Gene patents OK, higher court rules

By ACSH Staff — August 1, 2011

Upending a lower court’s 2010 decision, the U.S. Court of Appeals for the Federal Circuit has ruled in favor of the biotechnology industry and determined that genes and DNA can indeed be patented. In a lawsuit filed in 2009, the American Civil Liberties Union and the Public Patent Foundation sued Myriad Genetics, challenging the patents they hold to the BRCA1 and BRCA2 genes, which are used to predict an increased risk of breast and ovarian cancer. Since the mid 1990s, Myriad has held the patents to these genes with the University of Utah Research Foundation and charges over $3,000 for its breast cancer risk test.

Thousands of genes have already been patented, and people in the biotechnology industry maintain that these patents are important to encourage innovation. According to ACSH’s Dr. Gilbert Ross, The new ruling is in keeping with previous court decisions stemming from the 1980s, which have long allowed genes to be patented.

The 2-to-1 vote in favor of Myriad was written for the court by Judge Alan D. Lourie, who explained that DNA isolated from the body is markedly different in its chemical structure from DNA that exists inside chromosomes, therefore making it eligible for patent. However, the court did reject Myriad’s patent claims on a diagnostic test that would analyze whether a patient’s genes contains mutations that would raise their risk of cancer.

Overall, says Dr. Ross, the most recent ruling is an important and beneficial one. A rejection of Myriad’s patent claims would have thrown the biotech industry into a state of confusion, chilling research in this important area by removing an important incentive, he says. Although people would own their own genes, they would be left without therapies to treat many gene-based disorders.


Links