

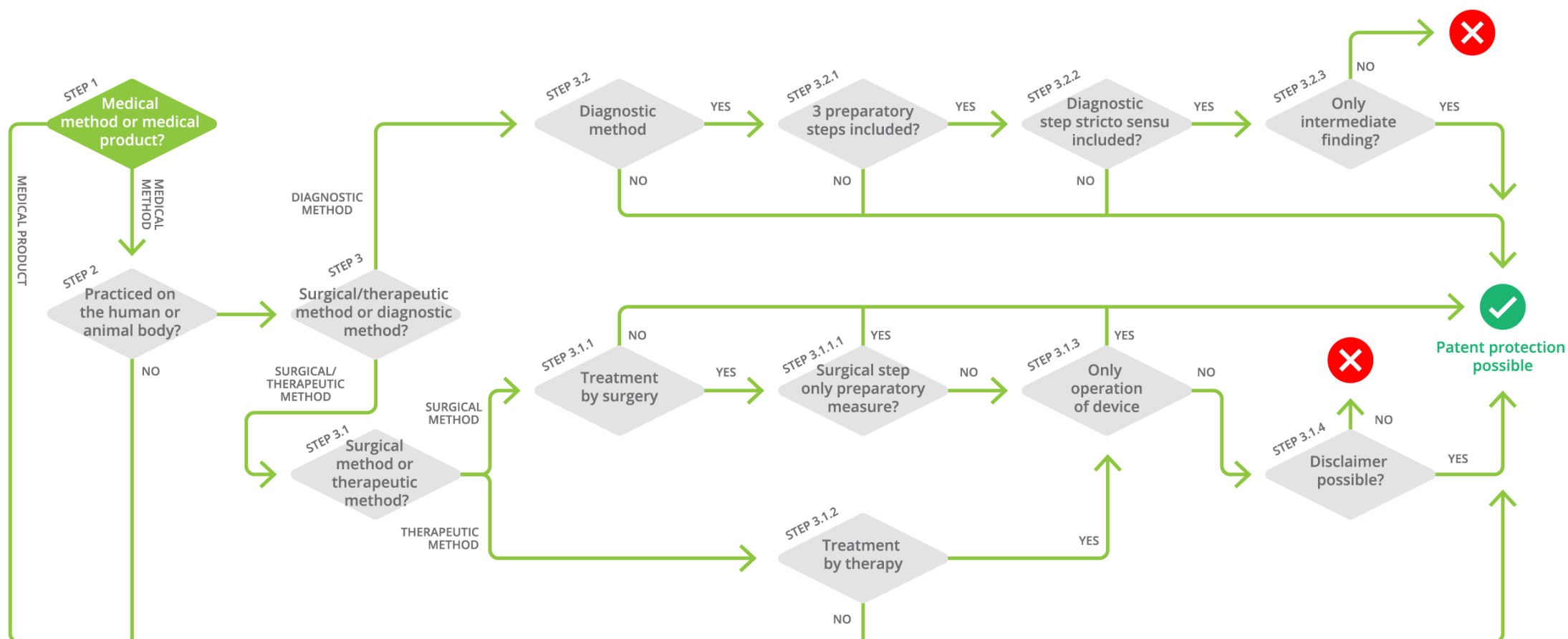
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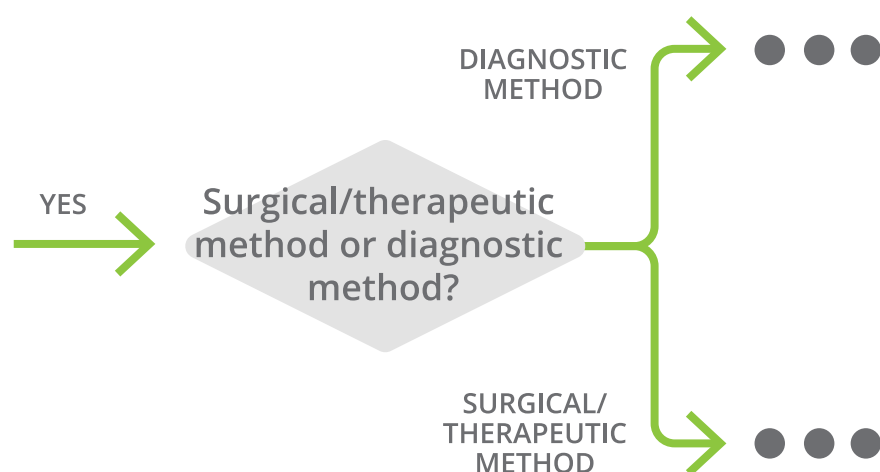
Is my medical invention patentable?

