

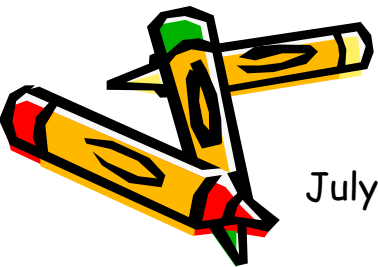
Can copyright protect *computer software?*

**A presentation at the Round Table for
Honorable High Court Judges
The National Judicial Academy,
Bhopal**

July 3, 2004

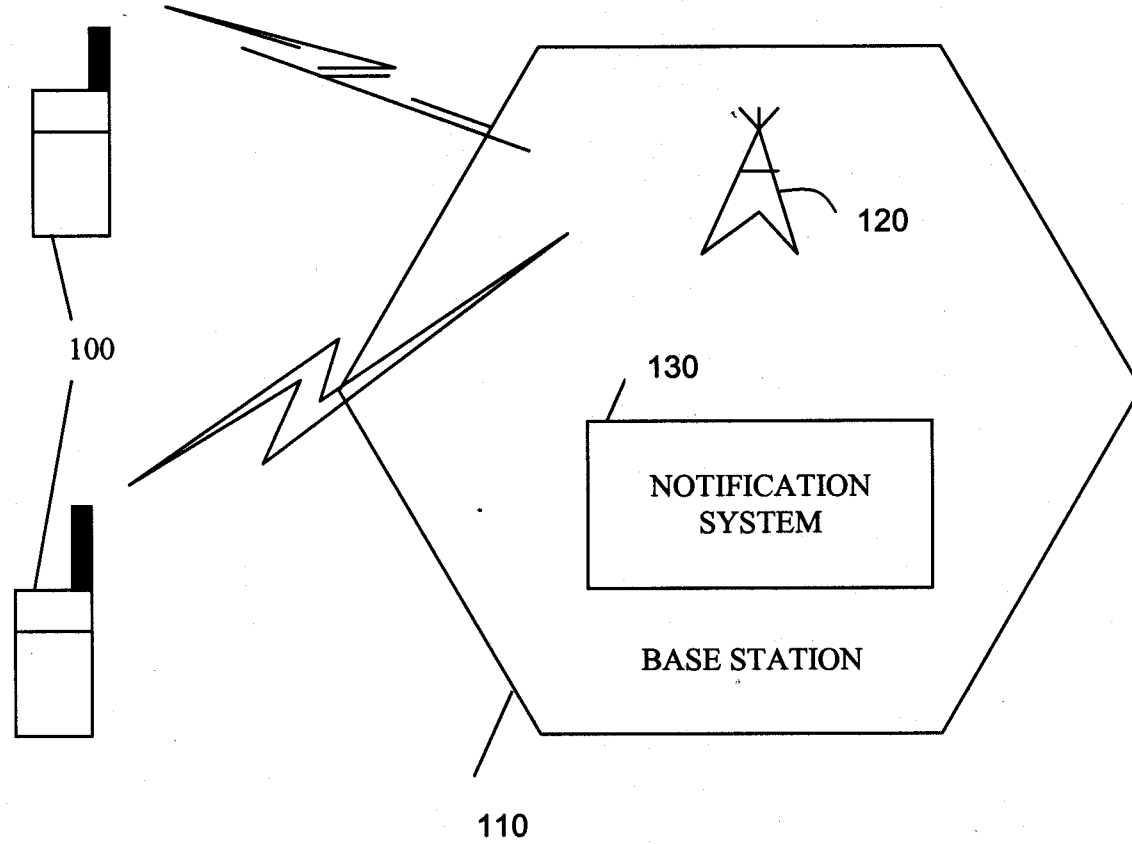
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Let 's look at this example



