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**Written Statements on the Referral to the Enlarged Board of Appeal
Case Number G 3/08**

The following statements are submitted in accordance with Article 10 of the Rules of Procedure of the Enlarged Board of Appeal, on the referral of the President of the European Patent Office to the Enlarged Board of Appeal concerning the limits of patentability of programs for computers.

Under Article 112(1)(b) EPC the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.

Thus, in order to be admissible, a referral has to fulfil two requirements, namely that different decisions were given on the question referred to the Enlarged Board of Appeal, and that the decisions were given by two Boards of Appeal. Neither of the two requirements is met in the present case. Therefore, in the view of the author of this brief the Referral is inadmissible.

It should also be recalled that it is not the task of a referral by the President of the European Patent Office to instigate the making of new case law, but to ensure uniform application of the law.

I. Introduction

A distinction has to be drawn between contradictory decisions and developments in case law¹. In this respect, the purpose of the possibility for the President of the European Patent Office to refer a point of law to the Enlarged Board of Appeal has to be kept in mind. It is expressed in the introductory part of Article 112(1) EPC and aims at ensuring uniform application of the law. This is in the interest of the users of the European patent system. As far as possible, it should be foreseeable for the parties to proceedings on which interpretation of the law their cases will be decided in order to avoid legal uncertainty.

The first and strongest indication that the case law is consistent and that no legal uncertainty in respect of the criteria for inventions related to computer programs exists is to be found in the decisions of Technical Board of Appeal 3.5.01. While in the situation underlying decision G 1/04, Technical Board of Appeal 3.4.1 did no longer agree to the legal principles for assessing eligibility for patent protection developed in its previous case law (see Reasons, pts. 3.4 and 4.4) such break with past precedents is not apparent in the case of inventions related to computer programs. On the contrary, while it may be said that the development of the case law has not always run in a straight line since the earliest cases, the line of development shows progressive convergence in respect of coherence and methodology of interpretation of the law².

This picture is confirmed by the case law of other Technical Boards of Appeal. Inventions related to computer programs are not restricted to the practice of the meanwhile five Boards of Appeal in the field of Electricity, also most Boards in the fields of Physics and Mechanics have to deal with such inventions since computer technology finds more and more application in almost all fields of technology. From the case law it is not apparent that any of the other Boards had problems in applying the standards originating from Board 3.5.01, originally the only Board dealing with computer implemented inventions. Neither has any of the other Boards seen any reason to refer a point of law to the Enlarged Board of Appeal, nor has any of them developed a different methodology for the interpretation of Articles 52(2) and 56 EPC. Rather, it can be taken from the European Patent Office's reports on the case law of

¹ Joos in *Singer/Stauder*, 4th ed. 2007, Art. 112 EPC, note 24

² *Steinbrener*, Die Auslegung von Artikel 52(1)-(3) EPÜ in der neueren Rechtsprechung der Beschwerdekammern, Festschrift für Bartenbach, Cologne 2005, p. 313, at p. 333

the Boards of Appeal that inventions related to a mix of technical and non-technical features are assessed by the Boards in a consistent and non-controversial manner in accordance with the approach in decision T 641/00³.

On this background, it appears that the referral by the President of the EPO does not serve the purpose of ensuring uniform application of the law. While the question of how to assess patentability of computer implemented inventions may be considered as a point of law of fundamental importance within the meaning of Article 112(1) EPC, the President of the EPO is not entitled to refer such a point in the absence of a relevant divergence in the case law and should be prevented from referring it by construing an artificial divergence.

II. No Different Decisions

In the case where no different decisions were given on the question referred to the Enlarged Board of Appeal, the latter has to reject the referral as inadmissible. The Enlarged Board of Appeal did so for instance in case G 3/95, in which the President of the European Patent Office was of the view that decision T 356/93 of Board 3.3.4 was in conflict with decision T 49/83 of Board 3.3.1 and also with decision T 19/90 of Board 3.3.2. The Enlarged Board of Appeal, however, found that the decisions were not different with regard to the questions referred to it and acted accordingly by rejecting the referral as inadmissible.

The President referred four groups of questions to the Enlarged Board of Appeal, comprising in total nine different questions. In this section I it will be shown that the respective arguments presented by the President in the Referral under the heading “The divergence” are not valid and that the alleged divergences actually do not exist.

