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A Comparative Study on Software Patent: The Meaning of 'Use' in Direct Infringement

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Abstract : The computer program inventors, particularly in Fintech, are unwilling to apply for patents in Taiwan after 2014. Passing the 'statutory subject matter eligibility' test and becoming the system patent are not the only cause to the reduction in the number of application. Taiwanese court needs to resolve whether the defendants had 'used' that software patent in patent direct infringement suit. Both 35 U.S.C. § 271(a) and article 58 paragraph 2 of Taiwan Patent Law don't define the meaning of 'use' in the statutes. Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc. reconsidered the meaning of 'use' in system patent infringement, and held that 'a party must put the invention into service, i.e., control the system as a whole and obtain benefit from it.' In Taiwan, Intellectual Property Office, Ministry of Economic Affairs, has explained that 'using' the patent is 'achieving the technical effect of the patent.' Nonetheless, this definition is too broad to apply to not only the software patent but also the traditional patent. To supply the friendly environment for Fintech corporations, this article aims to let Taiwanese court realize why and how United States District Court, S.D. Indiana, Indianapolis Division and United States Court of Appeals, Federal Circuit defined the meaning of 'use' in 35 U.S.C. § 271(a). However, this definition is so lax and confuses many defendants in United States. Accordingly, this article indicates the elements in Taiwan Patent Law are different with 35 U.S.C. § 271(a), so Taiwanese court can follow the interpretation of 'use' in Centillion Data case without the same obstacle.

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