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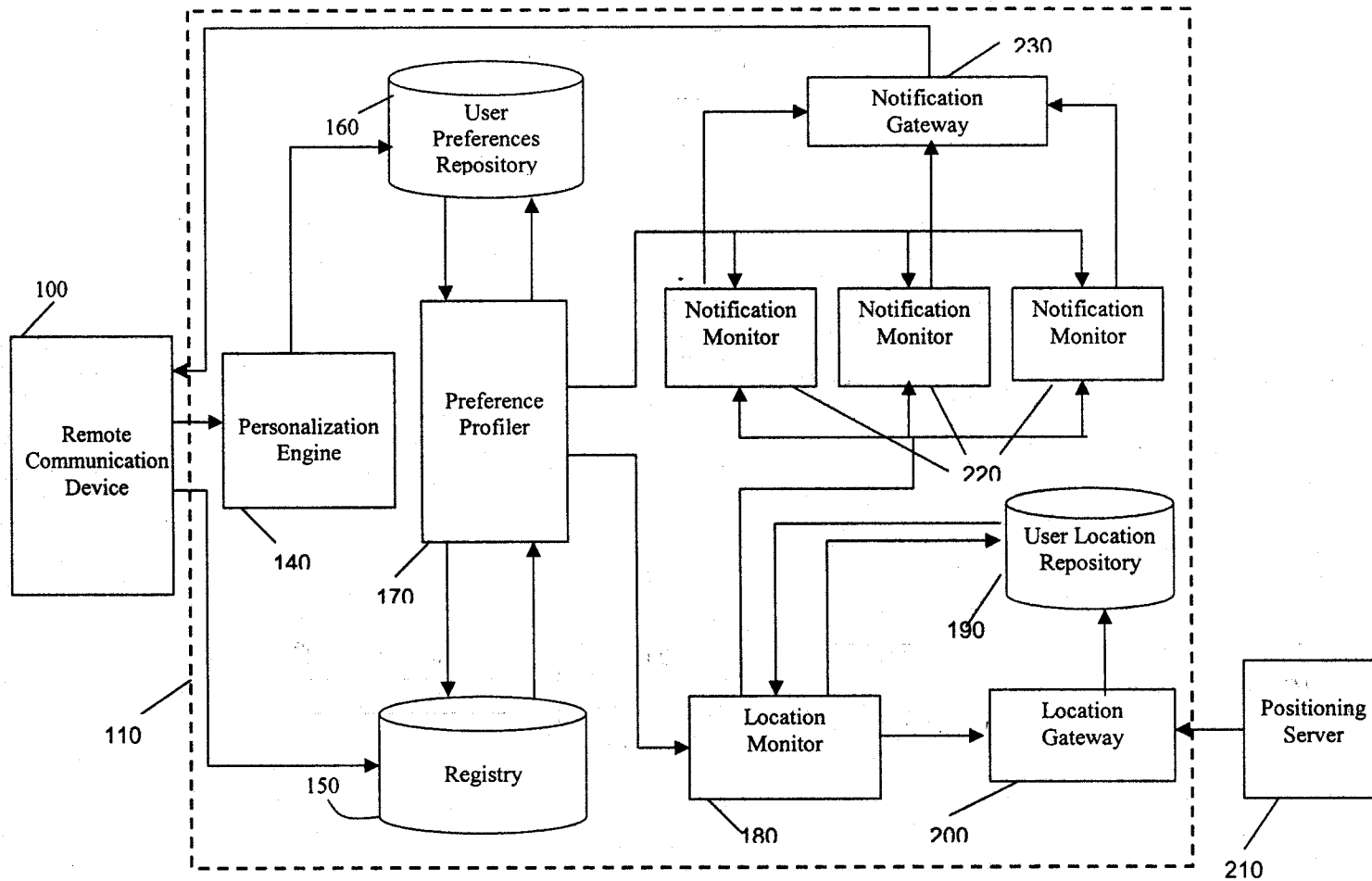
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Fig. 2



