

himself onto an "electronic application form", thereby permitting a decision to be taken on whether to authorise him as a user. Once authorised, he could access the system using that same card. The board ruled that this was not patentable – parts of the method claimed were merely instructions for using the machine, and although technical components were used, this did not alter the fact that what was being claimed was a method for doing business as such. The board held that a claim which, when taken as a whole, is essentially a business operation, does not have a technical character and is not a claim to a patentable invention within the meaning of Art. 52(1) EPC 1973, even though the claimed method includes steps which include a technical component. The true nature of the claimed subject-matter remains the same, even though some technical means are used to perform it.

A method of doing business is excluded from patentability even where it implies the possibility of making **use of unspecified technical means** or has practical utility (T 388/04).

In T 388/04 (OJ 2007, 16) the board considered that transmitting information as specified in the claim, even if performing the transmission might involve the use of technical means, does not go beyond a business activity as such. If the contrary were true, no method for doing business that implicitly could make use of a functionality offered by technical means would be excluded from patentability, which, in the view of the board, could not be what is intended by Art. 52(2) and (3) EPC 1973. The board held that subject-matter or activities that are excluded from patentability under Art. 52(2) and (3) EPC 1973 remain so even where they imply the possibility of making use of **unspecified technical means**.

In T 384/07 the method claimed included features corresponding to technical means for the technical implementation of the business scheme, such as a data processing terminal connected to a network of data processing terminals etc. The board held that the method did not constitute a method for doing business as such, and, therefore, was not excluded from patentability in accordance with Art. 52(2) and (3) EPC 1973.

## 2.5.2 Methods for performing mental acts

The use of technical means for carrying out a method for performing mental acts, partly or entirely without human intervention, might, having regard to Art. 52(3) EPC 1973, render such a method a technical process or method and therefore an invention within the meaning of Art. 52(1) EPC 1973 (T 38/86, OJ 1990, 384; see also T 258/03, OJ 2004, 575).

In T 2720/16, the board held that an activity was purely mental if it was performed entirely by the human brain. As soon as it manifested itself physically outside the brain, it lost its purely mental character. It did not matter whether this physical dimension to the activity was performed using a body part (eye, hand, etc.) or separate mechanical devices.

In T 471/05 the board pointed out that claim 1 merely formulated a series of mathematical and optical abstract concepts without properly requiring a physical, technical implementation. It followed that the subject-matter for which protection is sought was the