

d) Distinction from cosmetic methods

Therapeutic methods must also be distinguished from cosmetic methods. In G 1/07 (OJ 2011, 134) the Enlarged Board of Appeal pointed out that it was the express wording of Art. 53(c) EPC that only therapeutic methods were excluded from patentability (and thus cosmetic methods were not) and the exclusion could not be extended to treatments which were not therapeutic in character (see also T 1172/03 making reference to T 144/83, OJ 1986, 301).

e) Examples from case law

In T 469/94 the board observed that the treatment for reducing the perception of fatigue due to an increase in acetylcholine level in the brain and tissue was not comparable with the relief of pain, discomfort and incapacity (see above T 81/84, OJ 1988, 207).

In T 74/93 (OJ 1995, 712) the claimed invention related to alicyclic compounds and their contraceptive use. The board took the view that a method of contraception was not excluded per se from patentability under the aspects as stipulated in Art. 57 as well as in Art. 52(4), first sentence, EPC 1973 (now Art. 53(c) EPC). Pregnancy was not an illness and therefore its prevention was not in general therapy according to Art. 53(c) EPC (see also T 820/92, OJ 1995, 113; T 1635/09, OJ 2011, 542). Nevertheless, the method could not be patented as a method of contraception to be applied in the private and personal sphere of a human being could not be deemed susceptible of industrial application (see chapter I.E.1.2.1).

In T 1075/06 the board held that a method claim comprising the step of returning processed blood, depleted of some of its components and charged with an anticoagulant, to a donor is a method for treatment of the human body by therapy which is excluded from patentability under Art. 53(c) EPC.

According to the contested patent in case T 611/09, a lock solution was used for infusion into the lumen of an in-dwelling intravascular catheter, i.e. a catheter which was typically inserted into a vein or artery and therefore in intimate contact with the human or animal body. According to the board, this did not necessarily mean that the lock solution was also directly in contact with or even active within the human or animal body. The board concluded that the antibacterial activity only took place in the lumen, which was part of the catheter that was located outside of the human or animal body, which meant that it was not therapeutic.

In T 1819/13 the use of an antibiotic for the manufacture of a medicament for use in treating or preventing a bacterial infection in an animal by injection of the medicament subcutaneously at the junction of a pinna with the cranium of the animal was claimed. The site of injection was held to be an integral technical element of the administration of the medicament and thus of the therapeutic application. However, this feature of a specific site of injection did not mean that the claim fell within the scope of Art. 53(c) EPC (see also T 1554/11).