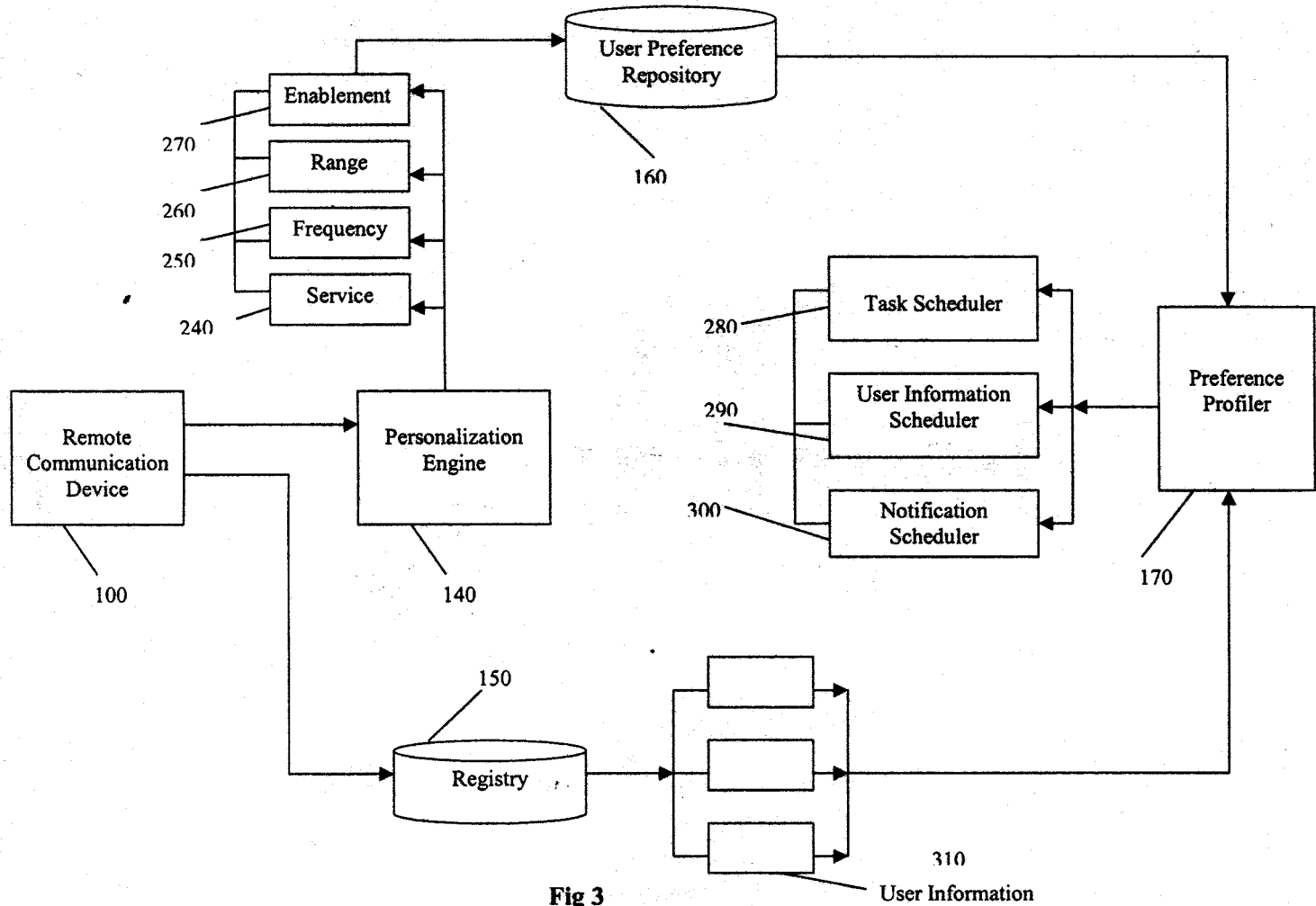


Fig 3

Location-based notification system

When you arrive in Bhopal, and if you are carrying your mobile phone, you will receive an SMS saying "Mr. "X", welcome to Bhopal-have a nice stay"

You may continue to receive notifications:

