

ACLU -- Myriad Genetics lawsuit will become landmark case

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The American Civil Liberties Union action in filing a lawsuit yesterday against Myriad Genetics is going to lead to one of the most important legal battles in the history of biotechnology, asserts *Genetic Engineering & Biotechnology News* (GEN). The ACLU charged that the patenting of two human genes linked to breast and ovarian cancer will inhibit medical research. The organization also claims that the patents are invalid and unconstitutional.

"This is going to turn into one of the watershed events in the evolution of the bioindustry," says John Sterling, Editor in Chief of GEN. "The pros and cons of patenting [genes](#) have been an ongoing, and often acrimonious series of debates, since the in re Chakrabarty decision in 1980. But this particular case seems to have taken on a life of its own with over fifteen plaintiffs. For while the [lawsuit](#) specifically centers on the patentability of two cancer-related genes, the ACLU says it plans to challenge the entire concept of patenting genes. What we have here is one group, the ACLU and its allies, contending that gene patents stifle life science research and potentially harm the health of thousands of patients. On the other side are biotech companies who maintain that without gene patents research incentives are seriously diminished and innovation is smothered."

Kenneth I. Berns, M.D., Ph.D., Editor in Chief of the peer reviewed journal, *Genetic Testing and Molecular Biomarkers*, which is the official journal of the Genetic Alliance, says the "patenting of human genes is a bad idea and that healthcare in the U.S. would be enhanced if the ACLU

suit prevails." Dr. Berns is also Director of the University of Florida Genetics Institute in Gainesville.

William Warren, partner at the Sutherland law firm, thinks the ACLU, in this case, is barking up the wrong tree. "The ACLU unexpectedly based its invalidity challenge on claims to unpatentable subject matter," he says. "The ACLU might have instead considered challenging the Myriad patents for obviousness." Warren and Sutherland colleague, Lei Fang, Ph.D., M.D., have authored a legal article, which will be published in the June 1 issue of GEN entitled "Patentability of Genetic Sequences Limited." It is now available online.

(
<http://www.genengnews.com/news/bnitem.aspx?name=54504126&source=genwire>)

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