

2.4. Computer-implemented inventions

2.4.1 Definition of computer-implemented invention

"Computer-implemented invention" is an expression intended to cover claims which involve computers, computer networks or other programmable apparatus wherein at least one feature is realised by means of a computer program (Guidelines G-II, 3.6 – March 2022 version).

2.4.2 Distinction from computer programs

A computer program and a corresponding computer-implemented method are distinct from each other. The former refers to a sequence of computer-executable instructions specifying a method while the latter refers to a method being actually performed on a computer (Guidelines G-II, 3.6 – March 2022 version).

2.4.3 Scope of Article 52(2)(c) EPC exception to patentability

Art. 52(2)(c) EPC states that programs for computers shall not be regarded as inventions within the meaning of Art. 52(1) EPC and are therefore excluded from patentability.

Art. 52(3) EPC establishes an important limitation to the scope of this exclusion. According to this provision, the exclusion applies only to the extent to which a European patent application or a European patent relates to programs for computers "as such". In T 935/97 the board stated that the combination of the two provisions (Art. 52(2) and (3) EPC 1973) demonstrates that the legislators did not want to exclude from patentability all programs for computers. In other words, the fact that only patent applications relating to programs for computers as such are excluded from patentability means that patentability may be allowed for patent applications relating to programs for computers where the latter are not considered to be programs for computers as such (see also T 1924/17, points 17 to 19.4 of the Reasons, on the background to Art. 52 EPC).

Claims directed to a computer-implemented method, a computer-readable storage medium or a device cannot be objected to under Art. 52(2) and (3) EPC as any method involving the use of technical means (e.g. a computer) and any technical means itself (e.g. a computer or a computer-readable storage medium) have technical character and thus represent inventions in the sense of Art. 52(1) EPC (T 258/03; T 424/03; G 3/08, OJ 2011, 10).

2.4.4 Patentability of computer programs: G 3/08

The President of the EPO, making use of her power under Art. 112(1)(b) EPC, made a referral to the Enlarged Board of Appeal on several points of law relating to the application of the exclusion of computer programs as such, and the limits of patentability in the field of computing. In particular, the President of the EPO referred to the Enlarged Board of Appeal the following point of law (see G 3/08, Question 1 of the referral), "Can a computer