

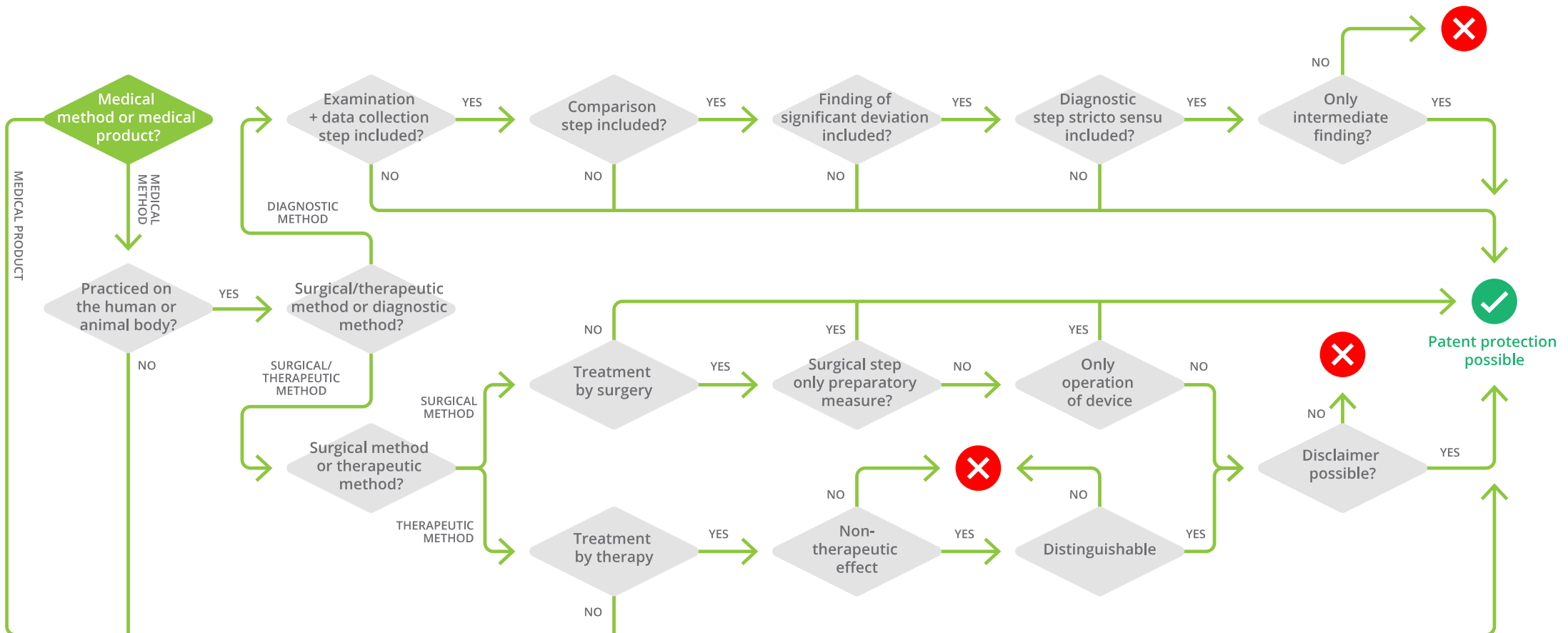
**BERGGREN**



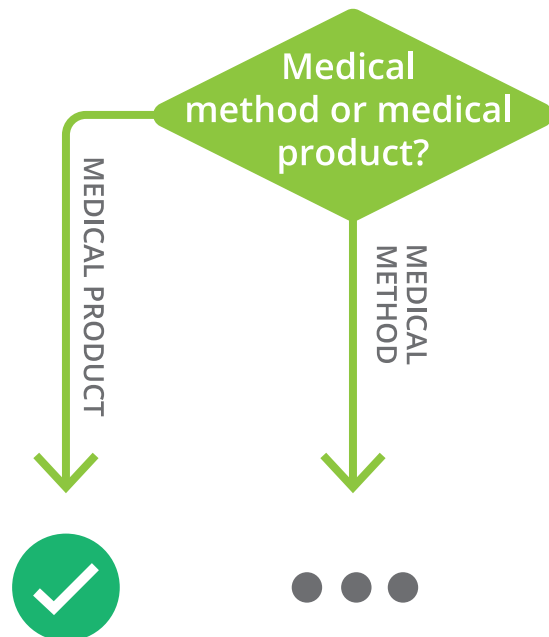
# Is my medical invention patentable?

## Part 1 - Product or method?

# Overview



- **Medical methods**  
→ **excluded** from patent protection<sup>1</sup>

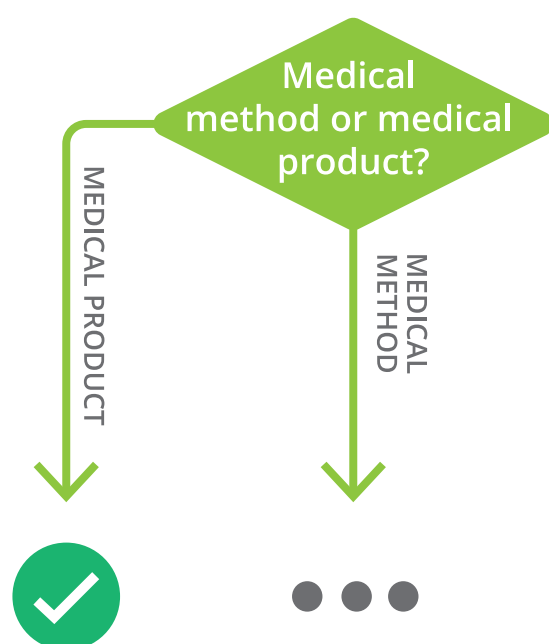


- **Products\*** for use in medical methods  
→ **not excluded**<sup>2</sup>
- **Methods of manufacturing** such products  
→ **also not excluded**

<sup>1</sup> Art. 53(c) sentence 1 EPC  
§ 2a Abs. 1 Nr. 2 sentence 1 PatG

<sup>2</sup> Art 53(c) sentence 2 EPC  
§ 2a Abs. 1 Nr. 2 sentence 2 PatG

\* substances, compositions, apparatus/devices



**BUT:**

**Medical product** also **excluded** from patent protection, if medical method step, in particular, **surgical step** is **inevitably included** in providing the medical product<sup>1</sup>.

<sup>1</sup> T 775/97 (2.6 of Reasons)

## Case law example: Cerebral implant (T 1731/12)

Claim 1: *Device with two electrodes and a controller configured such that the stimuli of the electrodes reset the phase of the neuronal activity of at least two sub-populations of a neuron population such that the two sub-populations have a different phase after the stimuli.*

According to the description:

5. Kalibrierung und Regelung:

5.1. Alle Elektroden 2 liegen in der zu desynchronisierenden Neuronenpopulation:

**Preparatory measurements and calibrations using already implanted electrodes necessary.**

→ **Surgical step implicitly and inevitably included**

→ **Exclusion from patent protection**



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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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