

19 November 2009



Committee Secretary
Senate Standing Committee on Community Affairs
community.affairs.sen@aph.gov.au

Dear Committee Secretary

Inquiry into Gene Patents: Comment on submissions

I write in regard to the Senate Community Affairs Committee's Inquiry into Gene Patents, which relates to the granting of patents in Australia over human and microbial genes and non-coding sequences, proteins, and their derivatives, including those materials in an isolated form. As the representative body of the biotechnology industry in Australia, with more than 3,000 members, I specifically wish to raise concerns over the submission of a supplementary statement by Cancer Council Australia (CCA) (Submission No 50 dated 18 August 2009), which includes proposed amendments to Australia's patent law.

AusBiotech is both concerned by and opposed to the approach suggested by the CCA. As a member of Biotechnology Industry Organization (BIO), the world's leading biotechnology industry group, which made an earlier submission, I wish to reiterate the biotechnology industry's view that the relevance that patents have to the biotechnology sector are shared globally, and the need for patent protection as the starting point for development of potential products, is needed by Australia.

The legislative amendments proposed by Cancer Council Australia (CCA), seek to introduce a provision to exclude from patentability:

"Biological materials, including recombinant materials (including but not limited to their components, parts or derivatives, whether isolated or purified or not and regardless of their state and processes used in their production) which are identical or substantially identical, individually or collectively, to those that exist in nature."

In its supplementary submission, CCA states that the purpose of this (above) amendment:

"...is to stop the patenting of genetic and protein materials that are rudimentary, in the sense that they are identical or substantially identical to their natural counterparts."

"In doing so, it will encourage further downstream innovation which utilizes these biological materials in new, inventive and practically useful ways."

AusBiotech disagrees with this statement and believes that such an amendment would prevent a significant proportion of the Australian biotechnology industry from protecting its innovations. The result of restricting patent protection in Australia in the manner

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proposed is certain to have an adverse impact on potential commercialisation opportunities in this country and reduce investment in the Australian biotechnology industry. Similarly, if international companies and organisations could not protect their biotechnology innovations in Australia, it is expected that much of that technology may not be made available to the Australian public.

Further, AusBiotech agrees with and supports the comments made by IPTA in their supplementary submission dated 7 September 2009.

The absence or dilution of the certainty derived from patents will discourage investment and therefore jeopardise future R & D projects that are based on genetic inventions – slowing, or possibly halting further development in areas that hold great hope of gene-based biomedical development.

In addition, such an exclusion to patentability may result in Australia breaching its obligations under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*) and Australia-United States Free Trade Agreement (*AUSFTA*).

AusBiotech asks the Committee to consider unintended and damaging consequences, prior to drafting any legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anna Lavelle', written in a cursive style.

Dr Anna Lavelle
CEO, AusBiotech