It was recognised in **T 208/84** (OJ 1987, 14) that the fact that the idea or concept underlying the claimed subject-matter resides in a discovery does not necessarily mean that the claimed subject-matter is a discovery "as such" (**G 2/88**, OJ 1990, 93).

In **T 1538/05** the board noted that, speaking very generally, an invention must be of a technical character and must solve a technical problem with – at least partially – technical means. It found that the claims at issue related to the discovery of a scientific theory rather than a technical teaching. The appellant claimed to have discovered a magnetic force that was hitherto unknown, and as a consequence thereof, established that theories such as the Heisenberg uncertainty principle as well as Einstein's theory of relativity were wrong. These were scientific theories or discoveries of the laws of nature different from those established. The board was in no position to determine whether these physical theories and discoveries were correct or not. Neither the claims, nor the description gave any indication of a clear technical teaching. It was clear to the board that the subject-matter claimed by the appellant was not patentable, as the appellant had not demonstrated that they were of a technical nature and that the invention could be applied to processes or devices.

2.2.2 Mathematical methods

Purely abstract or intellectual methods are not patentable. The exclusion applies if a claim is directed to a purely abstract mathematical method and the claim does not require any technical means. If a claim is directed either to a method involving the use of technical means (e.g. a computer) or to a device, its subject-matter has a technical character as a whole and is thus not excluded from patentability under Art. 52(2) and (3) EPC.

Merely specifying the technical nature of the data or parameters of the mathematical method may not be sufficient to define an invention in the sense of Art. 52(1) EPC, as the resulting method may still fall under the excluded category of methods for performing mental acts as such (Art. 52(2)(c) and (3) EPC, see Guidelines G-II, 3.3 and 3.5.1 – March 2022 version).

Even if the idea underlying an invention may be considered to reside in a mathematical method a claim directed to a technical process in which the method is used does not seek protection for the mathematical method "as such" (**T 208/84**, OJ 1987, 14; **G 2/88**, OJ 1990, 93).

The case law of the boards of appeal has established that, if a method which is not per se "technical" e.g. a mathematical method, is used in a technical process, and this process is carried out on a physical entity by some technical means implementing the method and provides as its result a change in that entity, it contributes to the technical character of the invention as a whole. Thus this feature must be taken into account when assessing inventive step (**T 208/84**, OJ 1987, 14; **T 641/00**, **T 258/03**, **T 1814/07**, OJ 2003, 352).

In **T 1326/06** it was held that a method of encrypting/decrypting or signing electronic communications may be regarded as a technical method, even if it is essentially based on a mathematical method.