

Description for general public

Contemporary medicine owes much to biotechnology. Thanks to the development of biotechnology it is possible to diagnose illnesses before their symptoms appear, to treat previously incurable diseases as well as to develop therapies and medicines adapted to peculiarity of a given organism.

In order to create such inventions it is necessary to conduct research on the functioning of a human organism – on the construction and activities of its particular elements. It is impossible to conduct such research without availability of elements of human body, such as blood, body fluids, cells. Results of such research works are often patented. A patentee has a monopoly over his invention, and therefore he may forbid any other person to use the invention in their professional or commercial activity. What is important, patents may currently be granted in respect to many solutions that earlier remained outside of the scope of patent protection. Among others, it is possible to gain exclusivity of using elements of human body, e.g. fragments of human DNA, cells or tissues, as well as lifesaving medicines.

The aim of our project is to find an answer to a question, whether patent protection of inventions concerning human body does not infringe fundamental rights. May grant of a patent infringe one's dignity? Will such patent not result in limiting human rights to decide on one's own body, on ways of using it, and in particular of using its unique genetic information? Should granting a patent on such invention depend on the consent of the person, whose biological material was used in the invention? Should the patented biological material not be available for researchers for the sake of subsequent research works? A question arises whether it is not an infringement of right to protect one's life or health, when availability of medicines depends on decision of a patentee?

These and other questions are invoked when one becomes aware how many controversies occur at the point of contact of patent law and fundamental rights, especially in the area of patents for inventions concerning the human body.

In the light of the indicated doubts it is – first of all - necessary to determine whether patent law may truly influence the fundamental rights, limit the scope of their protection, and if so – whether such influence shall be accepted, as justified by protection of other values or rights, or – whether such limitations shall be excluded. It is also reasoned to consider whether and how the fundamental rights of various persons and groups should be balanced with both rights of a patentee and interests of the whole society.

Whereas particular issues, mentioned above, are considered in foreign literature, it is difficult to find such a complex perspective as proposed in the our project. Another innovative feature of the project is setting of countries chosen to conduct comparative studies. Additionally, the indicated subject matter is actually not present in the Polish literature.

Within the research works we foresee an analysis of legal provisions in domestic, international and European Union law, case law of courts and patent offices as well as mainly foreign doctrine. It will allow us to identify legal solutions established in several chosen countries - Poland, Germany, United Kingdom, Italy and France - in order to compare them and present conclusions.

Results of the work will be realised in a publication written in English, containing conclusions and postulates, directed to the Polish, European Union and international legislators.