

Trial decision

Correction No. 2016-390147

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The case of trial for correction of Japanese Patent No. 5766115 has resulted in the following trial decision:

Conclusion

The correction of the Description and the scope of claims of Japanese Patent No. 5766115 shall be approved as the Corrected Description and the Corrected scope of claims attached to the written demand for trial of the case.

Reason

No. 1 History of the procedures

Patent No. 5766115 was originally filed on June 23, 2009 as an International Patent Application (priority claim under the Paris Convention: June 23, 2008 (FR)), the establishment of patent right regarding the invention according to Claims 1 to 7 was registered on June 26, 2015, and the trial for correction was requested on November 7, 2016.

No. 2 Object of the demand and details of the correction

The object of the demand of the case is to request corrections of the Description and the scope of claims of Japanese Patent No. 5766115 as the Corrected Description and the Corrected scope of claims attached to the written demand for trial of the case, and the details of the correction are the following Corrections A and B.

1. Correction A

Correction A is a correction of the description of "multipotent adult stem cells from human adipose tissue (hMADS cells)" in Claim 1 of the scope of claims to read "human multipotent adipose-derived stem cells (hMADS cells)" (similarly correcting Claims 2 to 7 which are dependent on Claim 1).

2. Correction B

Correction B is a correction of the descriptions of "multipotent adult stem cells from human adipose tissue (hMADS cells)," "multipotent adult stem cells arising from human adipose tissue (hMADS cells)," and "multipotent adult stem cells from human adipose tissue (hMADS cells)" in paragraphs [0013], [0025], and [0053] of the Description respectively to read "human multipotent adipose-derived stem cells (hMADS cells)."

No. 3 Judgment by the body

(1) Object of the correction

In the Description of the case, regarding the term "hMADS cells", the descriptions of "human multipotent adipose-derived stem cells" and "multipotent adult stem cells from human adipose tissue" are mixed, and the meaning of term "hMADS cells" is unclear.

In paragraph [0055] of the Description of the case, standard nomenclature of abbreviations is listed, and "Abbreviations: hMADS cells ("human multipotent adipose-derived stem cells")" is described. In paragraph [0010], "mesenchymatous stem cells (human multipotent adipose-derived stem cells, or hMADS cells)" are described. It is acknowledged that these descriptions indicate that "hMADS cells" mean "human multipotent adipose-derived stem cells."

Further, in the Examples, as hMADS cells, hMADS-2 line established from

adipose tissue from the pubic area of "a donor aged 5" was used ([0056]), so that it is acknowledged that the description of "A" in "hMADS cells" does not mean "adult," but "adipose."

In "I. Materials and Methods" of the Examples, it is described that "Cell culture: Preparation and characterization of hMADS cell multipotence and self-renewal have been described (Rodriguez, A.M., et al., Biochem Biophys Res Commun, 2004. 315(2):p. 255-63; Rodriguez, A.M., et al., J Exp Med, 2005. 201(9): p. 1397-405; Zaragosi, L.E. et al., Stem Cells, 2006. 24(11): p. 2412-9; Elabd, C, et al., Biochem Biophys Res Commun, 2007. 361(2): p. 342-8)." ([0056]), and it is clear that in these papers lines that had been established from adipose tissue from "infants" (Materials and methods in Rodriguez, A.M., et al., Biochem Biophys Res Commun, 2004. 315(2): p. 255-63), "5-year-old male donor" (Materials and methods in Rodriguez, A.M., et al., J Exp Med, 2005. 201(9): p. 1397-405), "5-year-old male donor" or "4- month-old male donor" (MATERIALS AND METHODS in Zaragosi, L.E. et al., Stem Cells, 2006. 24(11): p. 2412-9), or "young donors" (Elabd, C, et al., BiochemBiophys Res Commun, 2007. 361(2): p. 342-8) was used as "hMADS cells."

Thus, it is acknowledged that the description of "hMADS cells" in Claim 1 and paragraphs [0013], [0053] does not mean "multipotent adult stem cells from human adipose tissue," but "human multipotent adipose-derived stem cells." Further, it is similarly acknowledged that the description of "hMADS cells" in paragraph [0025] does not mean "multipotent adult stem cells arising from human adipose tissue," but "human multipotent adipose-derived stem cells."

Thus, Corrections A and B to correct the descriptions of "multipotent adult stem cells from human adipose tissue (hMADS cells)" and "multipotent adult stem cells arising from human adipose tissue (hMADS cells)" to read "human multipotent adipose-derived stem cells (hMADS cells)" are for the purpose of "clarification of an ambiguous statement" as prescribed in item (iii) of the proviso to Article 126(1) of the Patent Act.

(2) The corrections are to correct within the matters described in the Description, scope of claims or drawings attached to the application

Since the Corrections A and B are based on the descriptions of "Abbreviations: hMADS cells ("human multipotent adipose-derived stem cells")" in paragraph [0055] of the Description of the Patent and "mesenchymatous stem cells (human multipotent adipose-derived stem cells, or hMADS cells)" in paragraph [0010] of the Description of the Patent, Corrections A and B are to correct within "the matters described in the

Description, scope of claims, or drawings attached to the application of the patent," and comply with Article 126(5) of the Patent Act.

(3) The corrections are not to substantially enlarge or alter the scope of claims

As described in (1) above, the Corrections A and B are to correct the clarification of an ambiguous statement, and are not to substantially enlarge or alter the scope of claims, and comply with Article 126(6) of the Patent Act.

(4) Claims after the Correction of the case are independently patentable at the time of the patent application

Since no reasons are found that the appellant should not be granted a patent for the invention specified by the matters described in Claims after the Correction of the case independently at the time of patent application, the Correction of the case complies with Article 126(7) of the Patent Act.

No. 4 Closing

Thus, the request of the trial for correction is for the purpose of matter as prescribed in item (iii) of the proviso to Article 126(1) of the Patent Act, and complies with Article 126(5) to (7) of the Patent Act.

Therefore, the trial decision shall be made as described in the conclusion.

December 20, 2016

Chief administrative judge:	TAMURA, Akiteru
Administrative judge:	NAGAI, Keiko
Administrative judge:	MATSUDA, Yoshiko