

G01/07 makes prosecution of “medical claims” at the EPO more predictable

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The questions referred to the Enlarged Board of Appeal were answered as follows:

1. A claimed imaging method, in which, when carried out, maintaining the life and health of the subject is important and which comprises or encompasses an invasive step representing a substantial physical intervention on the body which requires professional medical expertise to be carried out and which entails a substantial health risk even when carried out with the required professional care and expertise, is excluded from patentability as a method for treatment of the human or animal body by surgery pursuant to Article 53 (c) EPC.

2a. A claim which comprises a step encompassing an embodiment which is a “method for treatment of the human or animal body by surgery” within the meaning of Article 53(c) EPC cannot be left to encompass that embodiment.

2b. The exclusion from patentability under Article 53(c) EPC can be avoided by disclaiming the embodiment, it being understood that in order to be patentable the claim including the disclaimer must fulfill all the requirements of the EPC and, where applicable, the requirements for a disclaimer to be allowable as defined in decisions G 1/03 and G 2/03 of the Enlarged Board of Appeal.

2c. Whether or not the wording of the claim can be amended so as to omit the surgical step without offending against the EPC must be assessed on the basis of the overall circumstances of the individual case under consideration.

3. 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 Article 53(c) EPC merely because during a surgical intervention the data obtained by the use of the method immediately allows a surgeon to decide on the course of action to be taken during a surgical intervention.

Overall, this can be seen as a very positive development at the EPO and, hopefully, this decision will be applied swiftly and without inappropriate interpretations.