

Patent Protection for Methods of Medical Treatment in the United Kingdom

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LT Medical treatment; Patents

I. INTRODUCTION

The debate relating to the desirability of maintaining the exclusion of methods of medical treatment in United Kingdom law has abated. The new Patents Act of 2004 (2004 Act), to ensure "conformity of practice", has implemented the changes brought about by the revision of the European Patent Convention (EPC) in 2000, and has kept the exclusion as part of United Kingdom law.¹ A judicially created exclusion of methods of medical treatment from patent protection existed prior to the enactment of the Patents Act in 1977 (1977 Act).² Now, in the post-1977 period, the courts in the United Kingdom are burdened with interpreting a specific legislative exclusion for methods of medical treatment.³ They have accepted, with little hesitation and under the guise of conformity, the interpretation given by the Technical Boards of Appeal (TBA) and the Enlarged Board of Appeal (EBA) of the European Patent Office (EPO) on the corresponding provisions of the EPC. This approach has been followed blindly for over 30 years.⁴

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¹ Explanatory Notes to the Patents Act 2004 (Ch.16), at para.16. The EPC 2000 enters into force on December 13, 2007 at the latest.

² See, J. Pila "Methods of Medical Treatment within Australian and United Kingdom Patents Law" (2001) 24 U.N.S.W. Law Journal 420.

³ See generally, A. Feros "Patentability of Methods of Medical Treatment" [2001] E.I.P.R. 79; A. Horton, "Methods of Treatment and Second Medical Use" (2000) *Patent World* 19 and D. Kell, "Expanding the Frontier of Patentability of Methods of Medical Treatment of the Human Body" [1995] E.I.P.R. 202. The "Examination Guidelines for Patent Applications relating to Medical Inventions in the UK Intellectual Property Office", June 2007 provides invaluable guidance in respect of the jurisprudence on methods of medical treatment in the United Kingdom and the European Patent Office.

⁴ This approach is not surprising given the statutory obligation in s.130(7) of the 1977 Act that the various sections, including s.2, are "so framed as to have, as nearly as practicable, the same effects in the United Kingdom as the corresponding provisions of the [EPC]". See also, *Merrell Dow v Norton* [1996] R.P.C. 76.