MATHYS & SQUIRE EXPERTISE
PATENTS

Mathys&Squire

Protecting the IP in your software

Mathys & Squire represents software companies - from startups through to large Silicon Valley multinationals.

Where there is commercial value in your software, we can help you protect it.

Can you patent software?

There is a common misconception that it is not possible to patent software. Although computer programs per se are excluded from patentability, many software inventions are indeed patentable. In general, you can obtain patents for inventions which are:

a) technical in nature; and
b) new and non-obvious.

These criteria still apply to software inventions, however identifying the technical nature of these inventions can be more difficult. The question is whether the software addresses a technical problem (rather than merely addressing e.g. business needs).

Key indicators of patentable software inventions include improvements (e.g. in terms of efficiency, resource usage, reliability, security) to the operation of external technical devices or processes or to the internal functioning of a computer system.

Examples might include processes for improved database indexing, data compression and encryption algorithms and lower-level operating system functions.

However, there is no simple, reliable rule and it is important to look at each case individually.

Examples of patentable software

Typical examples of patentable software inventions are where the software controls an external technical device or process (e.g. an engine management system). Inventions that improve the internal functioning of a computer system (in terms of efficiency, resource usage, reliability, security, etc.) can also be patentable – examples might include processes for improved database indexing, data compression and encryption algorithms, lower-level operating system functions, etc.

However, if a computer program solely implements a business process (such as an order management system), without at the same time addressing technical problems (as opposed to business needs), it is unlikely to be patentable in the UK and Europe. Whilst historically it has been easier to patent software in the US, it has been much harder recently and is harder to predict. As case law develops, so too does protective and commercial IP strategy.

Protection beyond patents

Copyright subsists automatically in most jurisdictions, i.e. you are protected as soon as you have created the software, or written out the code. Rights may depend on proving the creation date, and as software tends to evolve continuously, version control systems can help establish precise dates for various product iterations.

Unlike with patents, copyright infringement requires actual copying which must be proven. In some jurisdictions, most notably the US, it is possible to register your copyright which may make it easier to prove an infringement case and may deter infringement in the first place.

Other considerations

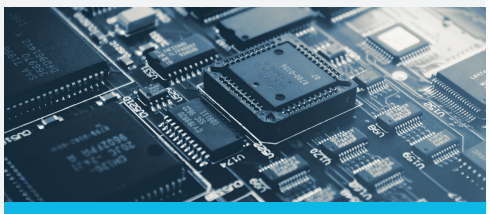
Does your software include a brand used to identify your product to customers?
Think about a trade mark to prevent others from impersonating you. Before launch, conduct a search to check you will not be infringing any third party trade marks.

Does your software include a user interface?
Consider protecting the appearance of the interface via Registered Designs in the UK or Community Registered Designs in Europe.

Have you thought about licensing?
Open source licences may restrict the ability to protect your IP effectively. It's important to know which open source solutions are used in a product and what licences are attached to them.

A team with tailored technical expertise

Our team has extensive experience across designs, copyright, patents, trademarks and litigation. We tease out which elements of your inventions might provide promising subject matter for a patent application alongside navigating the time frames and fine lines of applicable patentability criteria.



There are various means to protect the IP in your software, from registered rights such as patents and designs, through to copyright and trade marks.

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