

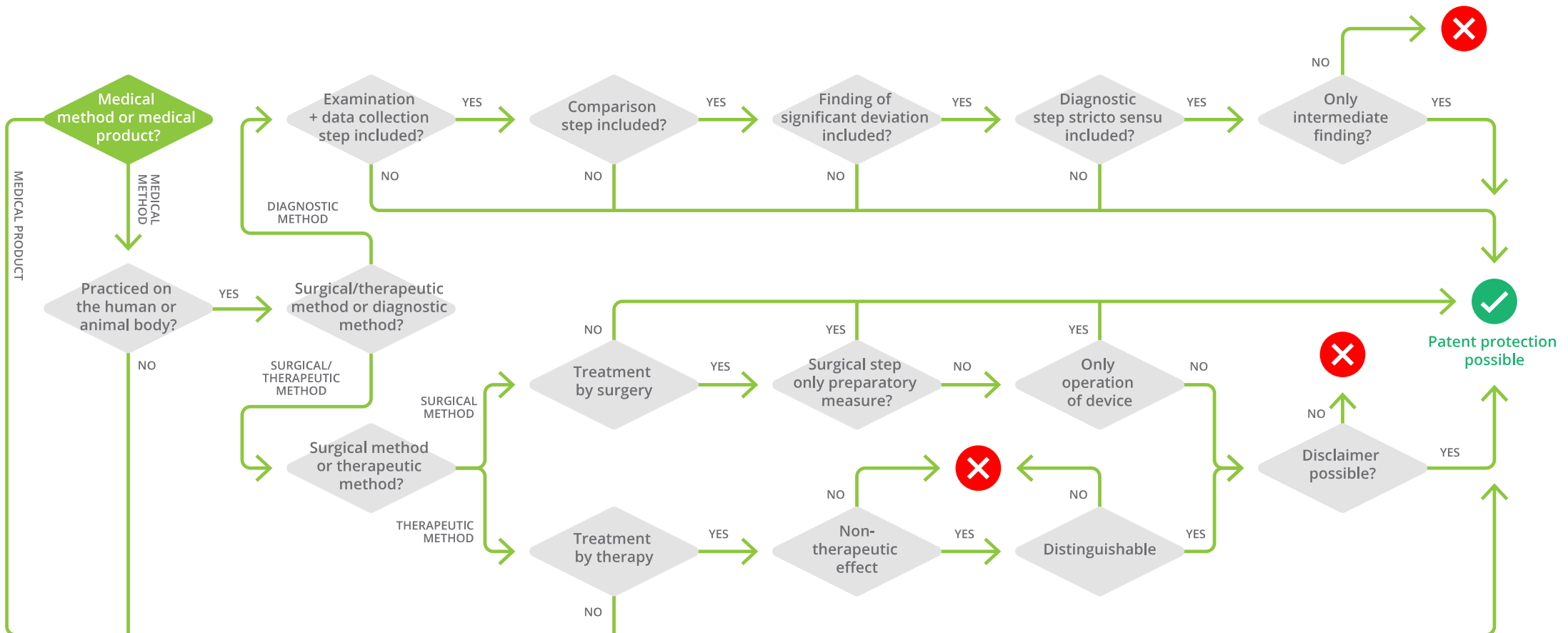
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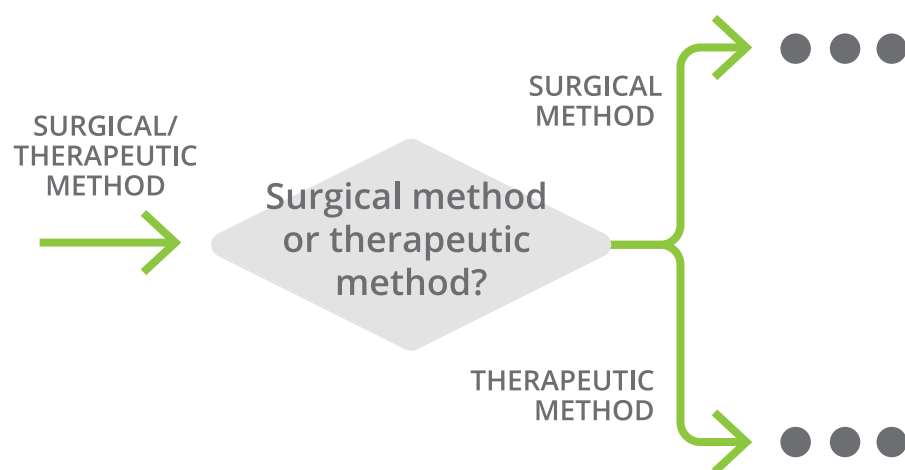
Is my medical invention patentable?

Part 4 – Surgical or therapeutic method?

Overview



Surgical or therapeutic?



- **One** (or more) surgical/therapeutic **step(s)**
→ **Excluded** from patent protection¹
- **Surgical step** does **not** have to have **curative** or therapeutic purpose²
- **Therapeutic step** may be **any physical activity or action**³ and does not have to involve a substantial physical intervention

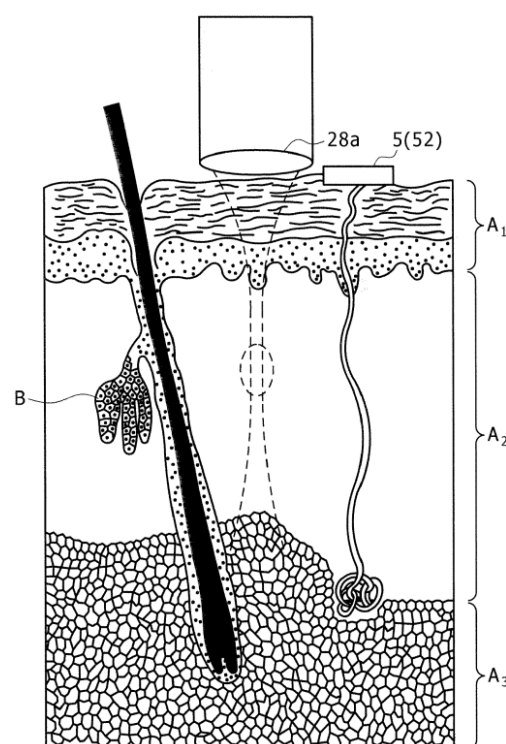
1 G 1/07, Reasons 3.2.5

2 G 1/07, Reasons 3.3.10

3 G 1/07, Reasons 3.2.5

Case law example: **Enzymatic activity** (T 1213/10)

FIG. 1



Claim 1: *Method of measuring an enzymatic activity, [...]*

said substrate is caused by a penetration device (5) to penetrate to a site where said enzyme is present, [...]

- The penetrated site includes the **liver, brain, kidney, muscles** etc.
→ **surgical step?**
- Common usage of the term “surgery” might suggest a mandatory curative/therapeutic purpose

BUT:

- **Curative/therapeutic purpose** is a prerequisite for therapeutic steps, but **not for surgical steps**
→ **Surgical method**, although no curative/therapeutic purpose
→ **Excluded from patentability**



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I help clients to choose the best IP strategy based on the actual invention as well as based on the respective business case and their overall business strategy.

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