

The patentability of medical processes before the European Patent Office

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The European Patent Convention (EPC) stipulates that European patents cannot be obtained in respect of “methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human body”. However, European patents can be granted for products, in particular substances or compositions, for use in any of these methods. Hence, European patents may be obtained for surgical, therapeutic or diagnostic instruments or apparatuses for use in such methods. To be excluded from patentability, a treatment or diagnostic method must actually be carried out on the living human or animal body. For example, the treatment of body tissues or fluid after they have been removed from the human or animal body, or diagnostic methods applied thereon, are not excluded from patentability insofar as these tissues or fluids are not returned to the same body. A treatment of blood by dialysis with the blood being returned to the same body would thus be excluded. The lecture presents recent case law to illustrate this situation in more detail and explains as to how maximum patent protection can be obtained within this framework.