**Isolated DNA Is Patentable Subject Matter in the U.S.**

*The Association for Molecular Pathology v. USPTO, Myriad Genetics & University of Utah Research Foundation*

Last Friday the Court of Appeals for the Federal Circuit overturned a lower New York District Court for the Southern District of New York's that genes can be patented. The court ruled that DNA isolated from the body was patentable subject matter and does not fall within the judicially created "products of nature" exception within §101. Their reasoning was based on the conclusion that isolated DNA was "markedly different" from its chemical structure of DNA that exists in the chromosome in the body.

The court also reversed the District Court's decision that the claims directed to screening potential cancer therapeutics using the changes in cell growth rates was eligible subject matter. In their reasoning the court deemed that the steps of "growing" transformed cells in the presence or absence of a cancer therapeutic fulfills the transformation test and is patentable eligible subject matter according to *In Re Bilski*, 130 S. Ct. 3227 (2010)

However the claims related to comparing or analyzing gene sequences for mutations were invalid since they were considered only abstract mental steps. Thus, the Federal Circuit suggested that the claims might have been upheld if they recited another step such as sequencing.

This case may also be appealed by requesting an *en banc* rehearing to the Federal Circuit or a petition for a *writ of certiorari* with the U.S. Supreme Court.

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