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Programs for computers G3/08, European Patent Office (EPO Enlarged Board of Appeal Opinion), 12 May 2010

Ferry van Looijengoed · Monday, May 31st, 2010 · Landmark European Patent Cases

The G3/08 opinion concerns the long-awaited view of the Enlarged Board of Appeal (EBoA) on the patentability of computer programs. The EBoA examined various issues regarding Article 112(1)(b) EPC. The EBoA held that positions taken in T1173/97 and T424/03 were clearly contradictory on the question whether it makes a difference whether a computer program is claimed by itself or as a record on a carrier. However, the EBoA concluded that this divergence does not allow a referral by the President of the European Patent Office as defined in Article 112(1)(b) EPC since it qualifies as a development of the case law.

On the question whether a claimed feature must cause a technical effect on a physical entity to have technical character, the EBoA pointed out that the case law of the Boards of Appeal is consistent in that all the features of the claim should be considered and not only individual features.

Finally, the EBoA opined that the statement that programming involves technical considerations (T 769/92) and is a mental act, is not contradictory. Hence, there is no divergence in case law on this point.

A [full summary](#) of this case has been published on [Kluwer IP Law](#).

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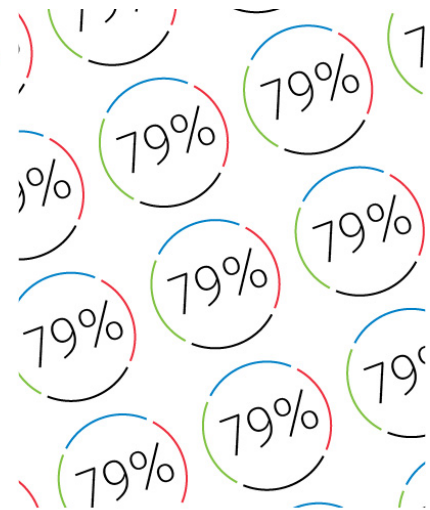
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