

# Protecting Medical Treatments of Human in Japan



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# Medical treatment of human is not patentable subject matter in Japan

Ex.

- × Methods of surgery, therapy or diagnosis of humans
- × Methods of contraception or delivery

From JPEG, Japanese Patent Examination Guideline

# Japanese practice is in-between EPO's and USPTO's

		EPO	JPO	USPTO
<b>Medical Treatment of: or</b>	<b>Humans</b>		×*2	○*3
	<b>Animals</b>	×*1	○	
<b>Diagnosis that deals with a body of:</b>	<b>Humans</b>			
	<b>Animals</b>		○	
<b>Diagnosis that deals with samples taken from a body of</b>	<b>Humans</b>			
	<b>Animals</b>		○	

\*1 Art. 53(c), EPC

\*2 “H12(Gyo-Ke)65”, Tokyo High Ct., March 11, 2002

\*3 Damage compensation and injunction are not available against professionals for medical practices. (35 U.S.C. § 287(c))

## Non-patentable surgery is wide and includes:

- (a) Methods for surgical treatment, such as incision, excision, centesis, injection, implant, and cosmetic surgery
- (b) Methods of inserting, moving, maintaining, operating and extracting a medical device (e.g., a catheter or an endoscope) inside the human body (excluding inside the mouth, inside the external nostrils, and inside the external ear canals)
- (c) Preparatory treatment for surgery (e.g., anesthetic treatment for surgery and methods of disinfecting the skin before injection)

# Suggestions: Converting to the following patentable subjects

- (a) A system or device used for controlling the treatment
- (b) A method for operating the system or using device
  
- (c) An artificial tissue
- (d) A method for making the artificial tissue
  
- (e) A methods for treating samples (e.g., blood, urine, skin, hair, cells or tissue) extracted from human body
- (f) A method for gathering data by analyzing the samples

Examples of conversions follow.

# JPEG Ex. 8-1 (Not patentable)

A **method** for **treating** an affected part by using a micro operation robot having receiving means and incising means, comprising the steps of;

operating a remote operation device and transmitting a manipulator signal in order to give medical treatment to the affected part,

receiving the manipulator signal from the remote operation device by the receiving means, and

incising the affected part of a patient by an incising means based on the manipulator signal being received.

# JPEG Ex. 8-2 (Patentable)

A method for **controlling** a micro operation **robot system** including a micro operation robot and a remote operation device, wherein the robot has a receiving means and an incising means, comprising:

transmitting a manipulator signal from the remote operation device,

receiving the manipulator signal from the remote operation device by the receiving means, and

controlling the incising means of the robot with the manipulator signal being received.

# JPEG Ex. 10-1 (Not patentable)

A method for capturing internal images of a celom with an endoscope including an imaging unit, comprising:

changing a direction of a view **by** an **operator** using a rotation indicator, and

rotating the imaging unit whose light axis is tilted to an insertion axis of the endoscope.

This is not patentable because “the operator using the rotation indicator” includes a step requiring action by a medical doctor, so it is regarded as a method of surgery for humans.



# JPEG Ex. 10-2 (Patentable)

A method for controlling an endoscope including an imaging unit, comprising:

arranging the imaging unit so that a light axis of which is tilted to an insertion axis of the endoscope, and

rotating the imaging unit about the insertion axis by receiving an instruction signal to rotate.

This is patentable because “rotating the imaging unit” is not an action of a medical doctor.

## JPEG Ex. 11-1 (Not patentable)

A method for contrast magnetic resonance imaging, comprising:

**imaging** an **examinee** injected with contrast media with a low-resolution real-time mode, and

shifting the mode to a high-resolution imaging mode when signal strength within a desired domain exceeds a predetermined threshold value.

# JPEG Ex. 11-2 (Patentable)

A method for controlling operation of a magnetic resonance imaging device, comprising:

shifting the device to a high resolution imaging mode when signal strength within a desired domain exceeds a predetermined threshold value.

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