15. Software patents

This chapter focuses upon the somewhat complex manner in which the patent system has operated in respect of so-called software-related inventions. For a variety of reasons, the United Kingdom’s Patents Act and the European Patent Convention both exclude programs for computers from eligibility for protection. The prohibition extends only to protection for the program “as such” and as interpreted by the patent and judicial authorities applications for inventions that produce a technical effect are considered acceptable even where these are based on programs. This chapter will consider how this situation has arisen and will consider the application of software related patents in key sectors such as that of mobile phones in which products and network technologies make very extensive use of patented technologies. The concept of standard essential patents has attained considerable prominence and requires the owner of such a patent to make its use available to others upon fair and reasonable licence terms. As well as possessing a degree of ambiguity as to what terms might be fair and
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reasonable, the situation is highlighting the problems of trying to apply national patents in the context of a global industry.

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