Of food joints - when you pass by a Pizza hut, a burger joint, or an Idli shop

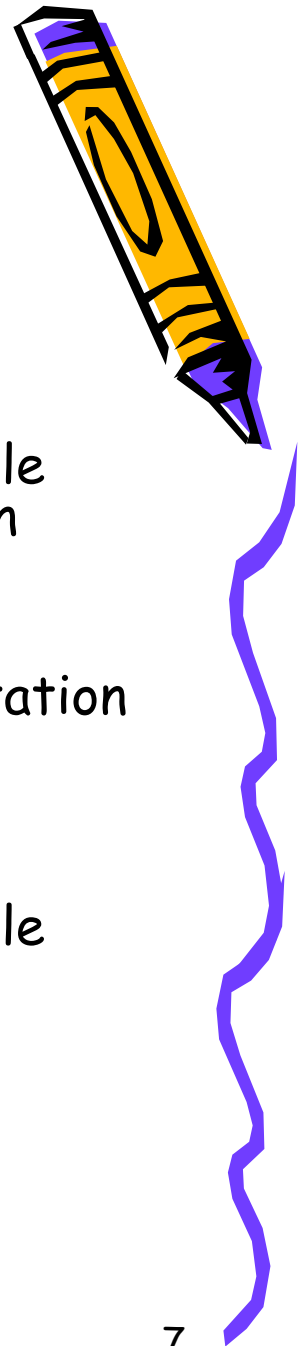
Of foot ware shops - when you pass by ..a Bata showroom.. a Floresheim shop..or

And so on ... notifying you of locations of your interest..

This is called **location -based notification system**



LBNS



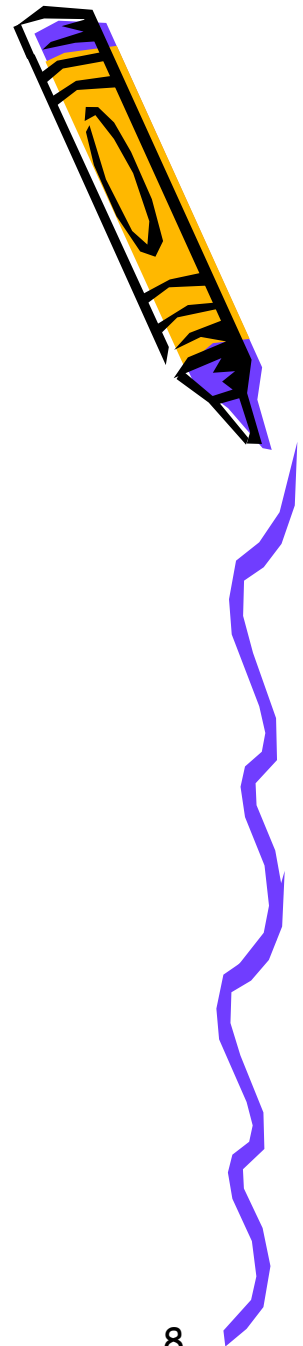
- This system contains a plurality of computer programs, configured to achieve the objective of notifying a mobile telephone subscriber of locations of his/her liking when he/she passes by such locations
- These computer programs are implemented in a base station which is part of a digital cellular telephony network
- These programs work in conjunction with known digital cellular technologies like GSM (Global System for Mobile Communications) & TDMA



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Can we copyright this?



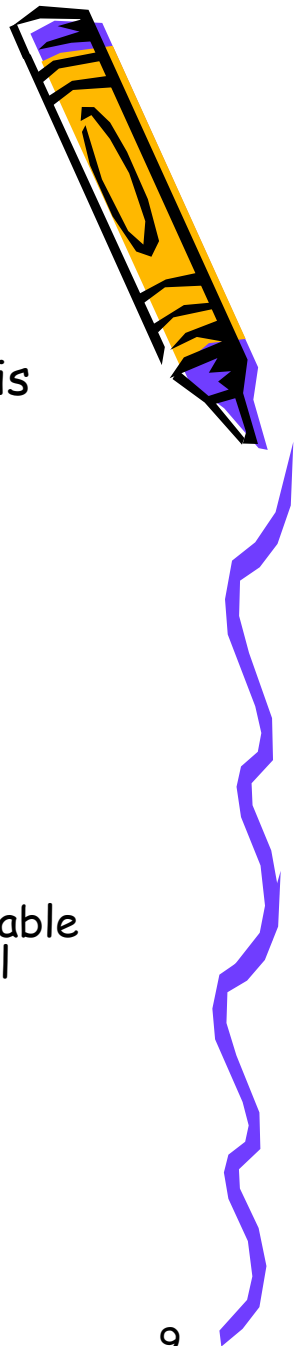
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Yes.

