

## VIII. Conclusion

This research demonstrated some possible ways to approach the hESC-related inventions. However, to solve the polarization and to reach ‘the middle-of-the-road’ position is not a straightforward task. Because current provisions dealing with the moral concerns for the patent eligibility of these inventions in Europe are not very elucidating. Moreover, those holding the decision making mechanism do not make the issue crystal clear.

As it is seen in the CJEU’s *Brüstle* judgment, the avoidance of discussion of ‘medical and ethical nature’ proved again that judges do not interfere with the job of legislator by following a black letter focused interpretation not tailored to the science at issue. The result is surprisingly beyond what is expected: hESC-related inventions involving immoral precedent activities, in other terms, “bearing the fruit from the poisonous tree” will not get patent protection.<sup>237</sup> This decision creates worries that the research in this field would be hindered and Europe will not be a suitable environment for this purpose.<sup>238</sup> The CJEU’s judgment was not successful to clarify the legal questions related to the stem cell technology. This fact is also proved by the new referral of the UK Court to the CJEU.<sup>239</sup> Despite its local character, the BGH decision does not follow an absolute prohibitive attitude and increases the radius of action in the human stem cell technology.<sup>240</sup> The value of the current legal development could only be assessed in light of beneficial effects of this scientific endeavour.<sup>241</sup> Therefore, it is vital to make pithy regulations related to this research field to avoid any uncontrolled judiciary intervention. Additionally, States must determine consistent attitudes towards the support of research involving stem cell technology as currently

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237 Martin Grund&Stacey J. Farmer, *Brüstle v. Greenpeace: The End of Road for Human Embryonic Stem Cell Patents*, 12 BIO-SCIENCE L. REV. 44, (2011.).

238 *Dismay, Confusion Greet Human Stem Cell Patent Ban*, 334 SCIENCE (2011).

239 See *supra* Part E.2.

240 See *supra* Part E.1.

241 *Stem Cell Treatment Helps Heal Stroke Victims*, THE TELEGRAPH, June 15, 2012 available at [www.telegraph.co.uk/archive/2012-6-15.html](http://www.telegraph.co.uk/archive/2012-6-15.html) (last visited Sep. 2, 2012).

outlined in the Horizon 2020 program, which is on the agenda of the EU.<sup>242</sup>

To conclude, patent law should preserve its incentivizing role of seminal technology, especially, considering the continuous improvement in the field.<sup>243</sup> Therefore the boundaries of exclusionary provisions of patent law based on morality concerns should be determined clearly and be interpreted narrowly. In this debate not losing the momentum related to hESC-related inventions, other legal instruments regulating their commercialisation, effects to the environment and use in pharmaceuticals should be seen as the kernel of the solution.

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242 *Renewed Vigour*, 486 NATURE 293 (2012.).

243 *See supra* Part II.B.3.

