

Dosage Regimen, European Patent Office (EPO Enlarged Board of Appeal), 19 February 2010

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The Enlarged Board of Appeal answers three questions of law as follows:

Question 1: Where it is already known to use a medicament to treat an illness, Article 54(5) EPC does not exclude that this medicament be patented for use in a different treatment by therapy of the same illness.

Question 2: Such patenting is also not excluded where a dosage regime is the only feature claimed which is not comprised in the state of the art.

Question 3: Where the subject-matter of a claim is rendered novel only by a new therapeutic use of a medicament, such claim may no longer have the format of a so called Swiss-type claim as instituted by decision G 5/83. This type of claim has been ruled forbidden in the short future for any new application filed after three months from the date of publication of the present decision in the Official Journal of the EPO.

A [full summary](#) of this case has been published on [Kluwer IP Law](#).