



Management Consultancy Software

Re: Referral of the President of the European Patent Office  
under Article 112(1)(b) EPC

2009  
Case number G 3/08

Dear Sirs,

I represent MCS nv, a Belgian independent software vendor in the fields of Facility Management and Real Estate. We are a small enterprise with around 25 employees.

The questions placed before you deal with the limits of patentability, specifically the exclusion of computer programs. The questions ask whether different formulations of the actual patent claim have an influence on the patentability of computer programs. From our perspective as software vendor, these questions must be decided on the underlying intent of the law for the limits of patentability: is computer software patentable or not?

The current situation in the EU is that patents in regular software are not enforceable. As a software vendor shipping on generic computers, we are therefore excluded from the threat of patent litigation. This situation allows us to compete in a market that has a large diversity in scale of the market players, where the capability of a business to sustain a dedicated legal department does not affect its competitiveness. Expanding the scope of patentability would have large consequences on the cost of doing business for software vendors like us, of which there are many throughout the EU. Our position is that such an expansion is both undesirable and unwarranted.

We therefore request that the decisions made by the board as they relate to the patentability of software attempt to define as narrow a scope of patentability as possible. Any decision to expand this scope should come from a lawmaking process that sees a full debate on the economic and legal consequences.

Yours faithfully,

Joeri Sebrechts  
MCS nv