

merely directed to the control of the device, because the teaching of the invention was not complete without the steps of initiating the monitoring and using the result; their necessary consideration as part of the teaching of the invention meant that the claim defined a method of treatment excluded under Art. 53(c) EPC.

4.4.6 Data obtained during surgery

On the particular facts of the case before it, the Enlarged Board held in G 1/07 that a claimed imaging method is not to be considered as being a "treatment of the human or animal body by surgery" within the meaning of Art. 53(c) EPC merely because during a surgical intervention the data obtained by the use of the method immediately allow a surgeon to decide on the course of action to be taken during a surgical intervention.

4.5. Therapeutic methods

Therapeutic methods are subject to a rule, similar to that applicable to surgical methods, that they cannot be patented if they include at least one feature defining a physical activity or action that constitutes a method step for treatment of the human or animal body by therapy (G 1/04, OJ 2006, 334; G 1/07, OJ 2011, 134).

4.5.1 The term "therapy"

a) Definition of the term

The first definition of the term "therapy" was given in T 144/83 (OJ 1986, 301). According to this decision, therapy relates to the treatment of a disease in general or to a curative treatment in the narrow sense as well as the alleviation of the symptoms of pain and suffering.

In T 81/84 (OJ 1988, 207) the board found that the concept of therapy should not be construed narrowly. It would be impossible and undesirable to distinguish between basic and symptomatic therapy, i.e. healing or cure and mere relief. The board concluded that irrespective of the origin of pain, discomfort or incapacity, its relief, by the administration of an appropriate agent, was to be construed as therapy or therapeutic use within the meaning of Art. 52(4) EPC 1973.

In T 24/91 (OJ 1995, 512) the board observed that the term "therapy" was not restricted to curing a disease and removing its causes. Rather, this term covered any treatment which was designed to cure, alleviate, remove or lessen the symptoms of, or prevent or reduce the possibility of contracting any disorder or malfunction of the human or animal body. The board found that the claimed process removed, by treatment of the patient's eye, the symptoms of myopia, hyperopia and astigmatism and was therefore a therapeutic treatment.

In T 2420/13 the board stated that a "therapeutic treatment" required some intervention on the body or body part to be treated which caused a therapeutic effect.