On none of the nine questions referred to the Enlarged Board of Appeal different decisions have been given.

³ see also decisions T 336/07 and T 1543/06 in Case Law 2007, OJ EPO, special ed., p. 18, 19, referring to Case Law, 5th ed. 2005, I.D.8.1.1. These decisions refer to and follow the reasoning of decision T 641/00.

II.1 Question 1

1. *Can a computer program only be excluded as a computer program as such if it is explicitly claimed as a computer program?*

This question of the Referral is not admissible because no diverging decisions could be cited in the Referral. The allegedly differing decisions are T 1173/97 of 1998 and T 424/03 of 2006. In T 1173/97 the Board of Appeal developed generally the principles of interpretation of Article 52 EPC and decided on the allowability of claims relating to a computer program product. In T424/03 the Board of Appeal had to decide on the allowability of claims directed to a method implemented in a computer system and to a computer-readable medium having computer executable instructions on it. However, none of the findings in T 424/03 are in conflict with the findings of T 1173/97, holding in particular that a computer program by itself has technical character if it provides a further technical effect

Reasoning:

The Referral gives the following reasons for a divergence between decisions T 1173/97 and T 424/03:

“T 1173/97 placed the emphasis on the function of the computer program (does the claimed program have technical character) rather than the manner in which it is claimed (e.g. as a computer program, a computer program product or a computer-implemented method). ... On the other hand, T 424/03 placed emphasis on the manner in which the computer program is claimed.” (Referral, page 5 seq.)

However, the fact that two decisions place different emphases does not mean that a question of law is differently decided by them. It is the normal case that two decisions have different emphases, already because the facts of each case are rarely the same .

The Referral continues to reason a divergence as follows:

“Following the reasoning of this decision [T 424/03], only a claim of the form ‘computer program for method x’ could possibly be excluded from patentability as computer program as such, whereas claims of the form ‘computer implemented method x’ or ‘computer program product storing executable code for method x’ would not be excluded (irrespective of the nature of the method x).” (Referral, page 6, 2nd paragraph)

However, even if it was true that it followed from T 424/03 that a rejection under Article 52(2) and (3) EPC could be avoided by certain claim formulations, decision T 424/03 would still not be in conflict with the findings of decision T 1173/97.

In decision T 1173/97, the Board held that a computer program claimed by itself can be patentable. The condition that must be fulfilled in this case is that the program when executed produces a “further technical effect”:

“In the view of the Board, a computer program claimed by itself is not excluded from patentability if the program, when running on a computer or loaded into a computer, brings about, or is capable of bringing about, a technical effect which goes beyond the “normal” physical interactions between the program (software) and the computer (hardware) on which it is run.” (T 1173/97, Reason 13, second paragraph, emphasis provided)

This means that the technical character of the claimed subject matter can be derived from the program alone, namely if the program produces a “further technical effect” when run on a computer, in which case the program is not regarded a “program as such” in the sense of Article 52(2) and (3) EPC:

“In other words, on the condition that they are able to produce a technical effect in the above sense, all computer programs must be considered as inventions within the meaning of Article 52(1) EPC, and may be the subject-matter of a patent if the other requirements provided for by the EPC are satisfied.” (T 1173/97, Reason 6.5, second paragraph)

However, 1173/97 does not say that whenever a computer program is involved in the claimed subject matter, the computer program itself must satisfy the technicality requirement. Rather, it seems to be clear that where the claimed subject matter has a technical character already for other reasons, for example because a piece of hardware is claimed, the claim satisfies the technicality requirement regardless of whether a computer program involved in the claim provides a further technical effect or not.

T 1173/97 in particular makes no statement about how the technicality requirement can be satisfied in the case that a claim is directed to a method or to a storage medium. The Board emphasizes twice, in Reason 1 and in Reason 9.1, that in T 1173/97 the requirement of a further technical effect is only applied to those claims of the application concerned which,

using the expression “computer program product”, claim a computer program, by itself or as a record on a storage medium⁴:

“As already pointed out under reason 1, the only question to be decided in this appeal is whether the subject-matter of claims 20 and 21 is excluded from patentability under article 52(2) and (3) EPC. These claims are directed to a computer program product and have to be examined from the point of view of what may be called the “further technical effect”, which, if present, may lead to the subject matter not being excluded under Article 52(2) and (3). (T 1173/97, Reason 9.1, emphasis provided)

The method claim (claim 1) of the application underlying T 1173/97 was not the subject of the decision. Note also that claim 21 was not directed to a storage medium but to a “*computer program product stored on a computer usable medium*”, and therefore to the computer program as a record on a storage medium⁵. There is an important difference between a claim directed to a “computer program (product) stored on a storage medium” and a claim directed to a “storage medium having a computer program (product) stored on it”. The former claims a computer program, whereas the latter claims a piece of hardware.

