Mike Adcock, Durham University. '*The End of Human Embryonic Stem Cell Patents?*'

Abstract

The opinion of Advocate General Bot in *Brüstle v Greenpeace eV* (Case C-34/10) issued in March 2011[1] and followed by the CJEU in October of that year, has confirmed the broad interpretation of Article 6(c) of Directive 98/44. Article 6(c) must now be read to mean that an invention must be regarded as unpatentable, even if the claims of the patent do not concern the use of human embryos, where the implementation of the invention requires the destruction of human embryos. The decision seems to go beyond the position taken by the EPO in cases such as WARF[2] and the UKIPO Practise Notice guidelines on the patentability of human embryonic stem cells published in 2009[3].

This paper will look at some of the key objections that have been put forward in criticism of the CJEU decision and conclude that the CJEU's decision is the correct one.

[1] http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-34/10&td=ALL
[2] EBA (Decision G2/06) November 2008
[3] Inventions involving human embryonic stem cells
http://www.ipo.gov.uk/pro-types/pro-patent/p-law/p-pn/p-pn-stemcells-20090203.htm