

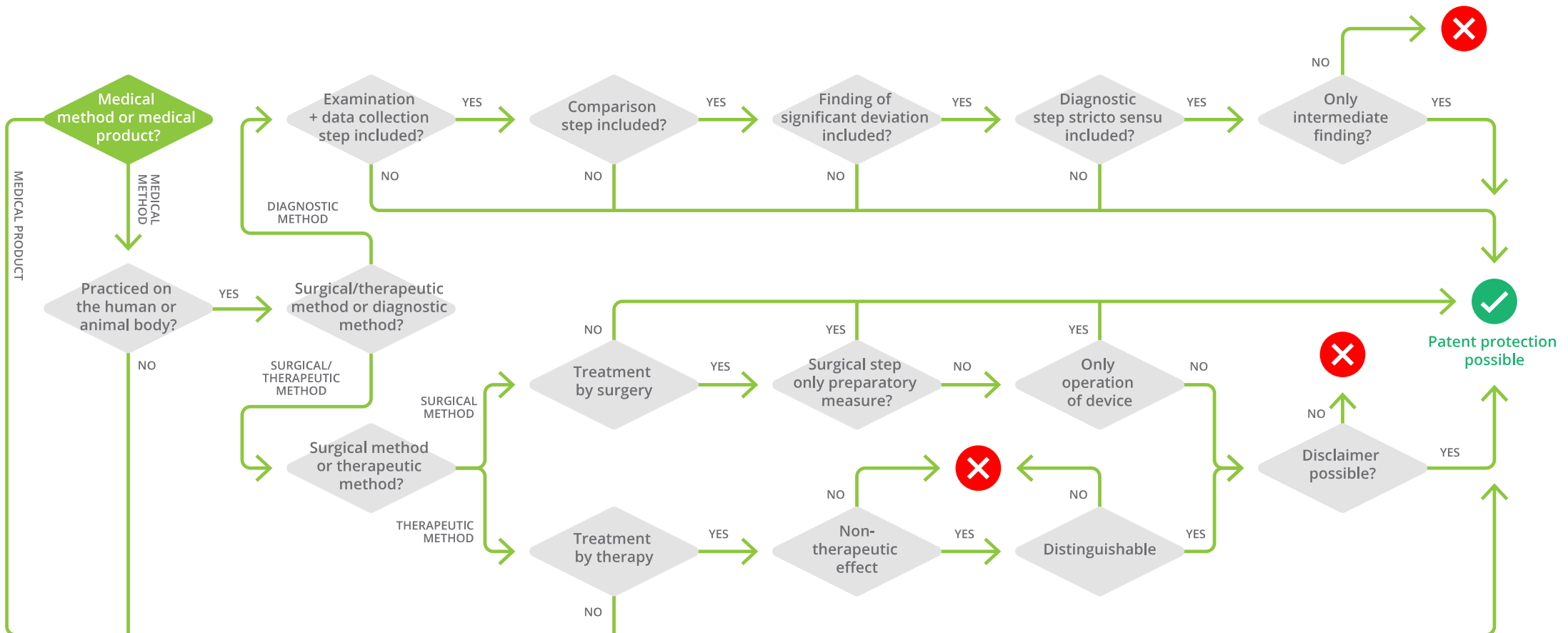
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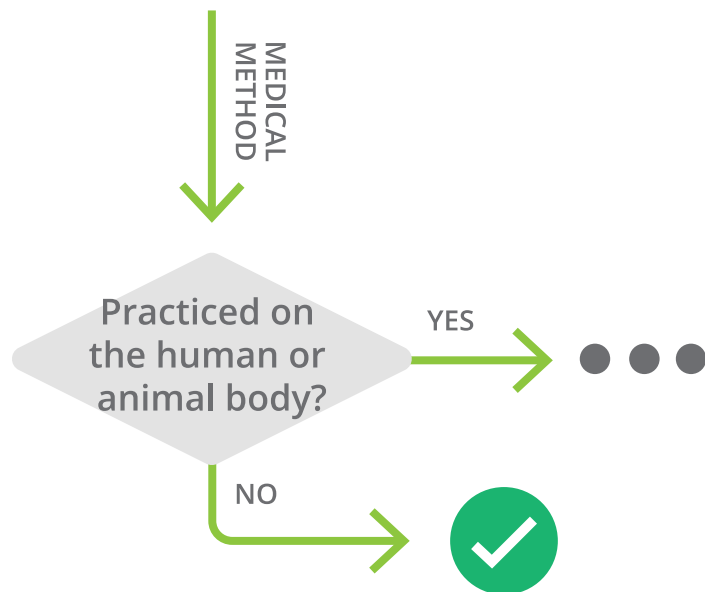
Is my medical invention patentable?

Part 2 – Practised on the human or animal body?

Overview



- If method step is practised on the **human or animal body**
→ **Excluded** from patent protection¹



- Exclusion of medical methods is to be interpreted narrowly
- Specific type and intensity of interaction with human or animal body not required
- In particular, **in-vitro** methods **not excluded**²

¹ G 1/04, T 789/96, T 245/87

² T 0182/90

Case law example: **Treatment of gas** (T 0238/06)

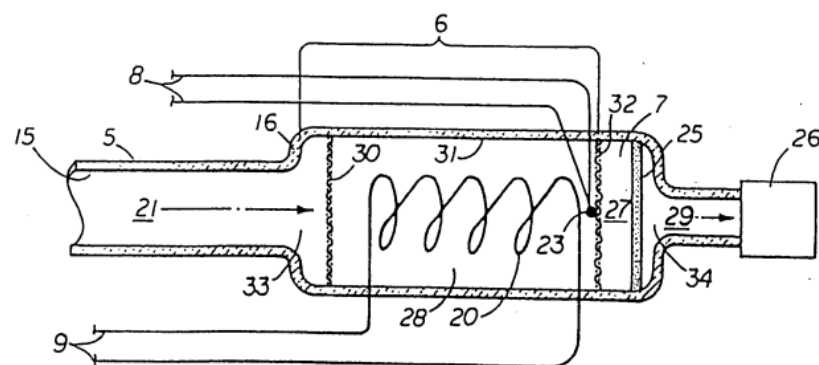


FIG 2

Claim 1: *Method of **treating gas** for use in an endoscopic procedure comprising:*

- directing gas into a treatment chamber (6);*
- treating the gas (heating and humidifying); and*
- providing the treated gas (for the endoscopic procedure).*

Pre-treatment of insufflation gases (heating and humidifying) **prior** to **passage** of the gases **into** the **patient**.

Insufflating patient with gas is undoubtedly medical.

BUT:

- Method steps performed in chamber independently of patient
 - No step requires any interaction with patient
- **Not practised on the human or animal body**

If step of flowing gas into patient was included in claim 1, method would relate to a surgical method.



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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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