

c) Methods only concerning the operation of a device

It is the established case law of the boards of appeal that a method which is only concerned with the operating of a device without any functional link between the claimed method and the effects produced by the device on the body does not qualify at all as a method for treatment within the meaning of Art. 52(4) EPC 1973 (Art. 53(c) EPC) (T 245/87, OJ 1989, 171, T 789/96, OJ 2002, 364). If, on the contrary, there is such a functional link the method is excluded from patentability (T 82/93, OJ 1996, 274, T 1680/08, T 141/15). In T 1075/06 the board explained that this principle, initially developed for devices for use in a therapeutic treatment (T 245/87, OJ 1989, 171), had been endorsed by the EBA for treatments by therapy as well as surgery (G 1/07).

According to the Enlarged Board in G 1/07, whether or not a claimed method only concerns the operation of a device without any functional link to the effects of the device on the body requires an evaluation of the overall technical circumstances of the case and is therefore a matter to be determined in the individual cases under consideration.

In T 1680/08 a non-invasive method and apparatus for optimising the respiration for atelectatic lungs was held to be a method for treatment by therapy, because there was a functional and indissociable link between the claimed method and any artificial ventilation practised on a connected patient.

In T 44/12 the board stated that, whether or not a method has to be considered a method for treatment of the human body by therapy is determined by the existence of a functional link or a direct influence of the method claimed in itself on a given therapy, such that the medical doctor's freedom of choice and of practice in this respect is hindered. In the present case the board considered that the subject-matter only concerned the operation of a device, without any functional link to the effects of the device on the body.

In T 699/12 the invention pertained to a method of verifying a radiotherapy treatment device. The board held that the claimed method only concerned the technical operation of a device without any functional link to the effects of the device on the body. While the intention of the claimed method was to verify the actual dose that the patient should receive, what was measured was the output dose of the radiation source and it was checked whether the radiation source worked as expected. In the claimed method there was no step that would influence the actual treatment of the patient. The medical practitioner was free to choose the next steps of treatment of a patient.

In T 944/15, the invention, as described, related to a data processing method for controlling a process of monitoring the position of at least a part of a patient's body during a radiation treatment by means of a computer. The board rejected the claim as being a medical method, even though the claim was restricted to a method implemented on a computer. It held that it was not the claimed scope, but the corresponding teaching of the invention which was decisive for establishing what the invention is, and, for the purpose of Art. 53(c) EPC, whether or not a claimed invention only concerned the operation of a device without any functional link to the effects of the device on the body (G 1/07). In conclusion and paraphrasing G 1/07, the board held that the claimed method was not