

The Rhineland Biopatent Gazette

brought to you by Michalski Huettermann & Partner Patent Attorneys

Issue 5/2014

Duesseldorf/Munich, 22 December 2014 The times they are a'changing – particularly in the Biopatent discipline. Biopatent professionals live in a quickly developing world, which is sometimes hard to keep pace with. Michalski · Huettermann & Partner Patent Attorneys have decided to produce relief to this situation, and are proud to present a new information service related to Patent issues in Biotechnology. This newsletter issues on an irregular basis in order to provide information with respect to actual events, as well as in-depth-analyses of long-term developments. Patent Attorneys from our firm explain the meaning of recent developments and decisions affecting the Biopatent community, and provide expert insight into what's going on behind the scenes. In this issue, MH associate Dr. Torsten Exner will report on the recent parthenote decision issued by the CJEU, while we will further announce the date of the 8th Rhineland Biopatent Forum, which will take place may 21, 2015.



Parthenotes cleared as no “Human Embryos”

CJEU follows Advocate General

On 18 December 2014 the CJEU gave its judgement in Case C-364/13, (International Stem Cell Corporation (ISCC) v Comptroller General of Patents). Its decision clarifies that human embryonic stem cells are patentable if they are obtained from an ovum that is not inherently capable of developing into a human being. The decision can be found [here](#).

The court held: “Art. 6(2)(c) of Directive 98/44 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, that ovum does not, in itself, have the inherent capacity of developing into a human being.”

The CJEU has thereby adopted the opinion of Advocate General Cruz Villalón, provided on 17 July 2014 (we reported in our issue 2/2014), and thus adjusted its previous statement given in the earlier case [C-34/10](#) (the so-called “Brüstle” decision), where the CJEU was still of the opinion that Art 6(2)(c) of the Biopatent Directive must be interpreted as meaning that any non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis constitute a ‘human embryo’.

In C-364/13, the CJEU had to decide on a referral from the Patents Court (High Court of Justice) of England and Wales. Judge Carr at the Patents Court had to deal with

8th Rhineland Biopatent Forum is set for May

21, 2015

Save the date !

The 8th Rhineland Biopatent forum has now been scheduled for May 21, 2015.

We have again gathered an excellent panel of speakers, including Paul A. Calvo (Sterne, Kessler, Goldstein & Fox), Dieter Wächter (European and Swiss Patent Attorney and former Head of Special Tasks at F. Hoffmann-La Roche Ltd), Claudia Hallebach, (Head of R&D Legal Affairs and Intellectual Property, KWS SAAT AG), Sander Arendsen (DSM Expert Center Intellectual Property), and Randall A. Rader, (former Chief Judge of the CAFC).

The topics will include a review of antibody patent jurisdiction in the US, a personal retrospective to 25 years of antibody protection in Europe, criticism on the new EU Regulation on Biodiversity and the Nagoya protocol, IP strategies in the biobased economy, and a critical review on recent decisions by the CAFC and the Supreme Court in the last three years.

Further, MH partners Dr. Hübel and Dr. Storz will speak about actual issues of Biotech IP.

We believe we could assemble an interesting and attractive programme, and would love to welcome you at this event.

+ from our firm +

**Online-survey on the
UPC – please take part,
it takes only 3 minutes !**

The Unitary Patent and the Unitary Patent Court will come. Forecasts estimate that the system will be plugged in early 2016. Seldomly has a patent reform been so comprehensive, affecting a market of such size so fundamentally.

At the same time, the knowledge about the upcoming system, its advantages and potential risks, is still unevenly distributed among IP owners.

When speaking to potential users about their attitude towards the upcoming system, it appears that opinions and positions rely, largely, on hearsay and prejudices. Further, it appears that opinions and attitudes differ, significantly, between SMEs and large corporations, Europeans and Americans, and companies from different technical disciplines, like pharma and engineering.

The author has thus decided to develop an online survey, to reveal these attitudes and

the UKIPO's rejection of two patent applications by ISCC, claiming methods of producing and isolating pluripotent human embryonic stem cell lines from parthenogenetically activated oocytes (see also our issue 2/2013). Judge Carr's view that the process used by ISCC should not be excluded from patentability as a 'human embryo', has now been confirmed.

In its decision the CJEU clarifies that in *Brüstle* it had been under the impression that human parthenotes had the capacity to develop into a human being, in view of the written observations presented at the time. However, due to the effect of the technique used to obtain a parthenote, this was apparently not the case. The facts were, however, for the referring court to determine.

The Rhineland Biopatent Forum has become a true tradition in the last years, and has built a reputation as a networking event for the Biopatent community because of its informal character, combined with excellent speakers and contributions.

Like always, participation is free of charge.

Please save the date ! We will circulate formal invitations at about the end of February 2015.

differences, and to find out about future usage behavior by IP owners.

The survey can be accessed under this [URL](#) or by scanning the following QR code:



It is absolutely anonymous, smartphone-enabled, and completion will only take three minutes.

Michalski · Huettermann & Partner are getting personal... Today: Stefan Michalski

Stefan Michalski was born in 1962 in Bremen. For two years he trained as an officer in the German Army. He studied Chemistry and Biochemistry in Hamburg, Göttingen, Paris and Berkeley, California, obtaining his Diploma in 1989 and his Doctorate in 1992.

Stefan Michalski is co-author of a series of scientific publications in the field of organic, high pressure and liquid crystal chemistry. He took his Patent Bar examination in 1995 and is admitted to practice as European Patent Attorney at the European Patent Office (EPO) and European Trademark Attorney at the European Community Trademark Office (OHIM).

Main practice areas in the field of Intellectual Property Law include Patent Prosecution; Patent Infringement; Trademark Prosecution; Trademark Infringement; Design; Licensing; Chemistry; Pharmaceutical Science, Material Science and Biochemistry. Stefan speaks German and English.



M I C H A L S K I · H Ü T T E R M A N N & P A R T N E R

Imprint: Michalski · Hüttermann & Partner Patent Attorneys, c/o: Dr. Ulrich Storz - email: st@mhpatent.de

Hafenspitze - Speditionstrasse 21 - 40221 Düsseldorf - Tel.: +49 (0)211 159 249 0 - Fax: +49 (0)211 159 249 20
Nymphenburger Strasse 4 - 80335 München - Tel.: +49 (0)89 208 027 274 - Fax: +49 (0)89 208 027 275

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