

Rule 23d(c) EPC does not allow European patents for "uses of human embryos for industrial or commercial purposes."

Claim 1 of the application underlying T 1374/04 reads as follows:

"A cell culture comprising primate embryonic stem cells which (i) are capable of proliferation *in vitro* culture for over one year, (ii) maintain a karyotype in which all chromosomes normally characteristic of the primate species are present and are not noticeably altered through culture for over one year, (iii) maintain the potential to differentiate to derivatives of endoderm, mesoderm, and ectoderm tissues throughout the culture, and (iv) are prevented from differentiating when cultured on a fibroblast feeder layer."

The following questions were referred to the Enlarged Board:

1. Does Rule 23d(c) EPC apply to an application filed before the entry into force of the Rule?
2. If the answer to question 1 is yes, does Rule 23d(c) EPC forbid the patenting of claims directed to products (here: human embryonic stem cell cultures) which - as described in the application at the filing date could be prepared exclusively by a method which necessarily involves the destruction of the human embryos from which the said products are derived, if the said method is not part of the claims?
3. If the answer to question 1 or 2 is no, does Article 53(a) EPC forbid patenting of such claims?
4. In the context of questions 2 and 3, is it of relevance that after the filing date the same products could be obtained without having to recur to a method necessarily involving the destruction of human embryos (here: e.g. derivation from available human embryonic cell lines)?