

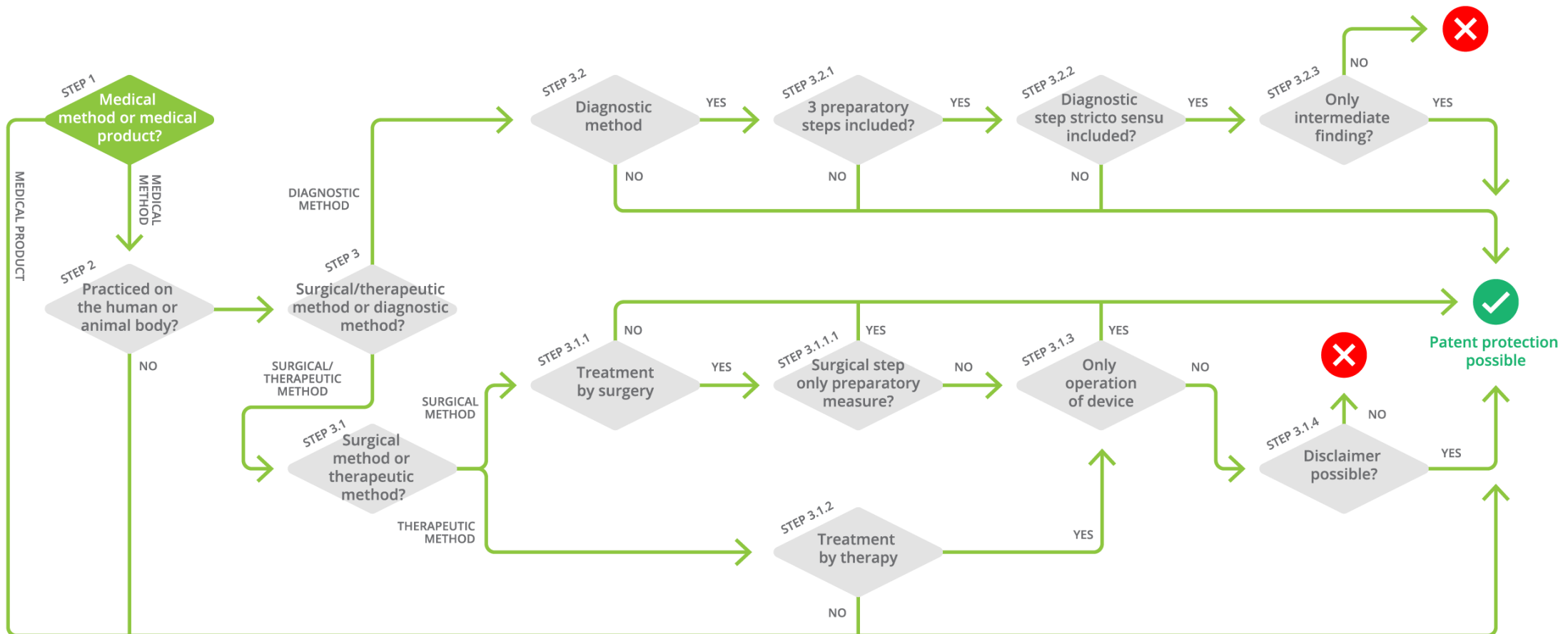
BERGGREN



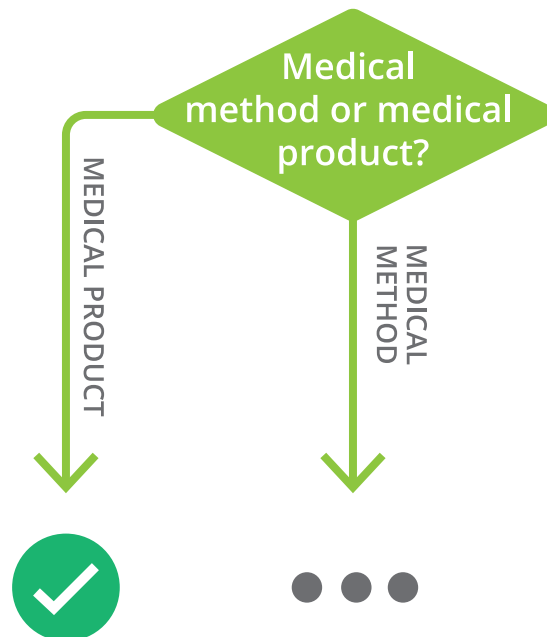
Is my medical invention patentable?

Part 1 - Product or method?

Overview



- **Medical methods**
→ **excluded** from patent protection¹

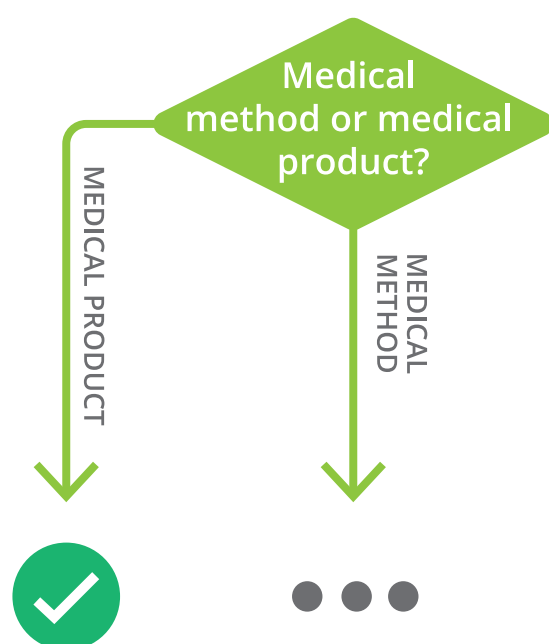


- **Products*** for use in medical methods
→ **not excluded**²
- **Methods of manufacturing** such products
→ **also not excluded**

¹ Art. 53(c) sentence 1 EPC
§ 2a Abs. 1 Nr. 2 sentence 1 PatG

² 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 product¹.

¹ 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 assist clients in crafting the most effective IP strategy tailored to their inventions, business case, and overarching business strategy.

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