did not mention claims, but rather referred to "invention" in the context of its exploitation. What had to be looked at was not just the explicit wording of the claims but the technical teaching of the application as a whole as to how the invention is to be performed. The Enlarged Board thus answered the second point referred as follows: R. 28(c) EPC forbids the patenting of claims directed to products which – as described in the application – at the filing date could be prepared exclusively by a method which necessarily involved the destruction of the human embryos from which the said products are derived, even if the said method is not part of the claims.

In **T 522/04**, the contested claim was directed to a method of proliferating *in vitro* a clonal population of neural crest stem cells of mammalian origin. This clearly included cells of human origin. Since the only teaching of how to prepare human neural crest stem cell cultures was the use (involving their destruction) of human embryos, the board concluded that at the filing date human neural crest stem cells could be prepared exclusively by a method which necessarily involved the destruction of human embryos – with the inescapable result that the invention fell under the prohibition of Art. 53(a) EPC combined with R. 28(c) EPC.

In **T 2221/10** claims 1 and 2 of the appellant's sole request referred to methods of maintaining human embryonic stem cells (hES cells) in culture in an undifferentiated state, while claim 5 referred to a cell culture comprising hES cells. The appellant argued that methods using commercially or otherwise publicly available hES cell lines were not excluded from patentability because no de novo destruction of human embryos was necessary to perform them.

The board disagreed. It referred to **G 2/06** and noted that, according to that decision, all steps preceding the claimed use of hES cells which are a necessary precondition for carrying out the claimed invention have to be considered. In this respect the Enlarged Board of Appeal had neither made a distinction between steps which have been carried out by the inventor or by any other person, nor between steps which took place in direct preparation of the experiments leading to an invention and steps having taken place at a point in time further remote from those experiments. The board thus decided that inventions which make use of hES cells obtained by de novo destruction of human embryos or of publicly available hES cell lines which were initially derived by a process resulting in the destruction of the human embryos are excluded from patentability under the provisions of Art. 53(a) EPC in combination with R. 28(c) EPC. It noted that its decision was in line with ECJ judgment C-34/10.

In **T 1441/13** claim 1 of the main request was directed to a method for obtaining polypeptide-secreting cells. The method required the use of a culture of primate pluripotent stem cells (pPS) which, according to the description in the application, included human embryonic stem (hES) cells. The board considered that at the relevant date of the patent in suit, the known and practised method for achieving cultures of hES cells, i.e. the starting material of the method of claim 1, included preceding steps that involved the destruction of human embryos. Thus, the main request was not allowable under Art. 53(a) EPC and R. 28(c) EPC.