

Patentability of software Q & A

Q: We're about to launch a unique software product that correlates the weather observations from multiple satellites. It's a niche market and we're confident that there's no other program that interleaves the data as quickly or efficiently as the algorithms that we've developed. The results can be downloaded and displayed via a smart phone app.

Can we apply for patent protection for our new app?

A: Contrary to popular belief, many software-implemented inventions are patentable throughout the world. While copyright automatically protects the underlying program code from being directly copied (e.g. code theft), this would not prevent a third party from writing their own program to run an app having the same function as yours. A patent, on the other hand, would give you exclusivity in programs running in the same way and provide a monopoly in the market for up to 20 years.

There is a hurdle for software to be considered patentable in Europe. The requirement is for a "technical effect", meaning that the software must have an effect beyond mere routine computation and display. In the present case, if the program behind the app were to simply collect together data from the various satellites and present it in a user-friendly format then this is unlikely to pass the patentability test. However, it sounds as though you have developed a program that processes the data more quickly than would otherwise be possible. If you can show that there is an improvement in the internal functioning of the processor or the software, e.g. improved efficiency, speed or power usage, then a software patent could potentially be obtained in Europe, as well as the USA, where software patents are more common.

Even without patent protection, there are ways to exploit your other intellectual property rights to secure your commercial position. For example, you could ensure exclusivity for the brand associated with the app by registering your trade mark(s) or structuring licence agreements to take into account the goodwill in your business. You can also register and protect any associated domain names in relevant countries.

Further advice

For more information, and to request a free consultation, please contact Laura Ramsay (lramsay@dehns.com) or Tim Wilson (twilson@dehns.com) or contact us using the details below.



Contact Dehns

T: +44 (0)20 7632 7200

E: mail@dehns.com

W: www.dehns.com

Copyright 2017. The information in this document is necessarily of a general nature and is given by way of guidance only. Specific legal advice should be sought on any particular matter. Dehns accepts no responsibility whatsoever for any action taken or not taken on the basis of the information contained herein. Last updated March 2017.

London • Munich • Oxford • Brighton • Manchester • Cambridge • Sandwich

www.dehns.com