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# **Human Embryonic Stem Cell Patent and Protection of Embryos ——Controversies Surrounding Directive 98/44/EC**

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Abstract

Many experts believe that human embryonic stem cells may lead to medical revolution and treat a lot of hitherto incurable diseases. Since embryos may be destroyed in this process, the controversies over the legal and ethical status of human embryos are extended to, weather inventions involving human embryonic stem cells are patentable. Article 53 (a) EPC excludes the patentability of inventions the publication or exploitation of which would be contrary to “ordre public” or morality. Directive 98/44/EC, integrated into the EPC implementing regulations, illustrates the following examples as not patentable: the processes for cloning human beings; processes for modifying the germ line genetic identity of human beings and uses of human embryos for industrial or commercial purposes. The Examining and Opposition Divisions of EPO exclude from patentability all inventions involving human embryonic stem cells. Since the principal patentability of biotechnological inventions is enshrined in Article 27(2) TRIPS, this essay starts from the strict interpretation of morality clause and its illustrating examples, and critically evaluates the controversies including the EGE opinion No. 16.

**Keywords:** human embryonic stem cell, morality, Directive 98/44/EC, patentability, cloning