
Life Sciences Alert

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The US Court of Appeals for the Federal Circuit (CAFC) recently ruled on 12 June 2015 that a patent directed to a method for detecting a paternally inherited nucleic acid sequence of fetal origin (cell-free fetal DNA (cffDNA)) in maternal serum or plasma from a pregnant woman is invalid and ineligible for patent protection because it applies to a natural phenomenon.

It is becoming abundantly clear that US courts and the US Patent and Trademark Office (USPTO) are consistently relaying a message that if method claims do no more than recite routine or conventional methods and steps, and the claims do not provide significantly more, then they will be found to be invalid or patent ineligible, regardless of the significance of the invention to science and medicine.

Until 7 October 2015, the path taken by Australian courts and the Australian patent office stood in contrast to that of the US courts and the USPTO. In September 2014, an expanded bench of five judges of the Australian Full Federal Court had unanimously confirmed in the Australian Myriad case the long held understanding and established patent office practice that isolated nucleic acid sequences are patent eligible subject matter in Australia. Less than a year earlier, the High Court of Australia affirmed the appeal court’s decision, and confirmed prior lower court precedent, that methods of medical treatment are patent eligible subject matter in Australia. These decisions had instilled confidence in Australia as a jurisdiction that recognised and appropriately afforded intellectual property rights for innovation in the life sciences sector.

However, on 7 October 2015, the High Court unanimously overturned the Full Federal Court’s decision in the Australian Myriad case and unanimously held that the claims-in-suit to isolated genetic material did not claim patentable subject matter under Australian law.

A copy of the presentation slides and recording from The Pulse Webinar: Patent law in the life sciences sector - US and Australian perspectives can be found in the downloads section below.

If you have any questions regarding this webinar or topic, please do not hesitate to contact Lisa or Nicholas.

DOWNLOADS

- Access the presentation slides
• Access the webinar recording

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