

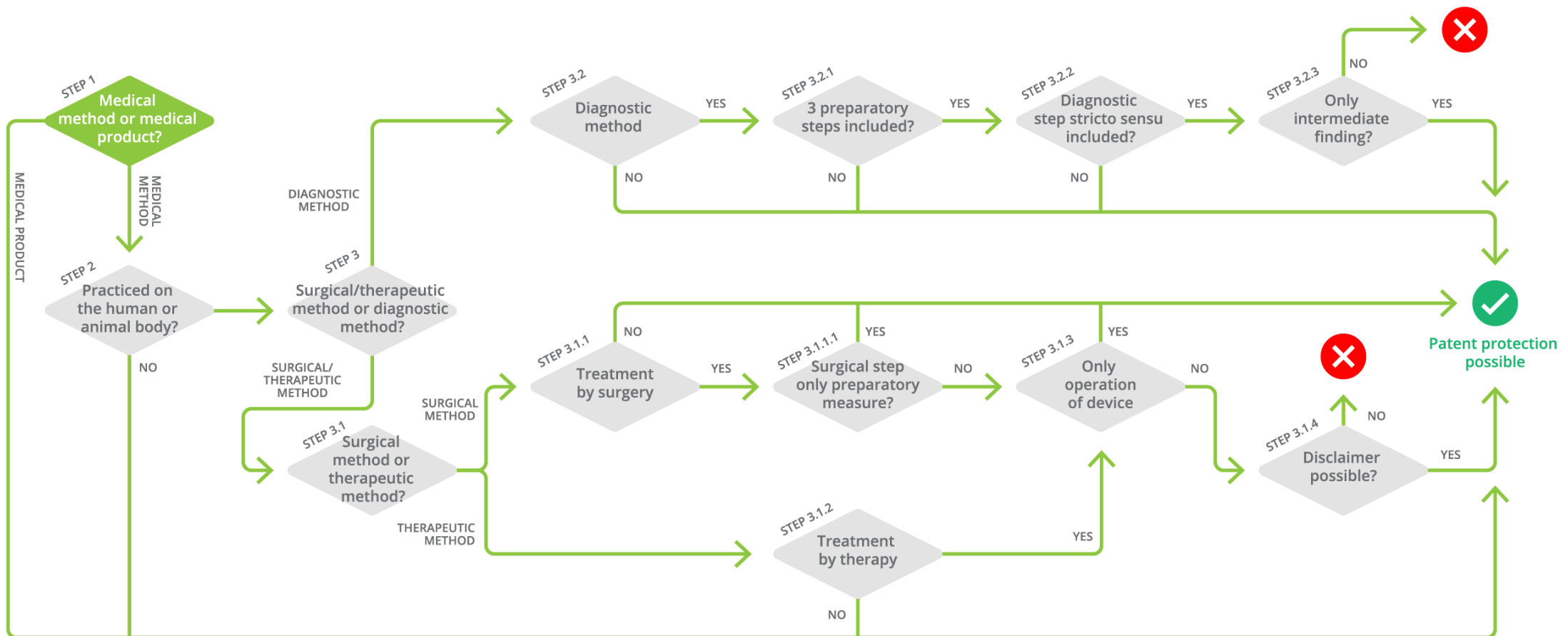
**BERGGREN**



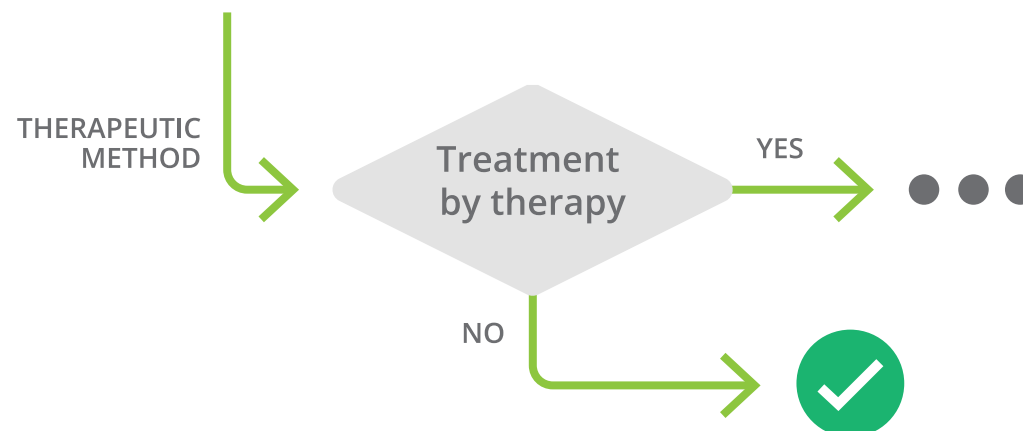
# Is my medical invention patentable?

