

## **Patentability of Computer Simulations in Europe (G 01/19)**

The long expected decision of the Enlarged Board of Appeal (G 01/19) has been announced by the EPO. The decision relates to the question whether computer simulations can be patented at the EPO.

In their decision, the Enlarged Board of Appeal (EBoA) relied completely on the existing COMVIK approach, which means the Problem-and-Solution Approach when adapted to consider computer implemented inventions. The EBoA also clarified that simulations have to be treated as all other computer implemented inventions.

The EBoA gave some particular guidance for applying the COMVIK approach to methods of simulations. Particularly, e.g. the technical character has to be present over the whole scope of the claimed invention. This is relevant if the outcome of the simulation forms the basis for the technical character of the invention, as the outcome of a simulation are data and all of the data generated by the claimed subject matter has to show the technical character. If a method is defined which is useful for simulating a system having specific technical characteristics, but the method is not limited to such a system, then the technical character does not exist over the full breadth of the claim.

A further use of the data generated by a simulation can be the basis for a technical contribution. It is not necessary that the further use is explicitly defined in the claims but it must be at least implicit in the claims.

To be patentable the claimed invention has to solve a technical problem through the simulation. It is not sufficient just to model an entity, even if the model is accurate and represents a technical system.

This decision does not rule as to the general patentability of simulations but provides some guidance for specific aspects which are to be considered in assessing the patentability of computer simulations.

This article was prepared by HGF Partners Bernhard Ganahl and Dr Chris Benson. If you would like further advice on this or any other matter, please contact Bernhard or Chris. Alternatively, you can contact your usual HGF representative or visit our Contact page to get in touch with your nearest HGF office.