

Enlarged Board of Appeal

European Patent Office

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Germany

Enlarged Board Appeal G3/08

Attention to P. Messerli

Statements to the limits of computer program patentability.

The question of the patentability of computer programs is a good chance to revise the technical and legal regulatory of European Community. Today the computer or communication related legal regulation is chaotic, let me say schizoid a little.

When the invented physical entity is a computer related invention staying either of powerless or powered state without adequate structured instruction for the inventor suggested operating for the adequate reason, it is just an ineffective or only energy consumer device if it have no structured instruction set – software – to operate. That state is only a dummy load state, so the software is technically characteristic for the invention. From that reason, by my opinion, it could be claimed.

The parallel computing and use of parallel computing has special problems, so it is not only simple multiplying of simple elements. When the 91/250 EC had been published, the highest prime number problem likelihood was "only theoretical" problem. Today it is important for secure connecting of computers.

Now EC has the 91/250 EC to regulate software, but how practice a patent attorney regarding to Article 1 (1) and Article 2 (3)? How lapses computer related invention: by the rules of EPC or by Article 8 of 91/250 regulation? Is the allowed reverse engineering regulated by the 6<sup>th</sup> Article of 91/250 regulation is an infringement for the dummy load stated and claimed patent or it is legally allowed behavior?

What is the knowledge of the skilled European person? Is it able to reproduce on the dummy load level or it is able to reproduce on instruction driven level, or it is able to modify the instruction driven level for adopting local national regulations? Is the localization a compulsory license like legal event or Article 5 (1) of 91/250 should be used in everyday practice?

Is the software emulation improving allowed on a computerized physical entity? Is the software emulation being claimed?

What legal proceeding is available when the granted EP is not reproducible in a member state from regulatory reasons?

Yours faithfully,

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Debrecen 2009. May 1