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GARVAN INSTITUTE
Breakthrough Medical Research

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

24 February 2011

Dear Ms Dennett

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

Thank you for the opportunity to comment on the proposed Bill before the Senate Standing Committee on Legal and Constitutional Affairs.

The Bill proposes to exclude the patenting of the following under Australian law:

> '*biological materials including their components and derivatives, whether isolated or purified or not and however made, which are identical or substantially identical to, such materials as they exist in nature.*'

In our view, the effects of this ban on the patenting of such a wide range of biological materials would have some serious consequences for the institute's continued research and development operations in Australia, as outlined in more detail below.

The Garvan Institute is involved in medical research that aims to change the directions of science and medicine and have major impacts on human health. Garvan uses its portfolio of patent families (at present 27) to create development opportunities with biotechnology and pharmaceutical companies to create research collaborations and contribute to development of diagnostic and therapeutic products. Such partnerships are critical to effectively translate our taxpayer funded research breakthroughs into effective new ways to prevent and treat disease- thus providing the major social and economic benefit back to the community. The inability to protect our research by way of patents would greatly affect our capacity to create these opportunities and would stifle the progress of fundamental science to new medicines and improved quality of life.

Patenting of genes

We feel that the current patent law provides clear direction as to forms of biological materials that may be patentable and includes appropriate standard of tests for patentability, including for genes. A native gene sequence per se cannot be patented. However we realise that a perceived lack of clarity around patenting of native genes can cause some confusion in the broader community. We therefore support an amendment to the law to provide clarification on this basis.

The current proposed Bill however extends beyond excluding native gene sequences from patentability and includes all DNA, RNA, proteins, cells and fluids. This is far too broad and raises a plethora of possible ambiguous interpretations which would severely curtail critically needed investment in research and development – it extends far beyond any desirable clarification around gene patenting.

Patents stifling research

At the Garvan, the existence of patents have not at all impeded our research activities. In fact, at times, patents are often considered in a similar light to journal publications in providing access to new information and technology that promotes progress in the research community. It often prevents researchers from "reinventing the wheel" and facilitates most effective use of scarce resources.

Any clarification of patent law to promote research activity should be in the form of broadening the research use exemption and providing further guidelines to activities that are included in such exemptions.

For the reasons outlined above, we strongly urge that the proposed amendment to the *Patents Act 1990* be rejected.

Yours faithfully,

John Shine AO FAA

Executive Director