Part 3 – Surgical/therapeutic or diagnostic method?

Overview



Surgical/therapeutic or diagnostic?



- Surgical/therapeutic method

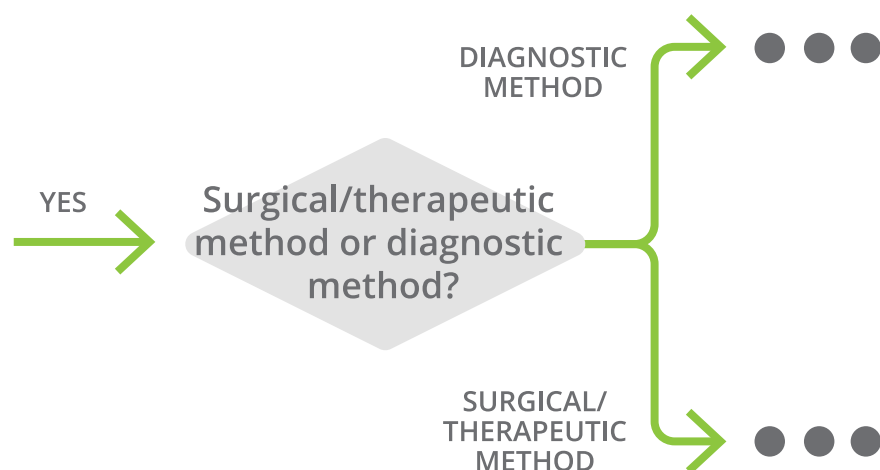
→ **One** surgical or therapeutic **step** suffices¹

- Diagnostic method

→ **Several steps** (including measuring, comparing, finding and diagnosis stricto sensu) required²

¹ G 1/07, Reasons 3.2.5

² G 1/04, Headnote 1 and Reasons 6.2.2



- The **overall teaching** of the invention as given in the application is decisive for establishing what the invention is and whether it is **excluded from patentability**¹.

→ “**Label**” given in the claims is **not relevant**

¹ G 1/07, Reasons 4.3.2;
T 0944/15, Reasons 21.

Case law example: **Measuring kidney values** (T 0141/15)

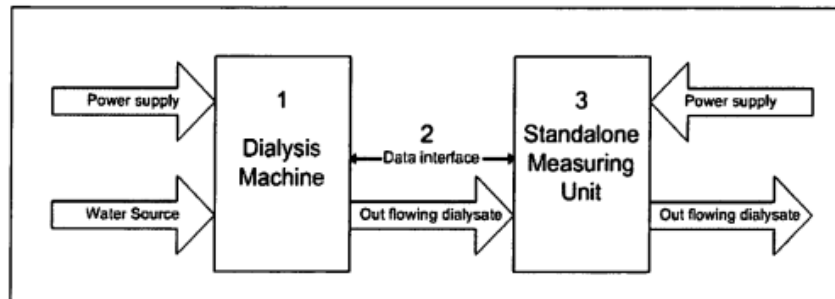


figure 2

Claim 1: *Method for measuring [...] parameters [...] achieved during kidney substitution treatment, wherein the kidney substitution treatment is provided by a machine, [...]*

Claim wording might suggest only related to **measuring**

- **only part of** the steps constituting a **diagnostic method**
- **not excluded** from patentability

BUT:

- Claimed method comprises **first step** of performing **dialysis treatment** and second step of measuring parameters.
 - Dialysis, i.e., removal of toxins from blood, is **therapeutic method** **and** continuous removal of blood, subsequent flowing through a device and its re-delivery is **surgical method** (cf. T 1695/07).
- **Despite** the “**label**” the claim is related to a **therapeutic and surgical method** and **excluded from patent protection**.



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