

"MEDICAL TREATMENT METHOD" PURSUANT TO THE PATENT ACT

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In 1970, in *Tennessee Eastman v. Commissioner of Patents* (1970), 62 C.P.R. 117, the Commissioner of Patents established that a method of medical treatment was not included in the definition of an "invention" as defined by the *Patent Act*, and, consequently, was not patentable. Until recently, this decision had generally been interpreted, by the professionals in the field, as excluding from the definition of the word "invention" any method to treat either an animal or a person. However, in the decision of *Re: Application General Hospital Corporation*, rendered by the Commissioner of Patents in 1996, the Commissioner has brought certain nuances and precision to the definition of a method of medical treatment. In this decision, it was stated that a method of medical treatment is any method which aims at curing a pathological condition. Therefore, any method which would not aim at curing, alleviating, or preventing a disease or restoring health would not be considered by the Patent Office as a medical treatment method in its strict meaning.

The Commissioner added that, in order to determine the nature of a method, one must first decide whether the method aims at treating a natural condition rather than a pathological one. Thus, in this particular case, it was established that pregnancy is a natural biological phenomenon and that therefore a contraceptive method was excluded from the definition of a medical treatment method, inasmuch as contraception aims at treating a natural condition as opposed to a pathological one.

Secondly, the principal use of the method at issue must be determined. In other words, even if the method at issue may be used for therapeutic ends, the principal object of the method must be established before concluding that the method is in fact a method of medical treatment. Thus, in light of this decision, it now seems possible to obtain patent protection for a method of

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treating a person or an animal, if this method does not aim primarily at preventing or curing a pathological condition.

It is worth mentioning that in other countries, including England, where methods of contraception are considered to be patentable, a similar definition was given to methods of medical treatment. For more information on this topic, please contact Zhen Wong from our firm.



