

Report Q132

Computer software, information networks, artificial intelligence and integrated circuits

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2009 Activity Report of the Special Committee Q132

1. 2008-2009 activities

The years 2008 and 2009 have been replete with activities for our Committee. Indeed, we were called upon to review and comment on two fundamental matters, one coming from Europe and the other from the United States, in the field of computer implemented invention.

1.1. Amicus Brief submitted to the Enlarged Board of Appeal of the European Patent Office

First, a referral G3/08 was submitted on October 22, 2008 by the President of the European Patent Office to the Enlarged Board of Appeal (EBA) of this Office. The developments of this procedure have been reported twice by our Committee in AIPPI e-news:

No.5 <https://www.aippi.org/enews/2008/edition05/referral-epo.html>; and
No.7 <https://www.aippi.org/enews/2009/edition07/amicus-brief.html>.

The European Patent Office published the referral in January 2009 with an invitation to third parties to file observations.

The Special Committee Q132 drafted an Amicus Curiae Brief for prior approval of the Bureau and subsequent submission to the Enlarged Board of Appeal.

The Amicus Brief reflects the resolutions and the report already adopted by the AIPPI, i.e. Resolution Q133 in 1997 (<https://www.aippi.org/download/comitees/133/RS133English.pdf>), Resolution Q158 in 2001 (<https://www.aippi.org/download/comitees/158/RS158English.pdf>) and the 2006-Report of the Special Committee Q132, which met almost unanimous approval. While promoting technical content as a prerequisite for patentability, AIPPI recognises as sufficient the technical content of an invention implemented in a technical system (which is always the case for computer software), even if the inventive contribution lacks a technical character. For AIPPI, new

and inventive business methods and other non-technical innovations should be patentable if implemented on a computer. A technical content is however necessary to avoid patent claims only reciting business method steps executable by humans.

The Bureau approved the draft and at the end of April 2009, submitted the Amicus Brief to the EBA of the European Patent Office on behalf of AIPPI (https://www.aippi.org/download/CompleteDocu_AmicusBrief_EPO_290409_website.pdf).

The members of the Q132 Committee who were highly involved in the preparation of the Amicus Brief to the Enlarged Board of Appeal of the EPO were expecting a little pause.

1.2. Amicus Brief submitted to the US Supreme Court

However, on June 1, 2009, the US Supreme Court decided to address *Bilski v. Doll* in connection with two questions of principle regarding the patentability of Computer Implemented Inventions.

The Committee alerted the Bureau and suggested that an Amicus Brief should be provided to the US Supreme Court on behalf of the AIPPI.

The Bureau decided to ask the US Group to draft an Amicus Brief in line with the opinion of the AIPPI.

A first draft was submitted to the Committee and to the Bureau in mid July 2009. After constructive exchanges between the Bureau, the US Group and the Q132 Committee, a final draft was ready at the beginning of August.

The AIPPI and the US Group submitted together this Amicus Brief to the Supreme Court before the deadline of August 6 (http://www.patentlyo.com/aippi-supremecourt_3455697.pdf).

These two Amicus Briefs were an excellent opportunity for the AIPPI to promote the patentability of Computer Implemented Inventions as defined in Q133 and 158 resolutions.

1.3. Other actions

Members of Q132 Committee were also involved in manifestations organized by the AIPPI or by national Groups.

First, two members (one of whom being the vice-Chair) of the Committee attended the AIPPI Seminar on April 27 & 28, 2009 in Warsaw at which the question of the patentability of computer implemented invention in Europe was debated.

Further, on September 3, 2009, the Chair of the Committee presented the position of the AIPPI in a meeting organized by its Secretary for the French Group and involving a Director of the EPO and a US Expert.

These meetings also contributed to promote the position of the AIPPI as regards patentability of Computer Implemented Inventions.

2. 2009-2010 activities

For next year, a task of the Special Committee will be to provide a guideline for patenting computer implemented inventions in Europe in view of the decisions of the European Patent Office and of the US Supreme Court, which are expected in 2010.

In the meantime, the Committee will continue its work on another task started last year, which is to provide a glossary of terms used by Offices and Courts in relation to computer implemented inventions.