

Patent case: Forschungszentrum Jülich GmbH vs Advanced Neuromodulation Systems, Inc., EPO

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Bart van Wezenbeek (V.O. Patents & Trademarks)

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A claim to a device will be denied patentability under Art. 53(c) EPC if it can only be produced through the exercise of a surgical method step.

A European patent was granted for a device for the desynchronization of activity of pathologically active brain areas. Specifically, the claim defined 'control means, which are designed such that they control the at least two electrodes...with the stimuli emitted being offset in time, and the stimuli causing the neural activity of the at least two subpopulations to be phase-reset, such that the at least two subpopulations have different neural-activity phases...'.¹

The European patent was opposed by the appellant on the basis of lack of novelty and inventive step. Although the opposition division raised of its own volition an objection under Art. 53(c) EPC they decided to reject the opposition. The opponent appealed and argued that the invention would not be patentable on the basis of the aforementioned grounds. In the summons to the oral proceedings the Board of Appeal mentioned a possible new ground based on lack of industrial applicability. On the basis of the preliminary opinion the patentee filed 4 auxiliary requests. During oral proceedings the Board mentioned that it might change its opinion on the basis of the case law (T 775/97), whereupon a new auxiliary request was filed.

Case date: 15 February 2019

Case number: T 1731/12

Court: European Patent Office (EPO), Board of Appeal

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