

European Patent Office
The Registry of the Enlarged Board of Appeal
D-80298 Munich
Germany

GBK · EBA · GCR

29. April 2009

Amicus Curiae Brief for case G 3/08 before
the EPO Enlarged Board of Appeal

by Ante Wessels

The European Patent Office is an executive organisation, it deals especially with patent applicants, as such, its view of the world may be biased. As an executive organisation, its interpretative powers are very limited. The European Patent Convention excludes computer programs, it is outside the EPO's power to change this. The exclusion of computer programs is a political question.

Article 52 was amended to state that inventions in "all fields of technology" are patentable. This change does not effect the exclusion of computer programs, since they are not inventions, according to article 52.2.c.

The referral centers around questions regarding technical effects. These questions are not relevant. Whether a field is a technology field is only important for inventions. As we saw above, computer programs are not inventions.

The exclusion is "as such". This implies that a computer program cannot turn an invention into a non-invention by combining the two.

An example. Traditionally, a seed drill was a mechanical machine. Improved sowing methods may be a patentable invention. If these improved sowing methods are indeed an invention, it is not relevant whether these methods are computed on a computer. They can still be an invention. But there has to be a standalone patentable invention outside the field of computing.

It only has to be established what are the fields of computing. The core task of a computer is to process data. So at least the processing of data is not patentable.

Respectfully submitted,

Ante Wessels

2de Atjehstraat 34 huis, 1094 LH Amsterdam, The Netherlands

