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Can Software Frameworks be Considered as IP?

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Q. I run a software company and use various frameworks to deliver services. I want to know if software frameworks be considered as IP? Can I patent them?

As you know that in computer programming, a software framework is an abstraction in which software providing generic functionality can be selectively changed by additional user-written code. Frameworks hence provide application-specific software and are important for any software company due to its reusability in various programs and moreover framework saves a lot of time and effort. Since a software framework is a concrete or conceptual platform where common code with generic functionality can be selectively specialized or overridden by developers or users, identification and protection of IP is extremely critical and challenging. Segregation of open source information and the IP itself is the toughest task.

Now coming to Intellectual Property (IP) protection for framework, it can surely be considered as IP if it fulfills the statutory requirement and it is been

created originally by you. The two legal regimes where a framework can be protected are copyright and patent.

In order to register copyright for the same it can be protected under copyright law, literary work class only if the framework is original, creative, and fixed. If these three conditions are fulfilled, framework can certainly be registered as copyright. Though copyright law protects only expression of the idea and not the idea itself, original work in copyright law is a work that is not copied from any source, including open source, which means that your framework will get copyright registration only if it is original.

As far as patent is considered, in India software per se is not patentable provided it has technical application. Therefore, getting patent for a framework or the invention appears to be a bit difficult. To bring about uniformity while dealing with patent applications for software (a.k.a. computer related inventions), the Indian Patent Office has come up with a set of draft guidelines for the examination of computer related inventions by the examiners of the patent office. This might help better determine the patentability of a software and thereby guide software developers.

Even if the subject matter is patentable, the framework as an invention has to be novel, industrially useful and shall be non-obvious to a person skilled in the art. Before filing for a patent, the patentability of a framework shall always be validated by performing comprehensive patent search to understand if it fulfills criteria of patentability and falls into patentable subject matter. Apart from patentability, jurisdiction for filing a patent application shall also be carefully identified.

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