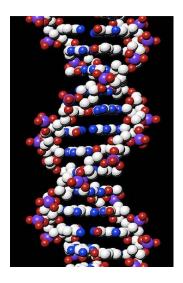
AWGA - News Update

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Call to change patent law after US gene ruling



Human DNA: Not patentable. Photo: Reuters

Human genes will no longer be controlled by private companies in America after a landmark ruling by the country's highest court.

The decision overturns thousands of US gene patents, and may have ramifications for an Australian case that is under way challenging the so-called breast cancer gene patent.

Advocates for cancer patients, lawyers and pathologists are celebrating the US decision, and have called on the Australian government to amend the Patent Act to reflect the ruling.

Rebecca Gilsenan, the principal lawyer at the firm fighting the Australian patent, Maurice Blackburn, said the US decision was exciting and encouraging.

"The Australian court is not bound by what the US Supreme Court has decided, however, I expect that an Australian court will be very interested in what [it] has decided and the reasons it had, and will take notice of that," she said. "It's a very significant development by a very significant court."

About 41 per cent of the human genome is currently subject to American patents.

In February, Maurice Blackburn lost a Federal Court case challenging the granting of a patent to US company Myriad Genetics on a mutation in the BRCA1 gene that greatly increases a person's risk of cancer.

In August it will appeal on the grounds Federal Court judge John Nicholas erred in finding that simply isolating a gene outside the body made it patentable.

"The US Supreme Court has held up the essence of the argument we have put forward in our case, that genes are a naturally occurring substance that are not patentable," Ms Gilsenan said.

Cancer Voices Australia said the government should immediately amend the Patent Act, to "reflect the wishes of the Australian people".

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"Our genes are not invented by companies like Myriad Genetics, so we are very pleased that this has been legally confirmed," spokeswoman Sally Crossing said.

Cancer Council head Ian Olver also said the Patent Act should be amended, because at present there was "nothing in Australian law to prevent commercial interests trying to monopolise the use of genetic materials".

In Australia, Myriad has granted an exclusive patent licence to a company called Genetic Technologies Limited. It attempted to enforce the patent in 2008, threatening pathology and cancer centres with legal action, but backed down after a public backlash. It has not actively defended the case in Australia with Myriad.

The Royal College of Pathologists of Australasia's Graeme Suthers said the threat to enforce the patent was very disturbing.

"The many laboratories that were doing the test at the time were publicly funded ... and there were a variety of laboratories, meaning there was healthy competition working together for quality," he said. He said the US decision was "game-changing" and would ensure patients received better tests, while still protecting synthetic DNA that is artificially created.

"This may have some factors in common with a naturally occurring gene, but there are other things the researchers would have to put in there to make it different," he said.

Patent lawyer Luigi Palombi said the decision clarified that such synthesised DNA, or cDNA was not patentable unless it was clearly different.

Read more: http://www.smh.com.au/technology/sci-tech/call-to-change-patent-law-after-us-gene-ruling-20130614-2090o.html#ixzz2WQillUor