

## Enlarged Board of Appeal doesn't decide on software-related inventions

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The President of the European Patent Office (EPO) had referred a question, on the patentability of computer implemented inventions, to the Enlarged Board of Appeal (EBA). The President based the referral on perceived differences between Board of Appeal decisions on software-related inventions.

The EBA has now issued its opinion as [G 3/08](#). Rather than make any decision, it found that the referral was inadmissible.

The EBA decided that the decisions did not differ, because they were not divergent or conflicting. Instead it found that, where there was a difference between two decisions, the decisions merely developed the law. The current law remained uniform, in the opinion of the EBA.

Therefore the current approach of the EPO to computer implemented inventions has not changed. In that approach, the EPO only considers the claimed features which contribute to the technical character of the invention, when assessing novelty and inventive step. If a claim to a software-related invention does not have any features which contribute to technical character the EPO is likely to find it unpatentable as a computer program *per se*.

However, this EBA decision will not restrict any further development of practice.

### **Practical advice**

We hope that this effective approval of current practice by the EBA will encourage national courts and patent offices to follow the EPO's approach.

The UKIPO applies a different approach to that of the EPO. It may be unable to align its approach with the EPO until by the UK courts set a new precedent. For the foreseeable future the EPO is likely to take a more favorable approach than the UKIPO to patent applications for computer implemented inventions.

### Further information

If you would like any further information please contact the Forresters software-related invention team:

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