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Patent Protection for Surgical Methods Under the European Patent Convention

—The Opinion of the Enlarged Board of Appeal G 1/07

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Abstract

Under article 53(c) of the European Patent Convention (the “EPC”) 2000, methods for medical or veterinary treatment, namely therapeutic, surgical and diagnostic methods, are excluded from patent protection. Considering the difficulty to find a balance between the interests of public health and of patients, specially freeing the medical profession from constraints which would be imposed on them by patents granted on method of medical treatment, and the proper patent protection for these medical related inventions, the Enlarged Board of Appeal of the European Patent Office has delineated the boundaries of the exclusion to insure the necessary legal certainty by two recent decisions G 1/04 and G 1/07. This article attempts to analyze these recent decisions by considering the definition and the scope of the exclusion of surgical methods in the light of the *ratio legis* of Article 53(c) EPC. By doing so, some suggestions could be given to TIPO, in hope of

more consistent in their interpretation of the exclusion of methods of medical treatment.

Keywords: Exclusion of Patent Protection, Exclusion for Methods of Medical Treatment, Surgical Method, European Patent Convention, Public Health