

Committee Secretary  
Senate Legal and Constitutional Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir/Madam,

**Patent Amendment (Human Genes and Biological Materials) Bill 2010**

Thank you for the opportunity to comment on the Bill. I am simply a member of the public with an interest in therapeutics and without any professional knowledge on the subjects of genetics or intellectual property. However, I consider my views representative of a sector of the community. I believe a distinction must be made between discovery and invention – with only the latter deserving of a patent.

Discovering that a particular gene sequence causes a specific disease is a foundation upon which future invention can result, but it is not patentable in itself: the tool used to identify the sequence is patentable; the process by which it is identified is patentable; interventions that modify the translation of that gene to a biological process are patentable; but the gene itself already existed and should be outside of what is patentable.

An analogous example would be if Newton, having used a prism to separate visible light into its constituent colours, had suddenly claimed green as his own colour. This is clearly a non-sensical and unworkable prospect.

This notion that discovery should be rewarded echoes an imperialist attitude where discovery meant ownership; in the case of European settlement of Australia, it is a philosophy now repudiated in our society. So in some respects, allowing entitlement to something that is merely discovered would be out-of step with our current thinking.

The behaviour of interests to date reveals that they cannot be trusted to have society's best welfare at heart as they move to commercialise their discovery. A 2010 editorial in the *New England Journal of Medicine*<sup>1</sup> outlines the well-known story of the Myriad patent on *BRCA1* and *BRCA2* genes to highlight the issue that I note has been expounded by some cancer patient advocacy groups in this submission process. A similar story<sup>2</sup> of commercial greed is revealed in India where pharmaceutical companies are bio-prospecting amongst the natural remedies used in traditional medical systems, resulting in traditional use now being a patent breach using IP and trade laws. The community cannot, and should not, allow the narrow interests of the few to outweigh our collective interest.

Sincerely, Craig Patterson

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<sup>1</sup> Kesselheim AS, Mello MM. *N Eng J Med* 2010;362(20):1855–8

<sup>2</sup> <http://www.guardian.co.uk/world/2009/feb/22/india-protect-traditional-medicines>