

# EUROPEAN PARLIAMENT

23 March 2000

B5-0288/2000}  
B5-0291/2000}  
B5-0293/2000}  
B5-0299/2000}  
B5-0301/2000}RC1

## JOINT MOTION FOR A RESOLUTION

pursuant to Rule 37(4) of the Rules of Procedure

by the following Members:

Liese and Fiori, on behalf of the PPE-DE Group  
Gebhardt and Medina Ortega, on behalf of the PSE Group  
Wallis and De Clercq, on behalf of the ELDR Group  
Breyer, Hautala, Lannoye and Echerer, on behalf of the Verts/ALE Group  
Uca and Krivine, on behalf of the GUE/NGL Group  
Sandbæk, Blokland and Mathieu, on behalf of the EDD Group

replacing motions by :

- the PSE Group (B5-0288/2000)
- the Verts/ALE Group (B5-0291/2000)
- the GUE/NGL Group (B5-0293/2000)
- TDI Group (B5-0295/2000)
- UEN Group (B5-0296/2000)
- the ELDR Group (B5-0299/2000)
- the PPE-DE Group (B5-0301/2000)

on the decision by the Patent Office with regard to patent No EP 695 351 granted on 8 December 1999.

*The European Parliament,*

- having regard to patent EP 695 351 of 8 December 1999 relating to the genetic manipulation of human cells and embryos, 'mistakenly' granted by the European Patent Office (EPO),

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PE 289.398}  
PE 289.401}  
PE 289.403}  
PE 289.409}  
PE 289.411}RC1  
Or. en

- having regard to European Parliament and Council Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions,
  - having regard to its resolutions of 16 March 1989 on the ethical and legal problems of genetic engineering<sup>1</sup> and artificial insemination 'in vivo' and 'in vitro'<sup>2</sup> and of 12 March 1997 and 14 January 1998 on the cloning of human beings<sup>3</sup>,
  - having regard to the 1973 European Patent Convention (EPC), in particular Article 53a thereof which precludes patenting of inventions contrary to “ordre public” or morality,
- A. whereas the granting of patent EP 695 351 has raised great public concern,
- B. whereas the said patent embraces within its description in paragraph 0011 “all animal cells, especially of mammalian species, including human cells” and Claim 48 of the patent is for the use of such “animal cells” to produce an embryo enabling germline transmission of the selectable marker (for example a herpes virus or an antibiotic resistance gene),
- C. whereas the EPO has sought to excuse the granting of this patent on the grounds of a simple error in the wording and interpretation of Claim 48 but has seriously misled the public by not revealing that Description 0011 expressly applies the claimed invention to human cells and that it has clearly granted a patent for the production and possible cloning of genetically modified human embryos,
- D. whereas the granting of the patent is incompatible with public morality and in breach of the European and national patent legislation in force in the European Union,
- E. whereas Directive 98/44/EC prohibits the patenting of the human body at any stage in its formation and development and of its elements, including the sequence or partial sequence of a gene,
- F. whereas there is no provision within the EPC or the operating rules of the EPO to amend or revoke a patent on its own initiative; whereas there must be effective legal safeguards to allow patents to be revoked ex officio in the case of manifest mistakes in the application of the Convention, without the need for recourse to legal challenge by third parties,
- G. whereas the possibilities of opposing the effects of the patent, within the nine-month deadline, have not yet been exhausted,
- H. whereas the absence of a Community patent is a shortcoming in patent legislation,
- I. whereas the public must be fully informed and the Union must play a leading role in promoting public debate; whereas the EPO is an unaccountable body acting as both judge

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<sup>1</sup> OJ C 96, 17.4.1989, p. 165.

<sup>2</sup> OJ C 96, 17.4.1989, p. 171.

<sup>3</sup> Minutes of those sittings, Part II.

and jury which should not have the power to make public policy through its actions; whereas there needs to be a review of the powers and procedures of the EPO,

1. Is deeply shocked at the granting of a patent to the University of Edinburgh, which includes a technique for the genetic modification of the germ line of human embryos and of the embryos themselves, a patent on isolation, selection, and propagation of animal transgenic stem cells, which could be used for the cloning of human beings;
2. Undertakes to file without delay an objection to patent number EP 695 351 if legally possible, and calls on the other institutions of the European Union and Member State governments to do likewise;
3. Notes the regret expressed by the EPO and expects the procedure opposing the granting of the patent to be processed speedily so that the patent can be revoked as soon as possible;
4. Calls on the Commission to establish clearly and categorically that the directive on the legal protection of biotechnological inventions rules out the patenting of human beings and parts of the human body, and manipulation of the genome and the refusal of cloning of human beings in all phases of its development;
5. Calls on the Commission to take all necessary measures to remove any ambiguity in European patent legislation and to close any loophole that exists as soon as possible and asks the European Group on Ethics in Sciences and New Technologies (GEE) to carry out a study on whether Directive 98/44/EC affords adequate protection of human dignity;
6. Demands a review of the operations of the EPO to ensure that it becomes publicly accountable in the exercise of its functions, and to amend its operating rules to provide for it revoking a patent on its own initiative;
7. Calls on the Commission to bring forward proposals to ensure the participation of Parliament in respect of ethical matters relating to biotechnology; considers that the Commission should present an annual report to Parliament on these issues and on the activities of the GEE;
8. Calls on the EPO to ensure that all existing patents and patent applications in Europe do not violate the principle of non-patentability of humans, their genes or cells and human embryos;
9. Calls on the European Union and the Member States to adopt the measures required to ensure that the human genetic code is freely available for research throughout the world;
10. Instructs its President to forward this resolution to the Council, the Commission, the European Patent Office and the governments of the Member States.