On the other hand, decision T 424/03 refers to claims directed to a “*method implemented in a computer system*” (T 424/03 Reason 5.1, emphasis provided) and to claims directed to a “*computer-readable medium having computer executable instructions (i.e. a computer program) on it to cause the computer system to perform the claimed method*” (T 424/03, Reason 5.3, emphasis provided). T 424/03 came to the conclusion that the claimed method had technical character because it was implemented on technical means (Reason 5.1). With respect to the medium claimed, it came to the conclusion that it had had technical character because it related to a technical product (Reason 5.3).

⁴ The claims in question read:

“20. *A computer program product directly loadable into the internal memory of a digital computer ...*”

“21. *A computer program product stored on a computer usable medium, comprising ...*”

The other independent claims read:

“1. *A method for resource recovery in a computer system ...*”

“14. *A computer system comprising ...*”

⁵ Cf. T 1173/97, Reason 13.3, third paragraph: “... *it does not make any difference whether a computer program is claimed by itself or as a record on a carrier ...*”

The Referral states on page 6, second paragraph, that it would follow from decision T 424/03 that claims of the form “*computer program product storing executable code for method x*” would not be excluded from patentability. However, as discussed above, T 424/03 concerns a “*computer-readable medium having computer-executable instructions*” and does not mention a “computer program product” at all. Thus, also the statement on page 6 of the Referral, last paragraph, saying that if one were to follow the reasoning of T 424/03, the exclusion of programs for computers merely required formulation of the claim “*as a computer program product*” is not justified.

None of these findings are in conflict with the findings of T 1173/97, holding in particular that a computer program by itself has technical character if it provides a further technical effect.

II.2 Question 2

2. (a) *Can a claim in the area of computer programs avoid exclusion under Art. 52(2)(c) and (3) merely by explicitly mentioning the use of a computer or a computer-readable data storage medium?*

(b) *If question 2(a) is answered in the negative, is a further technical effect necessary to avoid exclusion, said effect going beyond those effects inherent in the use of a computer or data storage medium to respectively execute or store a computer program?*

These two questions of the Referral are not admissible because no diverging decisions could be cited in the Referral. The allegedly differing decisions are T 1173/97 of 1998 and T 258/03 of 2004. The finding of T 1173/97 that a computer program must (only) be considered to be patentable when it has a technical character has a direct consequence only for claims directed to a computer program (product). Claims directed to a method do not necessarily need to derive their technical character from a computer program involved. The method may be technical for other reasons. Therefore, the finding of T 258/03 that any method involving technical means is not excluded from patentability under Article 52(2) and (3) EPC is not in conflict with the findings of T 1173/97.

Reasoning:

The Referral gives the following reasons for a divergence between these two decisions:

“T 1173/97 found (see section 3.1) that a computer program must be considered to be patentable when it has a technical character (Reasons, 5.3). ...T 258/03 (Headnote I) found that any method involving technical means is an invention in the sense of Art. 52(1) EPC – i.e. is not excluded from patentability under Art. 52(2) and (3) EPC. ... The divergence arises when one considers the same method claimed in the form of a computer implemented method or as a computer program. Following T 258/03, the former claim form requires only that technical means are involved (the computer) in order for it to be considered as having technical character. For the latter claim form, on the other hand, this is not sufficient. In this case a further technical effect is required which must go beyond the normal technical effects resulting from the involvement of a computer.” (Referral, pages 7 seq., emphasis provided)

Thus, the divergence the Referral believes to have identified could only exist if a claim directed to a computer program equalled a claim directed to a method implemented on a computer. However, this is not the case.

In fact, there is no Board of Appeal decision stating explicitly or implicitly that a computer program is a computer implemented method. Decision T 38/86 which is cited by the Referral clearly does not support the view in the Referral that *“claims for a computer program and a computer implemented method can be seen as having the same scope”* (Referral, page 8, Section III, first para). In this decision (Reasons, point 14) it is only said that *“the [method] claim covers the case in which a computer program is used.”*, i.e. the claimed method is carried out by means of a computer program but not that the method equals a computer program.

