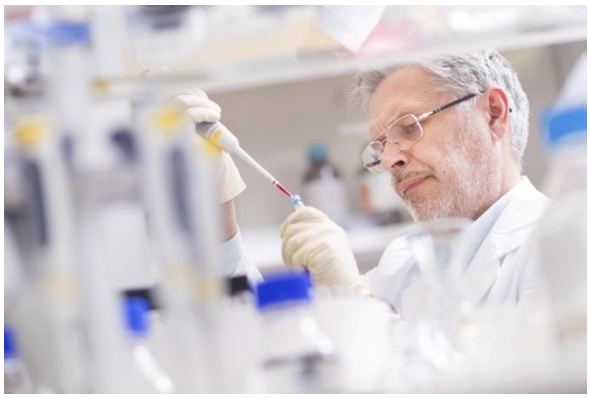
Barker Brettell

Intellectual Property

PATENTS

Methods of treatment at the EPO

The European Patent Convention (EPC) prohibits the patenting of methods for treatment of the human or animal body by surgery or therapy (and diagnostic methods that practice on the human or animal body).



There is a good body of case law on the subject, most of it relating to drugs which have both a therapeutic and a cosmetic effect. Cosmetic treatments are not therapeutic treatments, and thus are patentable at the EPO.

The Enlarged Board of Appeal at the EPO has issued decisions that make it quite clear that so long as the actual step of diagnosis is left out of the claim (and the claim still made sense) then it is not claim directed to a method of diagnosis as such. Therefore, gathering information that a doctor could use to diagnose an illness should be allowed, and the method of gathering that information should be patentable. However, actually using that information and going on to diagnose a particular disease, or correlating the information with the particular disease, is not patentable.

Any method that requires a patient to be present while it is carried out runs the risk of being objected to as a method of diagnosis or treatment at the EPO. Indeed, any reference to interacting with a patient at all should be avoided.

Instead, we can direct claims to the apparatus itself, rather than the method. Medical devices or apparatus are patentable subject-matter at the EPO. The EPO Guidelines also specifically say that methods for obtaining information are not to be considered methods of treatment or diagnosis (provided there are no diagnosis steps in the claim).

What next?

Please contact your usual Barker Brettell attorney for further information.