

practised on the human or animal body. It followed that in most cases, only the step which referred to the examination phase and involved the collection of data could actually be of a technical nature and, therefore, concerned with the criterion "practised on the human or animal body". Additional intermediate steps which concerned for example the adjustment or preparation of the apparatus with which the collection of data would be performed could be introduced into a method claim for completeness. However, since these additional features were not part of one of the steps necessary for making the diagnosis, they were to be ignored when assessing the diagnostic character of the method. The issue of whether or not these intermediate features were of a technical nature and practised on the human or animal body was, therefore, irrelevant for this question.

In T 143/04 claim 1 at issue related to a method of diagnosing Alzheimer's disease in a living subject. The board noted that data processing using an automated apparatus was not actually part of the examination phase which involved the data collection phase, but it resulted from a subsequent, technical step, intermediate between the data collection and the comparison of these collected data with standard values. Such intermediate steps were not to be considered when assessing the diagnostic character of the method. The claim at issue included all the features of a diagnostic method practised on the human or animal body as defined in the opinion G 1/04. The patenting of such a method was prohibited by Art. 52(4) EPC 1973 (Art. 53(c) EPC).

c) Clarity of a claim relating to diagnostic methods

In G 1/04 the Enlarged Board of Appeal found as follows: If diagnosis as the deductive medical or veterinary decision phase was a purely intellectual exercise, the feature pertaining to the diagnosis for curative purposes and the features relating to the preceding steps which were constitutive for making the diagnosis represented the essential features of a diagnostic method. Thus, in order to satisfy the requirements of Art. 84 EPC 1973, an independent claim relating to such a method had to include these features. If a non-technical feature was to be regarded as constitutive for defining the invention, it had likewise to be included as an essential feature in the independent claim.

d) Intermediate findings of diagnostic relevance

In G 1/04 the Enlarged Board of Appeal stated that intermediate findings of diagnostic relevance must not be confounded with diagnosis for curative purposes *stricto sensu*, which consisted in attributing the detected deviation to a particular clinical picture. It followed that a method for obtaining such results or findings did not constitute a sufficient basis for denying patentability by virtue of Art. 52(4) EPC 1973.

In T 1016/10 the appellant claimed an analogy to T 1255/06, arguing that step (iv) was missing and that thus the claim could not fall under the exception clause. The board disagreed. The appellants had argued that an "amyloidogenic disorder", identified as step (iv) in claim 1, merely represented an "intermediate finding", which according to reasons 6.2.3 of G 1/04, were not to be confounded with diagnosis for curative purposes *stricto sensu*. Such an intermediate finding did not make it possible to immediately determine the nature of a disease and to decide on a particular course of medical treatment