Software Patents in India Explained: What Can and Cannot Be Patented?

News & Updates • September 11, 2026

Technology companies building in India are frequently told two contradictory things: that software cannot be patented in India, and that software patents are routinely granted here. Both statements are incomplete. The reality is that Indian patent law treats computer-related subject matter with a specific statutory exclusion, and the outcome in any given case depends on how the invention is claimed, not merely on whether it involves software. Understanding software patents in India requires separating the underlying invention from the code that implements it, and understanding where the statutory line actually falls.

This article sets out the current legal framework — the relevant statutory provision, the applicable Patent Office guidelines, and the judicial interpretation that has shaped how computer-related inventions are examined.

Are Software Patents Allowed in India?

Indian patent law does not contain a blanket prohibition on inventions that involve software. At the same time, it does not treat software as automatically patentable simply because it is technically sophisticated or commercially valuable. The relevant restriction is found in Section 3(k) of the Patents Act, 1970, which excludes certain categories of subject matter from being treated as "inventions" for patenting purposes.

The practical effect is that an invention involving software must be examined to determine whether it falls within the Section 3(k) exclusion or whether it constitutes a computer-related invention that satisfies the ordinary patentability requirements under the Act. This is a case-by-case, claim-by-claim assessment rather than a fixed rule about software as a category.

What is a Computer-Related Invention?

A computer-related invention (CRI) is, broadly, an invention in which software forms part of how a technical result is achieved, as distinct from an invention that consists only of the software or algorithm itself, considered in the abstract.

Some computer-related inventions involve software controlling or interacting with physical hardware, for instance, software that manages a manufacturing process, controls a sensor system,

or governs the operation of a device. Others involve software implementing a specific technical process that improves the functioning of a computer system itself, such as a method that changes how a system stores, retrieves, or processes data.

It is important not to conflate two separate ideas: the mere presence of hardware in a claim does not by itself take an invention outside the Section 3(k) exclusion, and the mere fact that software runs on a computer does not by itself bring the invention within the exclusion. What matters is what the claimed invention actually is, the technical problem it addresses and the technical means by which it addresses that problem.

What Can Be Patented?

Subject to satisfying all applicable patentability requirements, the following categories of computer-related subject matter may potentially be considered for patent protection:

- A technical process that happens to be implemented using software, where the process itself produces a specific technical result.
- Software that controls a physical device or a technical system, where the interaction between the software and the hardware forms part of a genuine technical solution.
- A computer-implemented invention that solves a technical problem existing within, or relating to, a computer system, for example, a method that improves processing efficiency, memory usage, or data security.

None of these categories is automatically patentable. Each claimed invention must still separately satisfy the requirements of novelty, inventive step, and industrial applicability under the Patents Act, 1970, and must not fall within any other exclusion under Section 3 or Section 4 of the Act. Passing the Section 3(k) threshold is a necessary condition for patentability of a computer-related invention, not a sufficient one.

What Cannot Be Patented?

The following, considered on their own, fall within the Section 3(k) exclusion and cannot be patented:

- A computer programme by itself, claimed as a set of instructions without a specific technical application.
- An algorithm considered in the abstract, independent of a particular technical implementation.
- A mathematical method or formula, considered as a mathematical method.
- A business method — a method of conducting commercial, financial, or administrative activity — even where it is implemented through software.

A recurring difficulty in practice is the assumption that simply running an excluded concept — an algorithm, a business method, or a mathematical method — on a generic computer is sufficient to overcome Section 3(k). It is not. If the substance of the claimed invention remains the excluded subject matter, and the computer is merely the medium through which it is carried out, the exclusion continues to apply regardless of how the claim is drafted.

What is "Technical Effect" or "Technical Contribution"?

Indian courts have interpreted the word "per se" in Section 3(k) as directing attention to whether a computer-related invention produces a technical effect or technical contribution, rather than remaining a computer programme considered in isolation.

In *Ferid Allani v Union of India & Ors*, W.P.(C) 7/2014, decided by the Delhi High Court on 12 December 2019, the Court considered the rejection of a patent application for a method and device for accessing information sources on the web. The Court held that Section 3(k) excludes computer programmes "per se" and not every invention based on a computer programme, and observed that the term "per se" was included in the provision precisely so that genuine inventions developed using computer programmes would not be refused patents merely because they involve software. The Court linked patentability to whether the invention produces a technical effect, giving examples such as more efficient database search strategies, more economical use of memory, or higher processing speed.

