

US court hears appeal in key gene patent case

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A US appeals court heard arguments Monday in a closely watched case involving a pharmaceutical firm's patent of two genes linked to cancer.

The case was brought by Myriad Genetics, which is appealing a March 2010 ruling invalidating its seven patents on the genes dubbed BRCA1 and BRCA2, mutations of which have been linked to cancers of the breast and ovary.

Last year, US District Judge Robert Sweet in New York ruled that the company cannot patent genes created by natural phenomena.

Myriad repeated its argument that it cannot attract the resources needed for research for a cancer treatment if it cannot obtain the patents.

But the American Civil Liberties Union, which was one of the groups that filed suit in 2009 to invalidate the patents, joined the US government in asking the three-judge panel to uphold the lower court ruling.

"The human gene is a product of nature and no more patentable than a human kidney," said Chris Hansen, an ACLU staff attorney.

"The district court ruling striking down patents on human genes was a victory for the free flow of ideas and information, and could lead to important medical and scientific advances. The appeals court should uphold that ruling."

The lawsuit alleged that the patents restrict scientific research and patients' access to medical care.

Acting US Solicitor General Neal Katyal said the government's position "is that there is a fundamental distinction between human invention on one hand and products of nature on the other hand."

On the other side, the company and its partner, the University of Utah, have argued that US legal precedent set by the Supreme Court has upheld similar protection for living organisms since 1980.

The case is being closely watched because patents are being sought for some 20 percent of human genes in a sector believed to be worth billions of dollars. Biotech firms say these patents are needed to develop diagnostic tests and treatments for various diseases.

The American Medical Association is among the groups opposing the patent request.

The federal appeals court panel in Washington is expected to issue its ruling in the coming months.

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