

Decision G2/08 of the Enlarged Board of Appeal of the EPO

„Swiss-type-Claim“ format not longer allowed !

In G 2/08, the Enlarged Board of Appeal of the EPO has held that in cases where a claim is directed to a second or further medical use, i.e. the subject of a claim is rendered novel only by a new therapeutic use, such claim should no longer be written in the so-called "Swiss-type claim" format like >>Use of compound X for the manufacture of a pharmaceutical composition for the treatment of disease Y<<.

Pending applications are not affected by this decision. The relevant date for future applications is their date of filing or, if priority has been claimed, their earliest priority date. Therefore, European patents containing a Swiss-type claim and having a filing date or earliest priority date of January 29th, 2011 or later will not be granted.

In the future, applicants might use the following format of a purpose-related product claim:

"Composition comprising active agent X for use in the treatment of disease Y".

Additionally, the Enlarged Board of Appeal established in this decision directed to claims relating to a second or further medical use, the following head note:

"Such patenting is also not excluded where a dosage regime is the only feature claimed which is not comprised in the state of the art."

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