The Referral further speculates on page 8, 5th paragraph that *“it must be assumed that the Board [in decision T 1173/97] considered ‘programs for computers’ to be a type of method claim”*. However, as explained above in the context of Question 1, decision T 1173/97 in a first step generally discusses how the exclusion of computer programs as such in Article 52(2), (3) EPC has to be interpreted and under which conditions a computer program can be considered as an invention. In a second step, when deciding on the facts of the submitted case, the Board emphasizes, in Reason 1 and in Reason 9.1, that it only had to decide on claims directed to a computer program product. The decision explicitly does not refer to claim 1 of the application concerned, which is directed to a method in a computer system. On the contrary, T 1173/97 differentiates explicitly between a computer program (product) and a method:

“A computer program product which (implicitly) comprises all the features of a patentable method (for operating a computer, for instance) is therefore in principle considered as not being excluded from patentability under Article 52 (2) and (3) EPC.

It is self-evident that a claim to such a computer program product must comprise all the features which assure the patentability of the method it is intended to carry out when being run on a computer. When this computer program product is loaded into a computer, the programmed computer constitutes an apparatus which in turn is able to carry out the said method.”
(emphasis provided)

Thus, claims directed to a computer program or a computer program product are obviously seen in T 1173/97 as product claims defining a product which enables a method to be carried out but not as method claims.

Consequently, the finding of T 1173/97 that a computer program must (only) be considered to be patentable when it has a technical character has a direct consequence only for claims directed to a computer program (product). Claims directed to a method do not necessarily need to derive their technical character from a computer program involved. The method may be technical for other reasons. Therefore, the finding of T 258/03 that any method involving technical means is not excluded from patentability under Article 52(2) and (3) EPC is not in conflict with the findings of T 1173/97.

II.3 Question 3

3. (a) *Must a claimed feature cause a technical effect on a physical entity in the real world in order to contribute to the technical character of the claim?*
- (b) *If question 3(a) is answered in the positive, is it sufficient that the physical entity be an unspecified computer?*
- (c) *If question 3(a) is answered in the negative, can features contribute to the technical character of the claim if the only effects to which they contribute are independent of any particular hardware that may be used?*

These three questions of the Referral are not admissible because no diverging decisions could be cited in the Referral. The allegedly differing decisions are T 163/85 of 1989 and T 190/94 of 1995 on the one hand, and T 424/03 of 2006 and T 125/01 of 2002 on the other hand. However, the findings of T 125/01 or T 424/03 neither explicitly nor implicitly differ from the findings of T 163/85 and T 190/94 with respect to Question 3(a). Independent of the

inadmissibility of Question 3(a), also with respect to questions 3(b) and 3(c), the findings of T 125/01 or T 424/03 do not differ from the findings of T 163/85 and T 190/94. In fact, no basis at all for these questions can be found in the cited decisions.

II.3.1 No Different Decisions on Question 3(a)

With respect to Question 3(a) the Referral gives the following reasons for a divergence between these allegedly two “groups” of decisions:

“According to decision T 163/85 and T 190/94, a technical effect on a physical entity in the real world was required. This was however not the case in T 125/01 and T 424/03. In these decisions the technical effects were essentially confined to the respective computer programs.” (Referral, page 10, 3rd paragraph)

However, **first of all**, it is not true that in T 163/85 or T 190/94 a technical effect on a physical entity in the real world was required in the sense of a *conditio sine qua non*. It can be concluded from the cited decisions that such an effect is sufficient, but not that it is necessary.

In T 190/04 (Reasons 5.11 and 5.12), the invention laid essentially in the application of a new mathematical algorithm for rotating a digitally stored image. With regard to the digital representation of the image, the Board held:

“Since, therefore, the quantitative effects on the image pixels in terms of rotating angles ... do not appear to be the same in the claimed as in the known system, the differences between these two systems manifests itself in the real world in a technical effect on a physical entity in the sense of decision T 208/84, supra.

The claimed system thus making a contribution to the art in a field not excluded (by Article 52(2)/(3) EPC from patentability, the subject-matter of the Claim is to be regarded as an invention within the meaning of Article 52(1) EPC.”

