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MERRY CHRISTMAS! WAS JESUS' BIRTH THE FIRST CASE OF "LUCINA SINE CONCUBITU" (PARTHENOGENESIS) IN HISTORY?

Miquel Montaña (Clifford Chance) · Wednesday, December 24th, 2014

On 18 December 2014, the Court of Justice of the European Union ("CJEU") published a landmark judgment in Case C-364/13 *International Stem Cell Corporation v. Comptroller General of Patents*, in which it gave the following reply to a question referred by the High Court of Justice, Chancery Division (Patents Court), of England and Wales regarding the meaning of "human embryos" in article 6(2) (c) of Directive 98/44/EC:

"Article 6(2)(c) of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions must be interpreted as meaning that an unfertilised human ovum whose division and further development have been stimulated by parthenogenesis does not constitute a 'human embryo', within the meaning of that provision, if, in the light of current scientific knowledge, it does not, in itself, have the inherent capacity of developing into a human being, this being a matter for the national court to determine. "

Fortunately, the CJEU, following the Opinion of 17 July 2014 from Advocate General Pedro Cruz Villalón (please see the blog published on 24 July 2014 commenting on this), has decided to change direction and send *Brüstle* (Case C-34/10) to the warehouse where the CJEU stores its ugliest monsters. The readers may be familiar with the book entitled *Les Grands Arrêts de la Cour de Justice de l'Union Européenne*. If, one day, somebody prepares a collection of *Les Grands Gaffes de la Cour de Justice de l'Union Européenne*, *Brüstle* will fight fiercely with *Daiichi* (Case C-414/11) to top the list.

But *Brüstle* is now old history. The present and, hopefully, the future, is *International Stem Cell Corporation v. Comptroller General of Patents*. The reply provided by the CJEU has sparked the interest within lawyers, as to what "parthenogenesis" means. It has been known for centuries that, in some animals, females are able to produce eggs capable of development without first copulating. For example, in 1750, Sir John Hill, under the pseudonym of Abraham Johnson, sent a report to the British Royal Society seeking to explain the phenomenon of "pregnancy without intercourse". To test his hypothesis, he proposed that a royal edict should ban copulation for one year. Fortunately, this idea did not reach former Commissioner Michel Barnier. He could have approved a European Union ("EU") Regulation threatening the Brits with a similar measure, should they organise a referendum to decide whether or not they should leave

the EU, which would put at risk one of his preferred toys, that is, the European patent with unitary effect.

The fact is that the “*lucina sine concubitu*” was re-labelled “parthenogenesis” by Richard Owen in 1849, who defined it as “procreation without the immediate influence of a male”.

The proximity of Christmas begs the question as to whether Jesus’ birth could be considered the first reported case of “*lucina sine concubitu*” (i.e. parthenogenesis) in history. I am not sure. According to an article entitled “Parthenogenesis” published in 1978 by Ursula Mittwoch, professor at UCL at the time, in the *Journal of Medical Genetics*, the most famous reference to a virgin birth is actually based on a mistranslation from the Hebrew. She explained that Isaiah wrote at 7:14, that:

“Behold, a virgin shall conceive, and bear a son, and shall call his name Immanuel.”

According to Professor Mittwoch, “almah” does not mean “virgin” but “young woman”. So there is a possibility that the big celebration to be held tomorrow may, after all, have its origins not in a phenomenon of “*lucina sine concubitu*”, but in the type of “*lucina cum concubitu*” that has ensured the continuance of mankind throughout history. And even if Prof. Mittwoch was wrong with her translation point, according to Western tradition, the first example of parthenogenesis would have been *Adam and Eve*, in any event.

All in all, regardless of whether the “*lucina*” was “*cum*” or “*sine*” “*concubitu*”, it is a good thing to celebrate with family and friends. So may I finish this blog wishing the readers a very Merry Christmas and lots of good luck for them and their families for the New Year!

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