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"Edinburgh Patent" appeal withdrawn

Today the so-called "Edinburgh/stem cells" Patent, a heated debate topic for more than a decade, reached a quiet resolution in an appeal before an EPO board of appeal. Fourteen years after the patent was filed, the appellant and patent proprietor, the University of Edinburgh, withdrew the appeal during oral proceedings.

The patent in suit is now valid in the amended form resulting from the opposition procedure held in 2002. At the European level there are no further legal options remaining to contest the patent.

The "Edinburgh Patent" (EP 0695351) relates to an invention in the field of developmental biology. It describes a method of using genetic engineering to isolate stem cells - including embryonic stem cells - from more differentiated cells in a cell culture in order to obtain pure stem cell cultures.

In its original form the patent involved human stem cells, in particular human embryonic stem cells, which led to an intense public controversy. Fourteen parties, amongst them the governments of Germany, Italy and the Netherlands, as well as Greenpeace, had filed oppositions against the patent, holding that the patent contravenes Article 53(a) of the European Patent Convention (EPC) - an article which precludes the patenting of inventions whose exploitation would be contrary to "ordre public" or morality - and does not comply with the requirements of Article 83 EPC, which requires inventors to sufficiently disclose the invention's uses.

In the opposition procedure in 2002 the patent was limited to a method for genetically modifying stem cells, such as human adult hematopoietic stem cells or animal skin stem cells, and their selective propagation. Therefore, the patent no longer concerned embryonic stem cells. This decision was appealed by the patent proprietor.

The question of whether human embryonic stem cells are patentable is currently pending before the EPO's Enlarged Board of Appeal. Therefore, the board of appeal responsible for today's proceedings limited the oral proceedings to the question of sufficiency of disclosure of the invention (Article 83) and did not discuss how the moral and ethical issues of Article 53(a) may apply to the patent.

Further information

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