Similarly, decision T 208/84 referred to in T 190/94 concerned a method of digitally filtering a two-dimensional data array representing a stored image (cf. T 208/04, Reason 2). Therefore, it can be inferred from T 208/84 and T 190/94 that for the specific kind of invention where a mathematical algorithm is applied to digital data, the fact that the digital data represents a physical entity in the real world and that the application of the algorithm has a technical effect on this entity is sufficient for concluding that the invention makes a contribution to the art in a field not excluded by Article 52(2) and (3) EPC. However, there is no support in the decisions for an *argumentum e contrario* that the invention necessarily is excluded from patentability if

there is no technical effect on a physical entity in the real world, in particular if it does not fall within the above-mentioned specific kind of invention that was the subject of T 208/84 and T 190/94.

The same argumentation holds, *mutatis mutandis*, for decision T 163/85. Note, however, that T 163/85 does not even mention a “technical effect on a physical entity”. Rather, the decision comes to the conclusion that the claimed subject matter itself (a T.V. signal) is a “*physical reality which can directly be detected by technological means*” (T 163/85, Reason 2, 10th paragraph) and therefore is not excluded from patentability under Article 52(2) and (3).

Secondly, it is not true that the inventions in T 125/01 or T 424/03 did not have a technical effect on a physical entity.

T 125/01 concerned the operation of the microprocessor in a control unit for a telecommunications apparatus. The decision states in Reason 4.2 that the restructuring of the control program by the invention provides the possibility to include additional technical functions of the telecommunications apparatus and/or to improve the usability of the telecommunications apparatus. The invention therefore clearly has a technical effect on a physical entity, namely a telecommunications apparatus.

T 424/03 concerned the transfer of data on a computer via a clipboard. The decision states in Reason 5.2 that the invention enhances the internal operation of a computer system by facilitating the exchange of data among various application programs, and that it provided a general purpose computer with the further functionality of assisting the user in transferring non-file data into files. The invention therefore clearly has a technical effect on a physical entity, namely a general purpose computer.

For these two reasons, the findings of T 125/01 or T 424/03 neither explicitly nor implicitly differ from the findings of T 163/85 and T 190/94 with respect to Question 3(a).

II.3.2 No Different Decisions on Questions 3(b) and (c)

Regardless of how Question 3(a) is answered, the Enlarged Board of Appeal is asked subsequently, in additional Questions 3(b) and (c), to answer the question whether a feature causing a technical effect on a general purpose computer can contribute to the technical

character of the claim. This is because the “*unspecified computer*” of Question 3(b) is equivalent to a general purpose computer, and the “*particular hardware*” of the negatively formulated Question 3(c) is the opposite of a general purpose computer.

Note that the question of whether an effect caused on a general purpose computer is sufficient is entirely independent of Question 3(a).

Although the additional Questions 3(b) and (c) have the potential to severely restrict the patentability of inventions in the field of computing, the Referral does not discuss at all where a basis for these questions could be seen. No decisions with a conflicting view regarding the question are named. In particular, none of the decisions cited in the Referral suggests that in order for a claimed feature to contribute to the technical character of the claim, a technical effect on a general purpose computer might not be sufficient. In fact, there is not a single Board of Appeal decision making a statement in this direction.

It is respectfully submitted that it is not the task of a referral by the President of the EPO to instigate the making of new case law, but to ensure uniform application of the law

Independent of the inadmissibility of Question 3(a), also with respect to Questions 3(b) and 3(c), the findings of T 125/01 or T 424/03 do not differ from the findings of T 163/85 and T 190/94. In fact, no basis at all for these questions can be found in the cited decisions.

II.4 Question 4

4. *(a) Does the activity of programming a computer necessarily involve technical considerations?*

(b) If question 4(a) is answered in the positive, do all features resulting from programming thus contribute to the technical character of a claim?

(c) If question 4(a) is answered in the negative, can features resulting from programming contribute to the technical character of a claim only when they contribute to a further technical effect when the program is executed?

The three questions of Question group 4 of the Referral do not seem to concern a point of law but rather the general question of what is programming, and is in the view of the author of this

brief already for that reason not admissible. However, this question of the Referral is also not admissible because no diverging decisions could be cited in the Referral. The allegedly differing decisions are T 833/91 of 1993, T204/93 of 1993 and T 769/92 of 1994 on the one hand, and T 1177/97 of 2002 and T 172/03 of 2003 on the other hand. However, no divergence can be found between these decisions.

