

particular infections. The secondary effect of a therapeutic treatment did not render it patentable.

In T. 438/91 the patentee contended that the main purpose of the claimed process was to increase the weight of the animals which effect was separable from the effect of prevention or cure of scours. This latter was merely a beneficial side effect. The board found that, in the light of the patent disclosure, the two effects were linked by the single action of feeding the animals, and that the intention was to obtain both effects at the same time in animals suffering from scours (treatment by therapy) and to prevent the latter complaint in those animals which did not already have it (treatment by prophylaxis).

In T. 1077/93 the board held that a composition intended to protect the human epidermis against ultraviolet radiation and notably to reduce the intensity of erythema, recognised as the most spectacular form of damage to the skin by sunlight, and of skin-level cellular changes such as the formation of degenerated and necrotised keratinocytes, generally known by the term "sunburn cells (SBC)", was excluded from patentability. Citing the point, already explored in T. 820/92 (OJ 1995, 113), that the exclusion of therapeutic methods from patentability could not be avoided by a purely formal rewording of the claim to qualify the purpose of the process, in its indivisible entirety, as non-therapeutic, the board found that, since at least part of the protective effect did not derive from a simple filtering at the level of the skin surface, but rather from an interaction with the cellular mechanisms in the epidermis, the process had a genuine therapeutic effect.

T. 1635/09 (OJ 2011, 542) related to a method for oral contraception whereby the pathological side-effects were prevented or reduced. The board held that the prevention of side-effects – which was affirmed in claim 1 by the indication of the concentrations of active substance – was inseparably associated with the per se non-therapeutic contraceptive process. In such a case too, the exclusion from patentability under Art. 53(c) EPC could not be avoided even by limiting the claim to a "non-therapeutic use".

In T. 158/13 it was not possible to distinguish between a therapeutic or non-therapeutic use of the stimulative perfume composition, since the way of administering the composition was the same for a therapeutic and a non-therapeutic use. Sleepiness or inactivity in daily life may not only be a physiological condition, but may also arise from a pathological condition. Without a clear and unambiguous distinction between a physiological and a pathological nature of a person's mental condition, a clear distinction between therapeutic and non-therapeutic use is also impossible.

#### b) Therapeutic and non-therapeutic effects distinguishable

In T. 144/83 (OJ 1986, 301) was concerned with whether an appetite suppressant was being used to cause loss of weight or to cure obesity. The board pointed out that the language of the claim in question clearly covered a method of cosmetic use and was unrelated to the therapy of a human or animal body in the ordinary sense. The board held that the fact that a chemical product had both a cosmetic and a therapeutic effect when used to treat the human or animal body did not render the cosmetic treatment unpatentable.