By email
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Our Ref: 507899

19 March 2009

FB RICE & CO

Mr Elton Humphrey
The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Submission to Senate Community Affairs Committee Inquiry into Gene Patents

Dear Mr Humphrey

We are pleased to provide a submission to the Senate Community Affairs Committee in relation to the Inquiry into Gene Patents.

We provide comments based on our experience in assisting our clients in the patenting of human and microbial genes and non-coding sequences, proteins and their derivatives including in an isolated form (referred to herein as "biological materials").

(a)(iii) – the impact of patent monopolies on progress in medical research

The fundamental purpose of the patent system is to provide an incentive for investment in research and innovation by granting a limited monopoly for new and useful technologies. As a result, the patent system provides a temporary reward for the time and money invested in developing these technologies.

There are significant costs associated with high risk research and development of novel biological materials. Increasingly it seems that to be able to obtain suitable funding to meet these costs the researcher has to show that there is some potential commercial end-product. As result, removing biological materials as patentable subject matter is more likely to stifle medical research than have a positive effect.

(b) – should the Patents Act 1990 be amended to ameliorate any adverse impacts arising from the granting of patents over such materials

While we believe the patent system has an overall stimulatory effect on research and development of biological materials in Australia, medical researchers often express frustration with the lack of clarity surrounding the exceptions to infringement for experimental and research purposes. In particular, it is not clear to researchers whether working on a patented molecule to advance the understanding of the molecule and its uses is exempt from infringement. Amending the *Patents Act 1990* to more clearly define experimental use exemptions for research purposes would help to remove such uncertainty.

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(c) – should the Patents Act 1990 should be amended so as to expressly prohibit the grant of monopolies over such materials

There is no need to amend the *Patents Act 1990* to exclude biological materials from patentable subject matter.

The requirements for patentability of biological materials are the same as those for other technologies, for example, as for chemical pharmaceuticals. We believe there should be no difference in the consideration given to patent applications relating to biological materials as compared to other technologies. We see no rationale for excluding biological materials from the field of human and animal health, for example, while chemical pharmaceuticals and medical devices would still be subject to patent protection.

Finally, excluding biological materials from patentability would see Australia fall out of step with our major trading partners. As a significant proportion of funding for biotechnology research is provided by way of partnerships with corporations from our major trading partners, the exclusion of biological materials from patentability would result in a loss of research and development investment in Australia.

Yours faithfully
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