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Der Präsident

The President

Le Président

EPA/EPO/OEB · 80298 München · Deutschland

Lord Justice Jacob  
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Zeichen/Reference/Référence

2006-01-1384  
703021

Datum/Date/Date

22.02.07

**Re: Court of Appeal Judgement [2006] EWCA Civ 1371**

Dear Lord Justice Jacob,

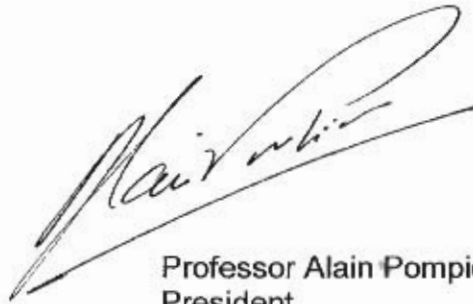
I am writing to you to let you know that the above-mentioned decision has led to a discussion within the EPO as to the possibility of referring questions regarding the exclusions to patentability set out in Article 52(2) EPC to the Enlarged board of Appeal.

On the basis of these discussions I have decided that at the moment there is an insufficient legal basis for a referral under Article 112(1)(b) EPC. Leaving aside Board of Appeal case law the line of reasoning of which has been abandoned by later case law, I believe there are insufficient differences between current Board of Appeal decisions dealing with Article 52 EPC exclusions on important points of law that would justify a referral at this stage.

This of course does not mean that a clarification of certain issues by the Enlarged Board of Appeal would not be welcomed. The EPO will continue to monitor case law closely, whereby I believe the appropriate moment for a referral would be where the approach taken by one Board of Appeal would lead to the grant of a patent whereas the approach taken by another Board would not.

I am sending a copy of this letter to the Comptroller General of the United Kingdom Patent Office.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alain Pompidou', written in a cursive style. The signature is positioned above the printed name and title.

Professor Alain Pompidou  
President