Kluwer Patent Blog

Treatment by surgery, European Patent Office (EPO Enlarged Board of Appeal), 15 February 2010

Lars de Haas (V.O.) · Monday, February 15th, 2010 · Landmark European Patent Cases

1. The Enlarged Board of Appeal considered the meaning that is to be given to the exclusion of patents on methods for 'treatment by surgery' (Article 53(c) EPC). The current construction used by the boards and the EPO as any non-significant intervention on the structure of an organism by conservative procedures was found to be overly broad. It was left for the future to define new criteria. The enlarged board only gave directions and it held that in the context of the case at bar the claimed method was excluded because it encompassed 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.

2. Limitation of the exclusion to curative surgery was rejected as unjustifiably narrow. The exclusion applied also to claims that contain non-surgical steps in addition to a feature that encompassed treatment by surgery.

3. The definition of new criteria for application of the exclusion had to cover the core of the medical profession's activities, for which its members were specifically trained and for which they assume a particular responsibility. Uncritical methods involving only a minor intervention and no substantial health risk should not fall under the definition. A treatment that involved administration of a diagnostic agent should only be excluded if the health risk was associated with the mode of administration and not solely with the agent as such.

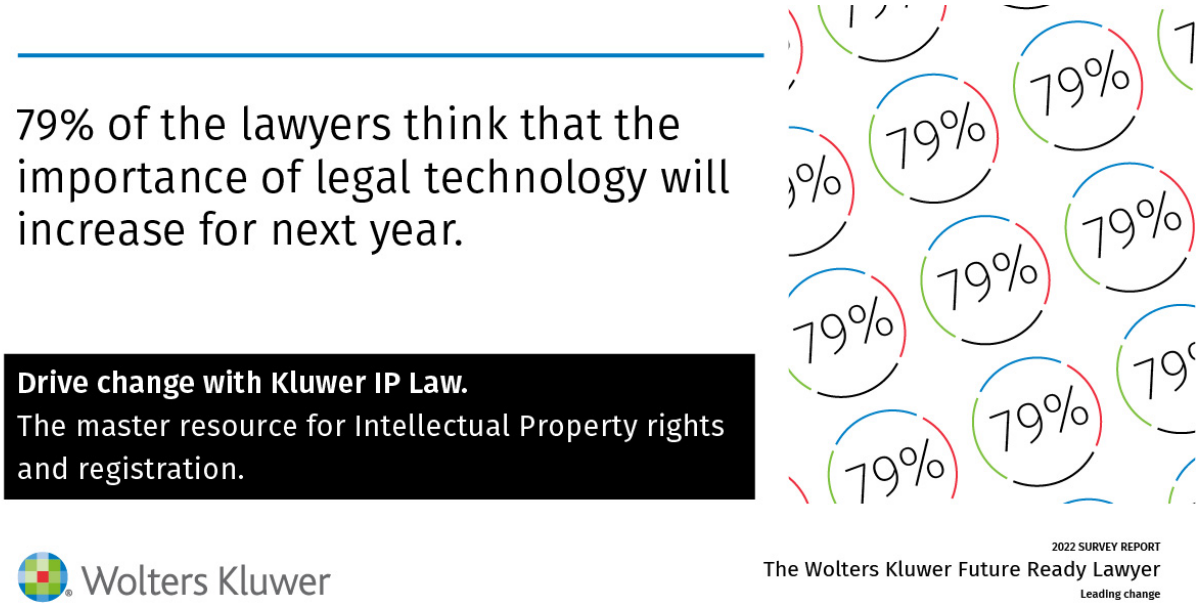
4. No general principle of narrow interpretation of exclusions from patentability which would be applicable a priori to the interpretation of the exclusions can be derived from the Vienna Convention.

The full summary of this case has been published on Kluwer IP Law.

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.



This entry was posted on Monday, February 15th, 2010 at 2:55 am and is filed under Case Law, Disclaimer, EPC, Exceptions to patentability, Mechanical Engineering
You can follow any responses to this entry through the Comments (RSS) feed. Both comments and pings are currently closed.