

In T.1075/09 the patent proprietor had argued that the feature had been part of the definition of the patient group and could not be considered to be a claimed therapeutic method. The board held that claim 1 was worded in such a way that it taught the direct administration of FSH to the patient for inducing folliculogenesis because the feature "and wherein folliculogenesis is induced by the administration of FSH" was not covered by the Swiss-type format. Therefore this feature constituted a therapeutical method of its own involving a direct physical intervention on the human body.

In T.944/15, the invention, as described, related to a data processing method for controlling a process of monitoring the position of at least a part of a patient's body during a radiation treatment by means of a computer. The appellant argued that the invention was a data processing method confined to the computer, i.e. a computer-implemented method. In the board's view, the second leg of the provision in Art. 53(c) EPC refers essentially to products and held that a computer program, as defined in the claimed invention was not such a product. In providing protection for a computer program which is designed to implement a method of treatment, de facto protection is provided for the method of treatment, because running the program is using the method. As the method is excluded, so the computer program should also be excluded: even if indirectly conferred, a protection for a method of treatment goes against the ratio legis of Art. 53(c) EPC (G.1/07, point 3 of the Reasons).

b) Prophylactic treatments

It is established case law that a prophylactic treatment, aimed at maintaining health by preventing ill effects that would otherwise arise, amounts to a method for treatment by therapy as referred to in Art. 53(c) EPC, and that therapy is not limited to treatments which restore health by curing diseases which have already arisen (see e.g., G.5/83, OJ 1985, 64). Both prophylactic and curative methods of treating disease are covered by the word therapy, since both are directed to the maintenance or restoration of health (T.19/86, OJ 1989, 24; T.290/86, OJ 1992, 414; T.438/91, T.820/92, OJ 1995, 113).

In T.2071/15 the invention concerned a dental care product for the purpose of restoring pH in the mouth, from a lower pH to neutral pH. This was held to be based on the therapeutic mechanism of action of inhibition of growth of oral bacteria, and therefore excluded.

c) Distinction from performance improvement

The board in T.774/89 distinguished "therapy" from "performance improvement", finding that the purpose of therapy was invariably to restore the organism from a pathological to its original condition, or to prevent pathology in the first place, whereas a non-therapeutic improvement of performance took as its starting point a normal state (to be defined) (see T.385/09).