

In T. 1599/09 and T. 235/15 the boards considered enteral feeding to fall under the meaning of the term "therapy". The alleviation of symptoms was considered to be therapeutic, especially in the case of tube feeding to alleviate a patient's inability to receive nutrition through a normal diet.

#### 4.5.2 Methods with both therapeutic and non-therapeutic indications

Whether or not a claimed invention is excluded from patentability under Art. 53(c) EPC depends upon the wording of the claim in question (see T. 820/92, OJ 1995, 113; T. 290/86, OJ 1992, 414; T. 780/89, OJ 1993, 440 and T. 1077/93). As a general rule, it is irrelevant for the purposes of Art. 53(c) EPC whether there are other therapeutic effects in addition to the claimed non-therapeutic use if those additional therapeutic effects can be clearly distinguished from the non-therapeutic use and are not covered by the subject-matter of the claim. If, however, the scope defined by the wording of the claim encompasses a use comprising a non-therapeutic element which is inseparably associated with a therapeutic element and that latter element is an essential part of the claimed method, the method is non-patentable under Art. 53(c) EPC (T. 1635/09, OJ 2011, 542; T. 290/86, OJ 1992, 414).

##### a) Inevitable and inextricably linked therapeutic effect of the claimed method

In T. 116/85 (OJ 1989, 13) the board held that a claimed method was excluded from patentability, if it rendered the therapeutic treatment of animals necessary, even though the therapeutic treatment of animals was commonly an aspect of agriculture, and agricultural methods were in general potentially patentable subject-matter. Here, however, the board did not consider it possible as a matter of law to draw a distinction between such a method as carried out by a farmer and the same method when carried out by a veterinarian, and to say that the method, when carried out by a farmer, was an industrial activity and, when carried out by a veterinarian, was a therapeutic treatment and thus not patentable.

In T. 290/86 (OJ 1992, 414) the board held that the disclosed method of eliminating plaque was not considered allowable because it inevitably had the therapeutic effect of preventing caries and periodontal disease. The board took the view that whether or not a claimed invention was excluded from patentability under Art. 52(4) EPC 1973 depended in particular on the wording of the claim in question. If the claimed invention was not directed solely to a cosmetic effect, but was also necessarily defining a treatment of the human body by therapy as well, such a claim was excluded from patentability (distinguishing T. 144/83, OJ 1986, 301). The board held that if the claimed use of a chemical product inevitably always had a therapeutic effect as well as a cosmetic effect the invention as claimed necessarily defined a treatment of the human body (see also T. 475/12).

In T. 780/89 (OJ 1993, 440) the claim in question related to a method of general immunostimulation for animals which led, inter alia, to an increase in meat production. The board regarded the effect of increasing meat production as a consequence of the improvement in the animals' health. Moreover, the general stimulation of the immune system was integrally linked to the specific prophylactic function of safeguarding against