

European Patent Office grants patent on the use of human egg cells

Testbiotech sees clash with ethical boundaries
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In July 2009 the European Patent Office granted the Swiss company Merck Serono a patent on the ripening process of human egg cells including their use in in vitro fertilisation treatment. Once the patent was granted Merck Serono not only had a monopoly on the egg ripening process but also exclusive rights on the usage of the human eggs cells. Testbiotech believes that this new patent raises questions on the ethical boundaries of patent law.

“The European patent laws do indeed prohibit the patenting of human egg cells but this legal prohibition can be circumvented by having patents on the usage of egg cells,” says Dr Christoph Then, executive director of Testbiotech. “There is an obvious loophole in the law here.”

The initial application for the patent was an attempt to patent the egg cells themselves. It was rejected by the European Patent Office. In fact the EU patent directive (98/44 EC) in its recitals excludes any patents on human germ cells (sperm cells and egg cells). Thus the human body in all the phases of its genesis and development including germ cells is excluded from patentability . With the EP 1794287 patent there is however a danger of egg cells (also called oocytes) used for in vitro fertilisation being monopolised. Claim 8 of the above-mentioned patent is worded as follows: “ A method of in vitro fertilization comprising producing a mature oocyte ... and treating the oocyte with sperm”.

After finding this patent during her research Dr Ruth Tippe from the No Patents on Life initiative and current member of the Testbiotech board warns that “Human egg cells must not be used for business purposes,” and that “the present wording of the patent laws does not provide adequate protection against the commercialisation of human life”. She says that “if the patent office simply kept to the wording of the patent laws then it would even be possible to patent human organs”. Just last week the German Federal Court turned its attention to the question of patenting human embryonic stem cells. It declared its intention of submitting various questions to the European Court of Justice for clarification because the wording of the EU patent directive (98/44 EC) was not sufficiently clear. Dr Christoph Then acted as an patent expert on behalf to the environmental organisation Greenpeace Germany in this particular case.

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