Reasoning:

The Referral gives the following reasons for a divergence between these two decisions:

“Decision T 1177/97 was concerned with a computer implemented method of translation between natural languages. The Board found (Reasons, 3, 7th paragraph) that ‘implementing a function on a computer system always involves, at least implicitly, technical considerations’. ... Furthermore, decision T 172/03, emphasised (Reasons, 6 and 7) that the person skilled in the art is a technical expert, to whom it is inappropriate to attribute professional competence in non-technological fields. In this decision the Board defined the skilled person as a software team, consisting of programmers (Reasons, 16). ... Contrary to these decisions, T 833/91 (Reasons, 3.2), T 204/93 (Reasons, 3.2) and T 769/92 (Reasons, 3.7, 5th paragraph) all considered that a programmer’s activity, i.e. writing computer programs, falls within the exclusions set out in Art. 52(2)(c) EPC.” (Referral, pages 11 seq.)

The earlier decisions cited regard as falling within the exclusions according to Article 52(2)(c) EPC “a programmer’s activity” (T 833/91, Reason 3.2, 2nd paragraph), “a programmer’s activity of writing a computer program” (T 204/93, Reason 3.2, 1st paragraph), or “mere programming as such” (T 769/92, Reason 3.7, 5th paragraph). That is, all these findings refer to the very narrow activity of writing the program code. They do not concern the entire process of implementing a function on a computer. This becomes clear for example in decision T 769/92:

“However, the implementation, in the claimed system and by the claimed method, of the said ‘interface’ in the form of said ‘transfer slip’ is not merely an act of programming but rather concerns a stage of activities involving technical considerations to be carried out before programming can start.” (T 769/92, Reason 3.7, 5th paragraph)

The implementation of a function on a computer encompasses much more than the mere writing of program code. They reach from a requirements specification and the design of the system architecture to the coding and testing of the program. Therefore, the finding of T 1177/97 that “implementing a function on a computer system always involves, at least

implicitly, technical considerations and means in substance that the functionality of a technical system is increased” is not in conflict with the findings in T 833/91, T204/93 and T 769/92.

Likewise, a “software project team” as mentioned in T 172/03, even if it typically consists of programmers (T 172/03, Reason 16), has many more tasks than just writing program code. Therefore, also the statement of T 172/03 defining the relevant skilled person as a software project team is not in conflict with the findings in T 833/91, T204/93 and T 769/92.

III. No Two Boards of Appeal

All decisions cited in the Referral stem from Technical Board of Appeal 3.5.1, and therefore from the same and not from two Boards of Appeal.

This is not changed by the fact that the decisions were not taken by the same persons. In decision G 4/98, the Enlarged Board of Appeal found that different decisions of the Legal Board of Appeal may be the basis of a referral by the President of the European Patent Office if the decisions were taken in different composition (Reason 1.2, 2nd paragraph). Otherwise no referrals would be possible with respect to the Legal Board of Appeal, which is one organisational unit only. Conflicting decisions might also occur in cases within the competence of the Legal Board of Appeal, which as an organisational unit comprises all legally qualified members of the Boards of Appeal and which therefore sits in a number of different compositions.

However, the reasons given in G 4/98 are not applicable to the present case because there is not only one but there are several Technical Boards of Appeal dealing with applications in the field of computing. Furthermore, unlike the Legal Board of Appeal, the Technical Boards of Appeal have a permanent composition which is more constant and thus makes conflicting decisions less likely.


The question whether a divergence within the meaning of Article 112(1)(b) EPC may be based on decisions given by the same Technical Board of Appeal as an organisational unit has also not been resolved in decision G 1/04. Accepting a divergence in that case, the Enlarged Board of Appeal referred primarily to the fact that other Technical Boards of Appeal had

followed the first of the two diverging decisions. Only as a second consideration, the Enlarged Board of Appeal mentioned that the diverging decisions had been taken by the same Board in completely different compositions (Reasons, pt. 1)

IV. Conclusion

The Referral is therefore inadmissible with respect to all four groups of questions already because there are no different decisions to form a basis for these questions. Furthermore, the Referral is inadmissible because all allegedly diverging decisions cited in the Referral were taken by the same Board of Appeal.

Very truly yours,



Christof Karl