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newsflash

EPO case law on patentability
of computer programs

EPO Enlarged Board finds existing EPO case law on patentability of computer programs clear

The Enlarged Board of Appeal of the European Patent Office has now issued its long awaited decision on the Referral (G0003/08) by the President of the Office of various questions concerning which kinds of inventions involving computer programs may be patented under the European Patent Convention. The EBoA has decided, however, that there was not sufficient divergence between the decisions of the Boards of Appeal in this area for the EBoA to decide on the questions. With much detailed analysis it points out for each question either that it could not see any divergence in the case law or, if there was some divergence, that the Boards of Appeal had merely developed the law and so there is no controversy as to what the law is as stated by the BoA.

The decision removes the uncertainty created by the Referral that the law in this area could

change in the short term, and in the medium term it is unlikely that European legislators will wish to revisit the matter after the rejection of the draft Directive on the patentability of computer programs in 2005. Therefore the law will remain as it is for some time. Our firm has played its part in this development of the law (in the Pension Benefit Systems case cited in the decision, T0931/95) and we remain happy to advise on the patentability of such inventions. While the law is now supposed clear it is not, in fact, straightforward, but it is possible to advise on individual cases. We particularly recommend consultation on the text of a specification before a PCT application, or a direct application to the EPO, is filed in order to make sure that it reveals the necessary technical effect of the invention and that the right aspect of the invention is claimed, without which such applications can fail.

The full decision can be found here: <http://www.epo.org/topics/news/2010/20100512.html>

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