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## OPEN LETTER

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### Ethical boundaries in patent law

Munich, 13. 4. 2010

Dear Sir or Madam,

Testbiotech made it publicly known in November 2009 that the patent EP1794287 had been granted to Merck Serono, and it has now filed an opposition at the European Patent Office in Munich. Further research by Testbiotech found that Merck Serono had several other similar patents. These patents were partially granted in Europe and also registered in other parts of the world. See overview in the table attached

The content of these patents, especially the wording of the claims, is not acceptable from an ethical point of view. Such patents are likely to foster commercialisation of the human body. Further, we found a strong tendency within the patent applications as filed via Applied Research Systems ARS Holding to use claims that also cover methods of medical treatment. This endangers a doctor's freedom to choose the most appropriate therapy for each patent. Therefore, European patent law does not allow these kinds of patents.

Testbiotech is committed to clarifying the boundaries in patent laws. Our group of experts hopes that this recent case will help to avoid further commercialisation of the human body. We see this case as an opportunity for Merck Serono to clarify its patent strategy and to abandon those patents which violate basic ethical boundaries. We would be more than happy to

**TEST**  
**BIOTECH**

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enter into direct discussions with you on this matter.

With kind regards,



Dr. Christoph Then  
Testbiotech e.V.

*Selected patents Merck-Serono (via Applied Research Systems ARS Holding, Curacao)*

Publication number (WO and EP)	claims as filed	legal status in Europe	other regions where the patents are registered (not complete)	
			applied	granted
WO9823748 EP 941329	human organs/ cells	granted in Europe valid	BR, CN, HK, IL, MX, SG, ZA	AU, CA, EA, JP, KR, NO, UA, US
WO0107021 EP 1196153	human sperm cells	granted in Europe	CA, JP, IL, US	AU, IT
WO 2004006916 EP1531813	human sperm cells	withdrawn in Europe	CA, IL, JP, NO, US	AU
WO2005054449 EP1697504	human embryos human oocytes	in examination Europe (claims: process for producing human oocytes)	AU, CA, IL, JP, NO, US	
WO2006039604 EP 1794286	human oocytes process for producing human embryos	withdrawn	AU, CA, IL, JP, NO, US	
WO2006039592 EP1794287	human oocytes	granted, under opposition from Testbiotech (claims: process for producing human oocytes)	CA, JP, NO	AU, IT

*AU: Australia, BR: Brasil, CA: Canada, CN: China, EA: Eurasian Patent, HK: Hongkong, IL: Israel, IT: Italy, JP: Japan, KR: Korean Republic, MX: Mexico, NO: Norway, SG: Singapour , UA: Ukraine, US: USA, ZA: South Africa*