International Chamber of Commerce
The world business organization

The Secretary General

Enlarged Board of Appeal
European Patent Office
Erhardtstrasse 27
80331 Munich
Germany

18 May 2009

Re: Case No. G3/08: Referral under Article 112(1) (b) EPC by the President of the EPO (Patentability of computer programs) to the Enlarged Board of Appeal

Dear Sirs,

As the world business organization representing businesses in a multitude of sectors worldwide, ICC has been closely following the discussions in Europe on the patentability of computer implemented inventions as these have implications for many different industries.

ICC notes that the President of the European Patent Office ("EPO") formally referred several questions of law relating to the patentability of computer-implemented inventions to the EPO Enlarged Board of Appeal ("EBA"). The issues referred to the EBA relate primarily to questions regarding the exclusion from patentability of computer programs "as such" under the European Patent Convention. This is being addressed by the EBA under Case No. G3/08.

ICC would like to take this opportunity to reiterate its longstanding support for the patentability of computer-implemented inventions. The present European patent system has served industry well in this regard, in particular in the way that determinations of the patentability of computer-implemented inventions have been made by the EPO. ICC believes that inventions relating to software should not be treated differently from any other inventions, and should be patentable as long as they meet all of the usual requirements of patentability applied to other fields of technology, including technical considerations. We have consistently taken the position that computer-implemented inventions that solve a technical problem involve technical considerations and are, therefore, patentable provided that the usual patentability criteria are met.

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It is important to recognize that computer-implemented inventions cover innovations that can be found in a significant number of everyday products on the market. Examples of such products, based on modern technology and using data and information processing are: telecommunication systems, including mobile phones, consumer electronic devices, integrated circuits, ABS brakes and fuel injection in cars, industry robots, etc. The consequences of a decision by the EBA will therefore not be limited to a narrow industry sector but will have a direct impact on many small and large companies involved in a wide range of business activities.

We believe, therefore, that the interests of stakeholders in the European patent system– including both patent applicants and third parties – would be best served by confirming the case law of the Boards of Appeal in the EPO as it stands today. That case law reflects a natural evolution in the interpretation of Article 52(2) and (3) EPC over the past two decades and has produced a stable and predictable framework for determining what subject matter is eligible for patent protection under the EPC.

We thank you for your consideration of our views.

Yours faithfully,

Guy Sebban