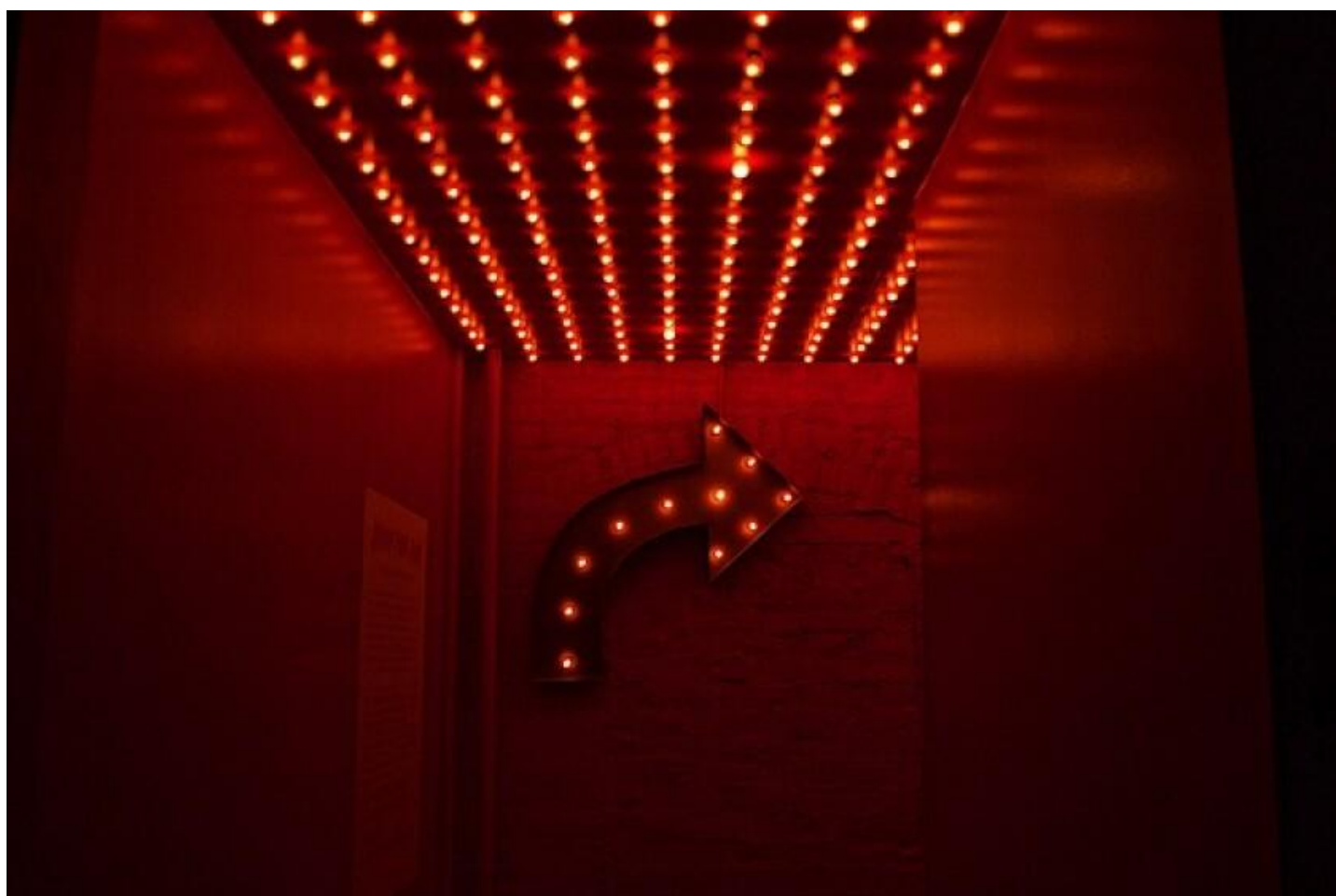


EPO: Enlarged Board considers patentability of simulations

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Peter Koefoed of Inspicos P/S explains the findings of a recent decision concerning the inventiveness of computer-implemented simulation methods

The Enlarged Board of Appeal (EBA) has issued its long-awaited decision in Case No. G1/19 concerning assessment of inventive step of computer-implemented simulation methods.

The patent application in suit relates to simulation of the movement of a pedestrian through an environment with a view to design a building where a crowd can move efficiently.

In examination, the EPO found the claimed invention to lack inventive step, arguing that a simulation does not contribute to the technical character of the invention. The refusal was appealed (T 0489/14) and the referring board asked the EBA to clarify whether a computer-implemented simulation can provide a technical effect going beyond the computer-implementation and, in the affirmative, what criteria to apply for determining this technical effect. A third question was whether it makes a difference if the simulation is claimed as part of a design process.

Referencing the COMVIK decision (T 641/00), the EBA confirmed that simulation methods may be patentable if an inventive step can be based on features contributing to the technical character of the claim over its entire scope (a claim is not inventive, if it specifies a method that may be used without a technical purpose).

The EBA did not specify the assessment criteria for technical character, but decided that the technicality of the simulated system/model does not necessarily have an impact on inventive step of a claim; the technical character can be derived from a subsequent use of the outcome of the simulation method. In that case the subsequent use must at least be an implicit feature in the claim.

The EBA also confirmed that these principles also apply if the claim relates to a design process.

In summary, applicants can rely on the existing principles (COMVIK) for assessment of inventive of computer-implemented invention also for computer-implemented simulation methods.

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