

**Meaning of the term "human embryos" (C-34/10, pending)**

Questions relating to the meaning of the term "human embryos" recited in Directive 98/44/EC (the "biotech" Directive") have been referred to the Court of Justice of the European Union (CJEU); *cf.* C-34/10 lodged on 21 January 2010.

These questions are:

*"1. What is meant by the term 'human embryos' in Article 6(2)(c) of Directive 98/44/EC?*

*a) Does it include all stages of the development of human life, beginning with the fertilisation of the ovum, or must further requirements, such as the attainment of a certain stage of development, be satisfied?*

*b) Are the following organisms also included:*

*1. unfertilised human ova into which a cell nucleus from a mature human cell has been transplanted;*

*2. unfertilised human ova whose division and further development have been stimulated by parthenogenesis?*

*c) Are stem cells obtained from human embryos at the blastocyst stage also included?*

*2. What is meant by the expression 'uses of human embryos for industrial or commercial purposes'? Does it include any commercial exploitation within the meaning of Article 6(1) of the Directive, especially use for the purposes of scientific research?*

*3. Is technical teaching to be considered unpatentable pursuant to Article 6(2)(c) of the Directive even if the use of human embryos does not form part of the technical teaching claimed with the patent, but is a necessary precondition for the application of that teaching,*

*a) because the patent concerns a product whose production necessitates the prior destruction of human embryos,*

*b) or because the patent concerns a process for which such a product is needed as base material?"*

It is worth noting that, in November 2008, the Enlarged Board of Appeal of the European Patent Office answered negatively to an issue similar to question 3. above (G 2/06).