## Part 7 – Treatment by therapy

# Overview



# Treatment by therapy

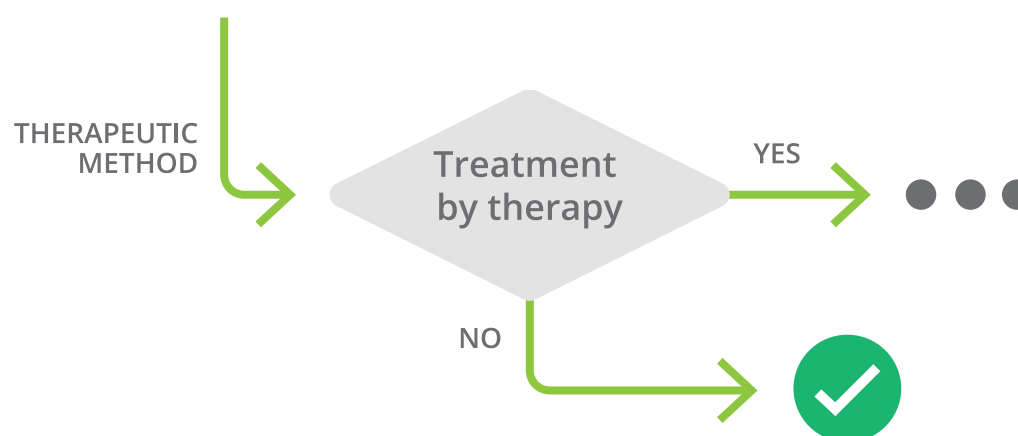


- **One** (or more) therapeutic **step(s)**  
→ **Excluded** from patent protection<sup>1</sup>
- **Therapeutic step** may be **any physical activity or action**<sup>2</sup>  
→ substantial physical intervention or health risk not necessarily involved

<sup>1</sup> G 1/07, Reasons 3.2.5

<sup>2</sup> G 1/07, Reasons 3.2.5

# Treatment by therapy



- **Therapy** comprises<sup>1</sup>:
  - Treatment of disease in general
  - Curative treatment in the narrow sense
- **Prophylactic** and **curative** methods covered<sup>2</sup>
- **Computer program** implementing method of treatment  
→ not an Art. 53(c) EPC product<sup>3</sup>

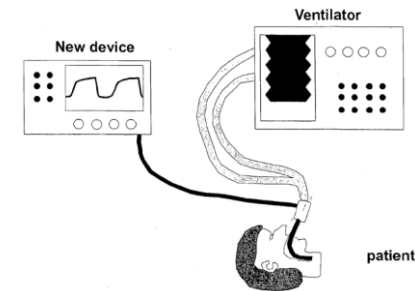
1 T 144/83; T 81/84; T 24/91;  
T 2420/13

2 G 5/83; T 19/86; T 290/86;  
T 438/91; T 820/92; T 2071/15

3 T 944/15

## Case law example: Airway pressure (T 1680/08)

Claim 1: *A method for determining airway pressure levels at which certain lung conditions of a lung ventilated by an artificial ventilator occur, comprising the steps of:*  
[...]



e) changing the airway pressure of the artificial ventilator, wherein from the observation of the resulting course of the plurality of calculated mean tracing values the airway pressure level at which alveolar opening or lung overdistension or lung open condition or alveolar closing occurs is automatically detected.

- Applicant argued that the claimed method did not cure any particular disease and was only a “test phase”.  
→ No method for therapy?

### **BUT:**

- Testing phase runs over tens of breathing cycles so that it cannot be distinguished from the normal artificial ventilation  
→ **Functional and indissociable link** between the claimed method and the artificial ventilation for keeping a patient alive.  
→ **Therapeutic** method



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I assist clients in crafting the most effective IP strategy tailored to their inventions, business case, and overarching business strategy.

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