



European Patent Institute | Bayerstrasse 83 | 80335 Munich | Germany

European Patent Office
Erhardstrasse 27

D-80298 Munich
Germany

FAX: + 49 89 2399 4465

Third Party Observation under Art. 115 EPC

Please transmit urgently to the Opposition Division in view of Oral Proceedings scheduled on 16 January 2013

Munich, January 11, 2013

European Patent Nr. 1 040 185
European patent Application Nr. 98 966 817.3 – 2401
Patentee Brüstle, Oliver, Prof. Dr.

Dear Sir, Dear Madam,

This Third Party Observation under Art. 115 EPC is made in name of the Institute of Professional Representatives before the European Patent Office (epi).

The epi wants to stress that the German BGH decision (X ZR 58/07 of 27 November 2012) cited as D7 with the Patentee's Representative letter of 14 December 2012 seems very important for the field of embryonic stem cell patenting and is arguably applying principles which are different from the current EPO approach.

No other national EPC contracting states court decisions are available that point in another direction than the decision of this German court. This decision from the German court seems to epi to be of sufficient importance to merit the further analysis of the full written decision by the EPO Opposition Division handling the present case.

The epi is of the opinion that decisions of national member states do need to be taken into consideration if patentability grounds pursuant to Article 53(a) and Rule 28(c) EPC are at stake. The BGH decision is potentially important and may be influential on the EPO as to how to interpret the CJEU decision. Thus a decision by the Opposition Division may be premature before issuance of the complete and written decision from the BGH. The epi believes that the EPO should thus await the impact of the BGH proceedings and take time to evaluate it fully.

The epi also encloses its earlier epi Position paper on Patentability of Human Embryonic Stem Cells (hESCs) following CJEU Decision C-34/10 signed by the President of epi.

In conclusion, the epi is in favor of the request of the Patentee's Representative dated 14 December 2012 that the Oral Proceedings scheduled for 16 January 2013 should be postponed so that the full decision of the German BGH can be taken in consideration by the EPO Opposition Division handling the present case.

Respectfully submitted,



Tony Tangena
President of epi

Encl.: epi Position paper on Patentability of Human Embryonic Stem Cells (hESCs) following CJEU Decision C-34/10