

Art. 52(2) and (3) EPC 1973, even if based on an abstract algorithm or mathematical method.

In T 1326/06 the board took the view that processes for encoding/decoding or signing electronic communications by RSA had to be regarded as technical processes, even if they were based essentially on mathematical processes (see also decisions T 953/04, point 3.3 of the Reasons and T 27/97, point 3 of the Reasons).

In T 1784/06 (point 3.1.1 of the Reasons) the board stated that the algorithm is a mathematical (inter alia Boolean) method and mathematical methods as such are deemed to be non-inventions (Art. 52(2) and (3) EPC). A technical character of the algorithm could be recognised only if it served a technical purpose (see e.g. T 1227/05, point 3.1 of the Reasons, OJ 2007, 574) (see also T 306/10).

In T 556/14 the invention related to a method for masking a private key used in cryptographic operations on a security token such as a smartcard against power analysis attacks. The board held that due to the express reference to a smart card on which the key parts and also the new parts are stored, the claimed method of masking was not a mathematical method as such.

2.3. Aesthetic creations

Subject-matter relating to aesthetic creations will usually have both technical aspects, e.g. a 'substrate' such as a canvas or a cloth, and aesthetic aspects, the appreciation of which is essentially subjective, e.g. the form of the image on the canvas or the pattern on the cloth. If technical aspects are present in such an aesthetic creation, it is not an aesthetic creation 'as such' and it is not excluded from patentability. The aesthetic effect itself is not patentable, neither in a product nor in a process claim. Nevertheless, if an aesthetic effect is obtained by a technical structure or other technical means, although the aesthetic effect itself is not of a technical character, the means of obtaining it may be (Guidelines G-II, 3.4 – March 2022 version).

In T 686/90 the board was called upon to decide whether the feature "work of art in the style of stained glass" meant that it was excluded from patentability under Art. 52(2)(b) EPC 1973. The board held that functional information referring to general aesthetic creations did not define an aesthetic creation as such, at least provided that and insofar as such information adequately identified technical features of the subject-matter of the claim. Since an aesthetic creation (not formally specified) as the stated purpose, together with the other features, adequately defined a technical subject-matter in the claim, there was no aesthetic creation as such. For this reason there could be no objection to the claim under Art. 52(2)(b) EPC 1973 on the basis of Art. 52(3) EPC 1973.

In decision T 119/88 (OJ 1990, 395) the subject-matter of the application in question related to a flexible disk jacket made of a plastic sheet presenting to the outside world a surface colour of a certain minimum light intensity. The board first of all stated that the feature of having a specific colour as such did not constitute a technical feature indicating that an object or device was entirely or partly covered by that colour; however, the board