

Kluwer Patent Blog

European Patent Office revoked European patent on neural precursor cells

Thomas Musmann (Rospatt Osten Pross) · Friday, July 19th, 2013

by Miriam Büttner

On [21 January 2013](#) we already reported on the decision of the German Federal Supreme Court (BGH) regarding the validity of German patent no. 197 56 864, the so-called “Brüstle-patent”, which concerns the protection of neural precursor cells, a procedure to cultivate these cells and the usage of these cells in therapies for neural defects of humans and animals.

On 11 April 2013 now an Opposition Division of the European Patent Office (EPO) re-voked Mr. Brüstle’s corresponding European patent no. 1 040 185.

Mr. Brüstle applied for this European patent in December 1997 claiming priority of the German patent mentioned above. The European patent was granted in February 2006. In November 2006 the Geron Corporation filed an opposition request with the EPO based on exceptions to patentability [Article 53a in connection with rule 28c of the European Patent Convention (EPC)], lack of disclosure (Article 100b and 83 EPC) and inadmissible extension (Article 100c and 123 (2) EPC).

At the end of the oral hearing on 11 April 2013 the Opposition Division of the EPO re-voked European patent no. 1 040 185 entirely as it would cover subject-matter not disclosed in the original patent application, which is not allowable under the applicable EPC. Background for this decision was a disclaimer, which Mr. Brüstle added to the relevant patent claims during the examination procedures. According to this disclaimer the invention should not comprise any procedures to destruct human embryos. Such a disclaimer was not subject of the original application. As the disclaimer did not fulfill the requirements set up by the Enlarged Boards of Appeal in its decisions G1/03 from 8 April 2004 and G2/10 from 30 August 2011 the patent had to be revoked on the grounds of added matter.

The decision is not final. It can be appealed to the EPO’s Boards of Appeal. Furthermore, the decision of the EPO does not influence the decision of the German Federal Supreme Court in November 2012 in which the parallel German patent was upheld in an amended form (see above).

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