The individual computer programs that are implemented in this system can be copyrighted.

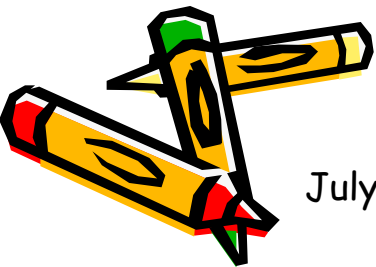
- Literary work includes computer programs (Sec. (2) (o))
- The Act defines Computer Program (Sec.2(ffc))
- Individual programs in this LBN System fall within the definition of computer program
 - Because each one of such programs whether in machine readable medium or in high level language causes the associated digital cellular telephony architecture to cause a certain function



Copyright would provide..

- The exclusive right to:

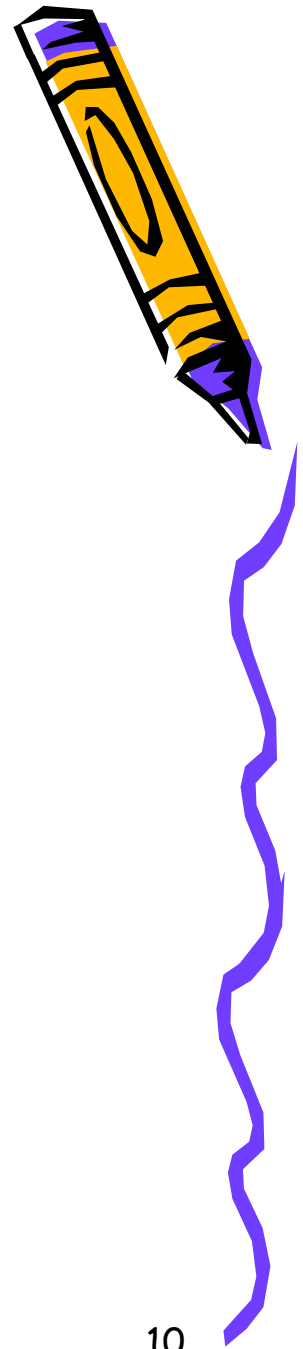
- Reproduce the work
- Store it in any medium
- Issue its copies to the public
- Perform it in public or communicate it to public
- Translate/adapt
- Sell
- Give on hire
- Offer for sale or hire

