Written by **Bob Adelmann** on June 14, 2013

Unanimous Supreme Court Ruling: Human Genes Cannot be Patented

On Thursday the Supreme Court ruled unanimously that patents on human genes are now void, while the successful creation of synthetic genes may continue to be patented. Both sides of the lawsuit celebrated victory.

Mike Adams of Natural News exclaimed:"Sanity prevails: human genes are not eligible for patent protection!" while the ACLU declared: "Victory! Supreme Court Decides Our Genes Belong to Us!"

On the other hand, Myriad Genetics, Inc., the biotechnology company that holds dozens of patents on human genes, wrote:

> The Supreme Court of the United States upheld its patent claims on complementary DNA, or cDNA. However, the Court ruled that five of Myriad's claims covering isolated DNA were not patent eligible. Following today's decision, Myriad has more than 500 valid and enforceable claims in 24 different patents conferring strong patent protection for its BRACAnalysis® test.

At issue was patent law protecting intellectual property rights that establish a temporary monopoly over an invention to protect the inventor's discovery, allow him to make his discovery public and to recoup his investment in developing it. The Supreme Court ruled that Myriad's separation of the genes involved in breast and ovarian cancer, first discovered in the 1990s by Mary-Claire King, was not an invention that could be covered under patent law. In writing the court's opinion, Justice Clarence Thomas said: "Myriad did not create anything. To be sure, it found an important and useful gene, but separating that gene from its surrounding genetic material is not an act of invention."

King's discovery had been patented by Myriad and allowed the company a virtual, though temporary (their patents expire in 2015), monopoly to charge up to $4,000 each for genetic testing such as that which led to Angelina Jolie's decision to have a double mastectomy earlier this year. King was pleased at the decision:

> It is splendid news for patients, for physicians, for scientists and for common sense. The marketplace will now be open.

Restriction of competition is one of the primary criticisms of patent law. The owner of the patent is free to market his invention without competition and such freedom often results in prices being charged that are significantly higher than a free market might allow. This, critics say, stifles competition and retards progress, especially in biomedicine. As noted in *USA Today*,

> The decision represents a victory for cancer patients, researchers and geneticists who claimed that a single company's patent [Myriad's] raised costs, restricted research and sometimes forced women to have breasts or ovaries removed without sufficient facts or second opinions.

Since 1984 the U.S. Patent Office has granted more than 40,000 such patents related to genetic

material and estimates are that at least 10,000 of them are now invalidated. Almost immediately, competitors who have been watching this case announced plans to offer alternative and much less expensive tests. A spokesman for Quest Diagnostics, Wendy Bost, said:

> Based on our initial review of the court's decision, we expect it will open opportunities for Quest Diagnostics to develop new testing services, including the area of hereditary breast cancer.
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> As the leader in women's health and cancer diagnostics, we are very interested in offering a BRCA [the offending gene] testing service. We now intend to … offer … test services to physicians and patients [later on] this year.

Not to be outdone, a Houston-based genetics testing company, DNA Traits, said it would immediately begin offering such tests for $995, about one-quarter of the price charged by Myriad prior to the Supreme Court's decision.

Adams sees the Supreme Court decision as a landmark case and "a huge loss for the biotech and pharmaceutical industries [which] would love to patent all seeds and food crops — even ones it hasn't genetically engineered." He added:

> Ultimately, this decision is a tremendous victory for all humankind because it prevents the power-hungry, evil-bent medical and biotech corporations from claiming ownership over genetic sequences that already occur in nature.
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> This ruling means the biotech industry cannot patent common plants and animals, either. They can't patent human body parts or human gene sequences. Yes, the industry can still patent synthetically-created genes, said the Supreme Court, but that's something they would actually have to create rather than merely discover in an already-existing organism.…
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> The ruling also means that other companies can conduct research on those genes without first seeking permission from Myriad. This will actually spur more innovation, potentially leading to more advanced genetic analysis tests that might help people better understand their health risks (and hopefully encourage them to change their diets and lifestyle choices to avoid expressing those genes).

The ACLU also saw the Supreme Court's decision as a success. By invalidating some of Myriad's patents (and, by definition, thousands of others as well), price competition can enter the field without snuffing efforts to develop new methods and strategies for fighting diseases. Said the ACLU:

> By invalidating these patents, the Court lifted a major barrier to progress in further understanding how we can better treat and prevent diseases. And in fact, the decision will help, not hinder, the biotechnology industry.
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> Most of the industry is focused on using genes as a starting point to create new tools, tests, and therapeutics. While all of these applications could be patented, the genes themselves should remain in the public storehouse of knowledge, for scientists at universities and corporations to freely study and use.…
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> We celebrate the Court's ruling as a victory for civil liberties, scientific freedom, patients, and the future of personalized medicine.

And so do we.

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New American *magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics. He can be reached at badelmann@thenewamerican.com.*