



**The Institute of  
Patent and Trade Mark  
Attorneys of Australia**

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A.B.N. 78 004 194 263

7 October 2009

Dear Sir/Madam

**Senate Community Affairs Committee  
Inquiry into Gene Patents**

The Senate Community Affairs Committee is presently conducting an "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.

The Institute of Patent and Trade Mark Attorneys of Australia (IPTA), which has been actively involved in this inquiry, is greatly concerned about a recent development, namely the submission of a supplementary statement by Cancer Council Australia (Submission No 50 dated 18 August 2009) which includes proposed amendments to Australia's patent law. A copy of this supplementary statement is available from:

[www.aph.gov.au/SENATE/COMMITTEE/CLAC\\_CTTE/gene\\_patents/submissions/sublist.htm](http://www.aph.gov.au/SENATE/COMMITTEE/CLAC_CTTE/gene_patents/submissions/sublist.htm)

As a highly significant supporter of the biotechnology industry in this country, IPTA wishes to alert you to the far reaching consequences of these proposed legislative amendments and encourages you to promptly voice your concern and opposition to their possible implementation.

**Proposed legislative amendments**

The main amendment proposed by Cancer Council Australia is to introduce a provision to specifically 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.

This is over and above the existing specific exclusion to "human beings, and the biological processes for their generation".

Level 2, 302 Burwood Road, Hawthorn Vic 3122  
PO Box 419, Hawthorn Vic 3122 Australia  
Tel: 613 9819 2004 Fax: 613 9819 6002  
Internet: [www.ipta.org.au](http://www.ipta.org.au) Email: [mail@ipta.org.au](mailto:mail@ipta.org.au)

## **IPTA comments**

In its supplementary submission, Cancer Council Australia states that the above proposed amendment:

*"... excludes, as a class, a patent monopoly over naturally occurring biological materials regardless of their actual physical state or their method of production. So long as the biological materials are identical or substantially identical to the naturally occurring biological materials they cannot be the subject of a patent monopoly, even if they are recombined. Accordingly, if the individual parts of a recombined and isolated gene are nothing more than a fusion of genetic parts, each of which are identical to their corresponding natural equivalents, then the recombined product is also excluded.*

*The purpose of the 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."*

IPTA disagrees with this statement as the proposed amendments do not just 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". That is, the proposed amendments, in fact, go much further than that. Indeed, as Cancer Council Australia has not given any definition of "biological materials", this term is extremely broad and covers a wide range of important classes of inventions.

Accordingly, any exclusion to the patentability of inventions relating to "biological materials" as proposed by Cancer Council Australia would, in IPTA's view, prevent a significant proportion of the Australian biotechnology industry from protecting its innovations. Further, restricting patent protection in Australia as proposed by Cancer Council Australia would 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 quite likely that much of that technology would not be made available to the Australian public.

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

Submissions detailing your concerns and opposition to the legislative amendments proposed by Cancer Council Australia may be made to:

Senate Community Affairs Committee Secretariat by email:  
'community.affairs.sen@aph.gov.au'

Please contact IPTA should you wish to discuss this matter further.

**Dr Trevor J Davies**  
Councillor