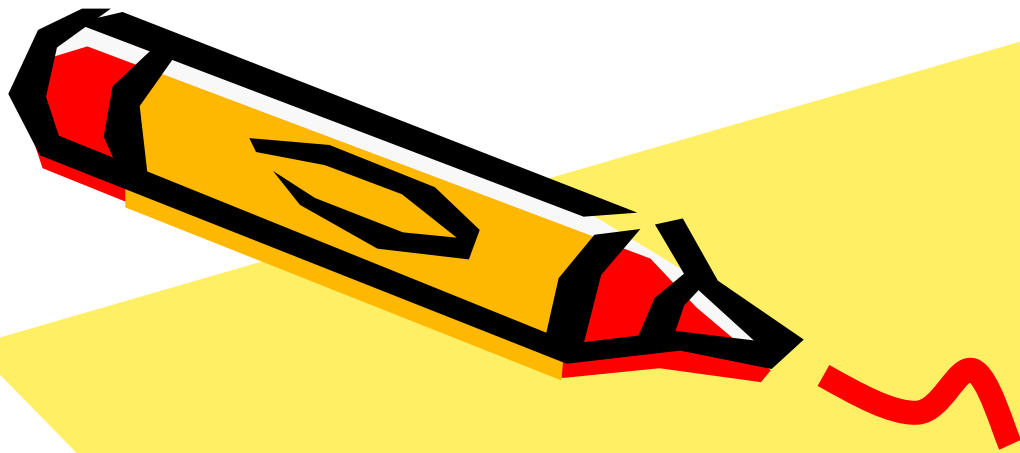


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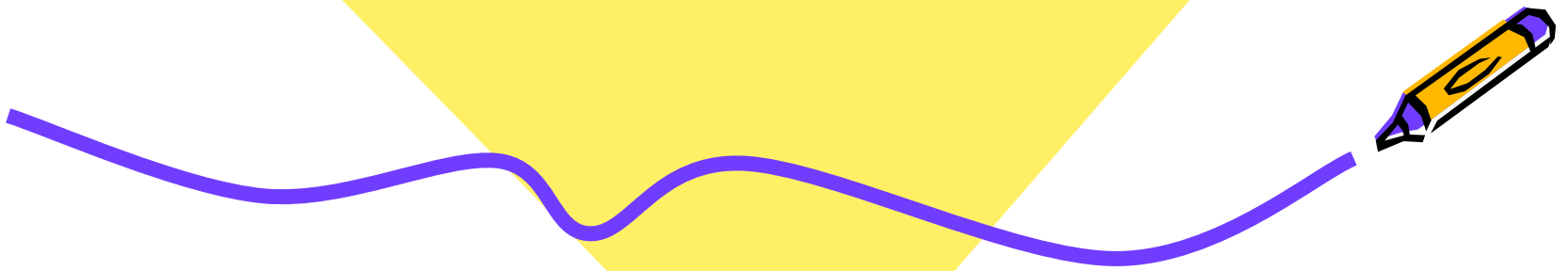
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But, what if some one achieves the same function that this LBN System performs employing a different set of computer programs



Copyright cannot protect the functional output of this system

All that copyright provides is to give the owner of the copyright the exclusive right to literally reproduce the program

If someone achieves the same functional outcome by a different set of codes, the copyright owner cannot prevent him/her from implementing a location based-notification system

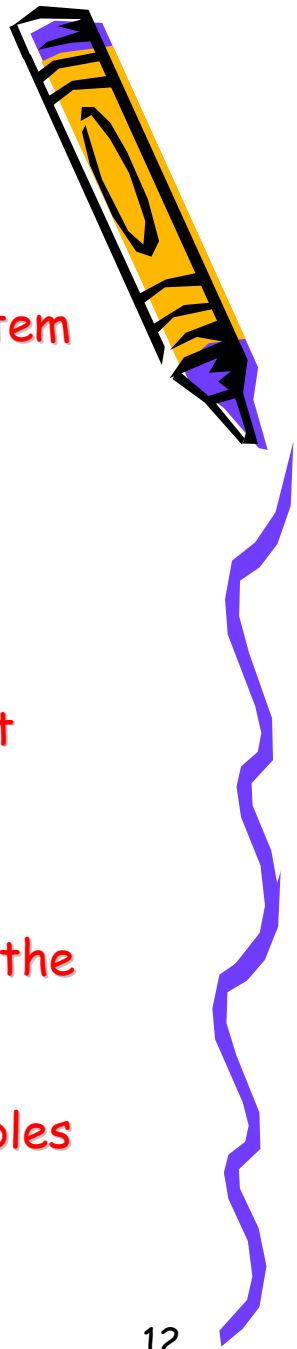
It can only protect the owner from literal infringement of the computer programs

The critical function here was to invent a system that enables notifying an end-user of a mobile telephone of location information of his/her liking