The Indian Patent Office's Guidelines for Examination of Computer Related Inventions, most recently revised as the CRI Guidelines, 2025 (issued in July 2025, replacing the 2017 Guidelines), provide the current examination framework the Patent Office applies when assessing whether a computer-related invention discloses a technical effect or technical contribution going beyond the excluded categories under Section 3(k). These Guidelines are administrative in nature, they guide how examiners apply the statute and do not themselves override the Patents Act or the Patents Rules, 2003, where a conflict arises.

A technical effect is distinct from a purely business or administrative outcome, such as improved efficiency of a commercial process without any change to the underlying technical operation of a system, and is also distinct from an abstract mathematical result with no specific technical application. The distinction is assessed on the substance of the claimed invention, not on the language used to describe it.

Patentability is More Than Section 3(k)

Overcoming the Section 3(k) exclusion addresses only one part of the patentability analysis. A computer-related invention that is not excluded under Section 3(k) must still separately satisfy the

general requirements for patentability under Section 2(1)(j) of the Patents Act, 1970:

- **Novelty**: the invention must not have been publicly disclosed anywhere in the world before the priority date.
- **Inventive step**: the invention must involve a technical advance, or have economic significance, or both, and must not be obvious to a person skilled in the art.
- **Industrial applicability**: the invention must be capable of being made or used in an industry.

The application must also satisfy the applicable disclosure requirements for the complete specification. A computer-related invention that clears the Section 3(k) threshold but lacks novelty, or represents only an obvious variation of known technology, will not be granted a patent.

Practical Examples

Example	Potential Position
Standalone algorithm, described independently of a specific technical application	Generally excluded under Section 3(k)
Mathematical calculation implemented on a generic computer, with no further technical application	Generally excluded under Section 3(k)
Business method implemented through software (e.g., a method of pricing or billing)	Generally excluded under Section 3(k), even where software is used to carry it out
Software controlling a physical device as part of a genuine technical solution	May be considered, subject to Section 3(k) and the other patentability requirements
Computer-implemented technical solution addressing a problem in the functioning of a computer system	May be considered, subject to Section 3(k) and the other patentability requirements
Software producing a demonstrable technical improvement (e.g., in processing speed, memory use, or data security)	Potentially patentable subject matter, subject to novelty, inventive step, and industrial applicability

What Should Software Companies Consider Before Filing?

Founders and technical teams evaluating whether to pursue patent protection for a software-related invention may find it useful to work through the following, as a starting point for a proper legal assessment:

- Identify the actual technical problem the invention addresses, distinct from any commercial or business objective.
- Identify the specific technical solution and the technical effect or contribution it produces.

- Assess whether the solution is novel as of the intended filing date.
- Consider whether the solution involves a genuine inventive step over existing technology.
- Examine how the invention would be claimed in light of Section 3(k), and whether the claims focus on the technical implementation rather than the underlying algorithm or business method alone.
- Avoid public disclosure of the invention before filing, since prior disclosure can affect novelty.
- Document the technical development of the invention, including the problem addressed and the technical means used to solve it.
- Consider, more broadly, whether patent protection is the appropriate strategy for the specific technology, having regard to how it will be commercialised and whether it can realistically be protected in other ways.

This is an informational checklist and does not constitute legal advice on any specific invention.

Conclusion

Indian patent law does not impose a blanket prohibition on every invention that involves software, but Section 3(k) of the Patents Act, 1970 creates a real and frequently litigated exclusion for computer programmes per se, algorithms, mathematical methods, and business methods. Judicial interpretation, most notably in *Ferid Allani v Union of India*, has clarified that the exclusion turns on whether the invention produces a technical effect or technical contribution, and the current CRI Guidelines, 2025 set out how the Patent Office applies that principle on examination. For companies assessing software patents in India, the relevant question is not whether an invention "uses software," but whether the claimed invention, taken as a whole, discloses a technical solution to a technical problem that also satisfies novelty, inventive step, and industrial applicability.

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