p>While examining CRI</p>	<p>Nowhere in the guideline it comes to advancement or</p>

<p>invention is inserted in the technical sector (item 15.1.2 c), solve technical problems, constituting the solution to such problems, (item 15.1.2.e) and having technical effect (item 15.1.2 f).</p>	<p>applications, the examiner Shall que confirm the claims have the requisite technical advancement.</p>	<p>progress, but in practice the criteria are very similar</p>
<p>It is not patentable the device associated with creation implemented by program computer, defined as more media functions, where any contribution resides in matter focusing on any item of Art. 10 of the IPL.</p>	<p>The Following questions shouldnt be Addressed by the examiner while Determining the technical advancement of the inventions Concerning CRIs: (i) Whether the Claimed technical feature has the technical contribution on a process Which is carried on outside the computer; (ii) Whether the Claimed technical feature operates at the level of the architecture of the computer; (iii) Whether the technical contribution is by way of change in the hardware or the functionality of hardware.</p>	<p>Both approaches seem adiotar the contribution approach to the framing of the subject invention as</p>
<p>Thus, an apparatus for calculate the solution of a differential equation only characterized by means for executing the Runge Kutta method of fourth order is not subject to patentability since their contribution lies in the mathematical method, which focuses on item I of Art. 10 of the IPL.</p>	<p>An apparatus (610, 650) for eigenvalue decomposition and singular value decomposition of matrices in wireless communications Comprising</p>	<p>The example seems to be excluded in the INPI because all equipment is trivial, the contribution is the mathematical method, but is accepted in India</p>
<p>A method of operating a banking machine reading characterized by the steps of user card, identification and comparison of a password with the card information, provide a non-financial technical solution: user authentication. Thus, such a method It may be considered the invention.</p>	<p>The method for granting an access to the computer-based object, wherein - The memory card having a program code processor is provided, with at least one public and one private key assigned to the memory card being stored thereon,</p>	<p>The example given in India seems to be also granted the INPI</p>
<p>Any creation implemented by computer program characterized only by its informational content such as music, text, image, is considered presentation information therefore focuses in section VI of Art. 10 of the IPL. However, presenting creations technical functionality than mere presentation of information can be</p>	<p>A method of controlling an electronic device (1) Comprising the touch sensitive display (11) the method Comprising: displaying a plurality of graphical items (43) on the touch sensitive display (11) where each graphical item (43) has an identity (44);</p>	<p>The example given in India seems to be also granted the INPI</p>

<i>considered invention. The method associated with functional aspects of the interface user, who bring technical effect may be considered an invention.</i>		
<i>A method of operating a banking machine reading characterized by the steps of user card, identification and comparison of a password with the card information, provide a non-financial technical solution: user authentication.</i>	<i>The computer-implemented method Comprising: Identifying one or more person names in a set of one or more documents, with each identified person name more Likely to refer to a single person in a profession other than person names in the document</i>	<i>The example given in India seems to be also granted the INPI</i>
<i>Examples: data compression, encryption, management of databases, Data communication protocols</i>	<i>A method for providing a network bridge in UDP multicast traffic, the method being executed by the multicast repeater (108a; 708a)</i>	<i>The example given in India seems to be also granted the INPI</i>
<i>Examples: processing data representing physical features (size, color, delay) generating a virtual product (video, music, picture), image processing and audio involving the physical quantities amplitude and phase delay;</i>	<i>The method for estimating the length of time required to download one or more application programs on the wireless device over the wireless network, said method Comprising of operations</i>	<i>The example given in India seems to be also granted the INPI</i>
<i>Examples: processing data representing physical features (size, color, delay) generating a virtual product (video, music, picture), image processing and audio involving the physical quantities amplitude and phase delay;</i>	<i>A method for tracking the mobile electronic device using instant messaging (IM),</i>	<i>The example given in India seems to be also granted the INPI</i>
<i>Examples: data compression, encryption, management of databases, Data communication protocols</i>	<i>The method of creating Tunnel End Points for the IPv6 over IPv4 tunnel using simple network management protocol (SNMP) in a system having Dual-Stack Border Router the v4 /v6 nodes</i>	<i>The example given in India seems to be also granted the INPI</i>
<i>Examples: controlling the oven temperature to transform a product; stabilization the dynamic behavior of a vehicle along a predetermined path; one automatic transmission system for vehicles; print control; Control of industrial machinery;</i>	<i>Method for controlling a wind turbine and a wind turbine</i>	<i>The example given in India seems to be also granted the INPI</i>
<i>A method of operating a banking machine reading characterized by the steps of user card, identification and</i>	<i>The method of scoring compatibility between members of a social network,</i>	<i>Example denied in India seems to be accepted into the INPI. The reference profiles can be seen as a classification database and search</i>

<p><i>comparison of a password with the card information, provide a non-financial technical solution: user authentication. Thus, such a method It may be considered the invention.</i></p>		<p><i>compatibility. Although aspects of the content of the information will not be considered for inventive step scouting purposes, there is no direct framework of Article of the IPL and qualify as financial method as does India seems forced</i></p>
<p><i>. Examples of creations that focus on item III of Article 10 of the IPL include: analysis business viability, market analysis, auctions, consortia, incentive programs, methods of outlets POS (Point of Sale), funds transfer, banking methods, tax processing, insurance, equity analysis, financial analysis, methods audit, investment planning, retirement plans, health insurance, online shopping methods, method of sales of airline tickets over the Internet, between others.</i></p>	<p><i>A method of operating a computer network search apparatus for generating the result list of items representing a match with information by entered the 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 Comprising method: storing a plurality of items in the database, each item Comprising information to be communicated to the user and having associated with it at least one keyword, an information provided and the bid amount</i></p>	<p><i>Example denied in India seems to be also denied the INPI</i></p>

[1] http://www.ipindia.nic.in/iponew/draft_Guidelines_CRIs_28June2013.pdf

[2] http://www.ipindia.nic.in/iponew/CRI_Guidelines_21August2015.pdf

[3] http://www.inpi.gov.br/menu-servicos/patente/consultas-publicas/arquivos/consulta_publica_1_versao_final_24_07_2012.pdf

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