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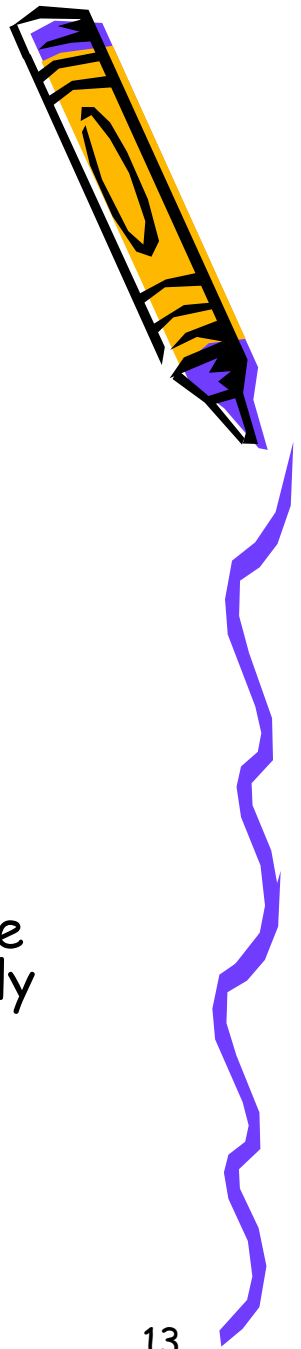
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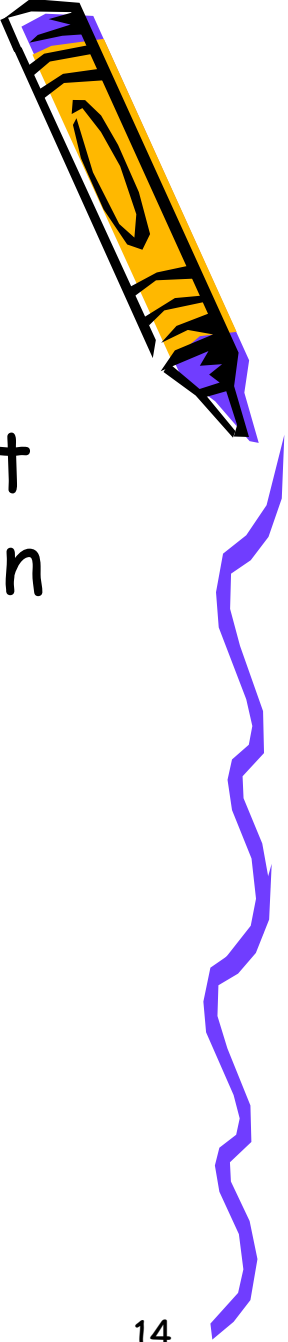
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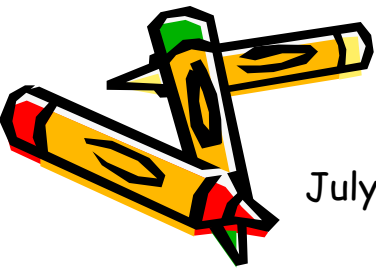
Patents protects the functional output

- A patent, on the other hand, protects the functionality of this invention
- It will give the patentee the exclusive right to prevent third parties from the act of:
- Making, using, offering for sale, selling or importing this product (LBNS)
- To put in the other way round, it will give the patentee a negative monopoly to commercially work the invention (Sec.48)





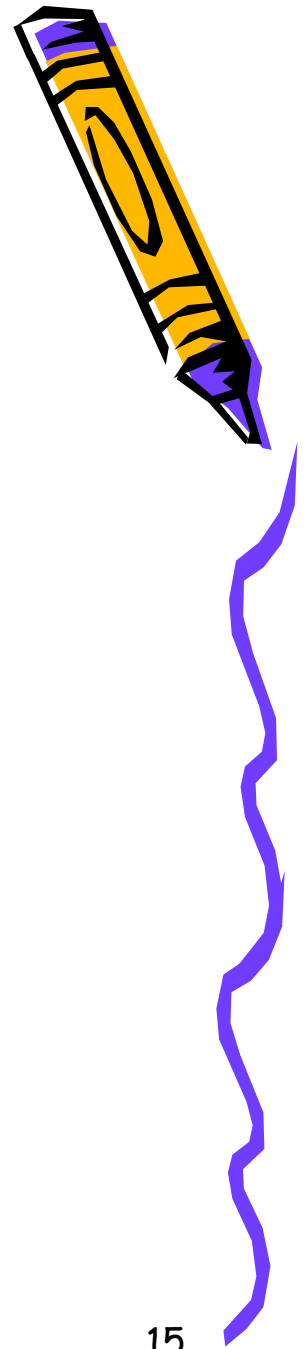
Here arises question - Is patent
the right form of IPR protection
for computer software?



