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Brüstle v. Greenpeace, European Court of Justice, 18 October 2011

Jochen Buehling (Krieger Mes Graf & v. der Groeben) · Saturday, December 3rd, 2011

This long awaited ECJ decision concerns the interpretation of the term “embryo” in the Biotech Directive (98/44/EC). According to the Court Art. 6 (2c) of the Directive excludes the patentability of use of human embryos for commercial or industrial purposes, and only use for therapeutic or diagnostic purposes which is applied to the embryo for its benefit is patentable. The court leaves it to the national courts to determine in the light of the current technical developments whether and under which conditions stem cells obtained from a human embryo at the blastocyst stage qualify as an embryo in the sense of the Directive. Furthermore, the court held that Art. 6 (2c) of the Directive excludes an invention from patentability if the technical teaching which is the subject matter of the patent application requires prior destruction of human embryos or their use as starting material, even if the use of human embryos is not specifically mentioned in the description of the application.

Click here for the full text of this case. A summary of this case will be posted on http://www.KluwerIPCases.com.

This entry was posted on Saturday, December 3rd, 2011 at 3:33 pm and is filed under Biologics, EPC, Exceptions to patentability, Germany
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