

**Abstract**

**Study on the influences of SW patent on Copyright system  
- Reconsideration on the necessity of revision of Korean Patent Act -**

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There is constant controversy concerning SW patent system and recent disputes are focused on the boundary or scope of SW patent. Precisely, controversy concerning which SW patent is limited into computer implemented invention, or invention of computer program in tangible system, or computer program invention related with algorithm.

In this article, I define 3 types of SW patent which are classified into.

First type of SW patent called 'computer implemented invention' is that "invention which needs computer or software as a device or process to embodies the technical idea using the law of nature".

Second type of SW patent called 'invention of computer program in tangible system' is that "invention which is filed with claims computer program in tangible system".

Third type of SW patent called 'computer program invention related with algorithm' is that "invention which is protected as idea or algorithm of computer program itself".

Among 3 types of SW patent, computer implemented invention is patentable under present Patent Law as a invention of device and also as a invention of process. Also, invention of computer program in tangible system is also patentable in Korean Patent Office Guideline. But, the third type of SW patent, 'computer program invention related with algorithm' is not patentable in Korea also in USA and EU.

US court decides the computer program invention on the tangible system without technical nature and contribution would not patentable along with Mayo's framework. Also Japanese court decides that SW patent without detailed electric circuit should not patentable because their claims don't use technical idea based on the law of nature.

With those international cases, we should be careful to revise Patent Law to permit SW patent including third type of above category. Computer program invention related with algorithm may make Copyright system into the dead law, because expression will be subject to idea and computer program's expression will be subject to computer program's idea and algorithm.

So, we should reconsider the revision of Patent Act and also whether 'invention of computer program in tangible system' without technical nature and technical contribution should be patentable or not.

### Keywords

SW patent, computer implemented patent, Alice case, Bilski case, Mayo's framework, two-step analysis, inventive concept, copyright

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