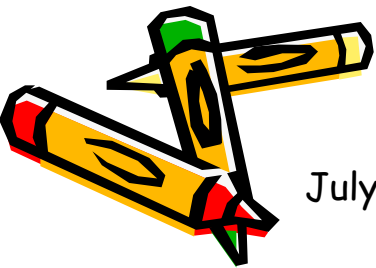
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A patent claim on LBNS will be as follows:-



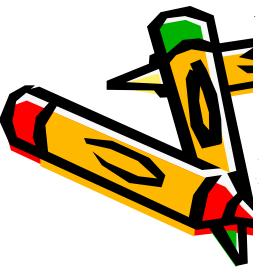
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We claim:

1. A communication system comprising:
 - a remote communications device configured to communicate through a telecommunication network;
 - a base station in communication with the remote communications device, the base station having a notification system interfacing with the remote communications device, wherein the base station is configured to provide location based notifications to the remote communication device using the notification system.
2. The system according to claim 1 wherein the remote communications device comprise a mobile phone.
3. The system according to claim 1 wherein the remote communications device comprise any device capable of communicating through a telecommunications device.
4. The system according to claim 1 wherein the base station is configured to provide location based notifications to the remote communications device.
5. A system for providing location based notifications, the system comprising:
 - a remote communications device configured to communicate through a telecommunications network; and
 - a base station in communication with the remote communications device, the base station having:
 - a personalization engine configured to interface with the remote communications device and receive personal preferences from the remote communications device;
 - a user preference repository configured to store user preferences obtained by the personalization engine from the remote communications device upon termination of the interface between the remote communications device and the personalization engine;
 - a registry configured to receive and store predefined user information;
 - a preference profiler configured to receive user preferences from the user preference repository and user information from the registry and to create notifications;



I claim:

1. A communication system comprising:

a remote communications device configurable to communicate through a telecommunications network;

a base station in communication with the remote communications device, the base station having a notification system interfacing with the remote communications device, wherein the base station is configured to provide location based notification to the remote communications device employing the notification system.



In India, the law is yet to be settled on this issue

- Section 3 (k) of the Patents Act, 1970 was inserted by the Patents (Amendment) Act, 2002 (that came into force on May 20, 2003)
- This section reads as follows:
"The following are not inventions within the meaning of this Act,-
a mathematical or business method or a computer program *per se* or algorithms"



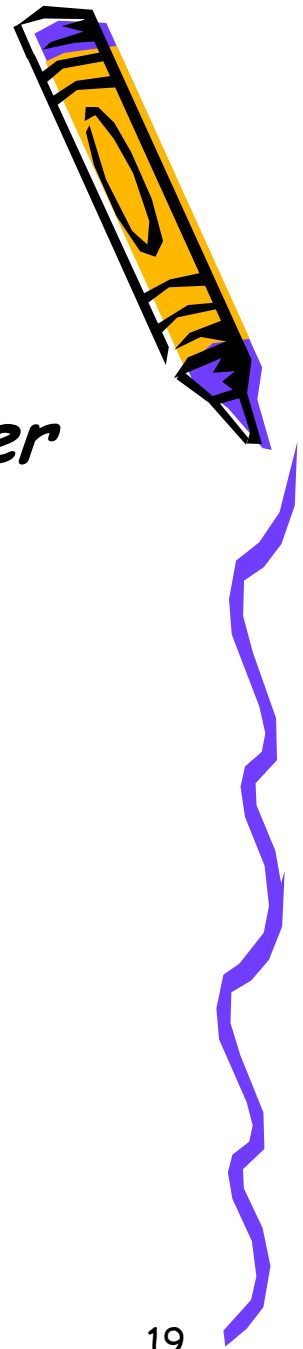
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Question here is what is not *computer program per se*..



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May I leave it at that

Thank You

