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Gene patent debate "muddled": panel

A panel at the AusBiotech 2010 Conference has tackled the 'myths' surrounding gene patenting.

Tim Dean (Australian Life Scientist)

The gene patenting debate is complex, says Tania Obranovich, partner at law firm Davis Collison Cave, who spoke yesterday at the AusBiotech 2010 Conference on a panel entitled 'Busting the myths about gene patenting.'

"It is a complex issue," said Obranovich. "I don't think it's so difficult that people can't understand it, but it takes time to explain it."

And Obranovich feels that many people engaging in the debate over gene patents haven't taken sufficient time to understand the real issues at stake.

"There is a lot of misunderstanding about how best to regulate the industry to make sure people have access to various tests and drugs," said Obranovich.

"Some people say that banning the patenting of genes would be the answer, and that diagnostics would become free for all. But there are so many mistakes in that understanding."

According to Obranovich, many of the issues discussed in the light of gene patenting are not only about genes; they involve all other patents as well.

Issues concerning safeguards to prevent a patent holder from abusing their monopoly and restricting access to their patent by researchers or clinics are issues that concern other patents, and there already exist protections, such as Crown use and compulsory licenses.

"If someone refuses to make their technology available or to make it available at a reasonable cost, there are mechanisms already in the patent act to deal with this," she said.

Obranovich has been reviewing the submissions made to the Senate Inquiry into Gene Patents, which was meant to report earlier this year but is still underway.

One of the concerns raised in some submissions is that gene patents will restrict access by scientists to crucial information protected by patents, and this might stifle research.

Another of the panellists, Dr Julian Clark, head of business development at Walter and Eliza Hall Institute, argued that this is not the case.

According to Clark, while in 2004 it was discovered that there isn't a research use exception in the Patent Act, this hasn't resulted in any labs receiving letters of demand insisting they stop conducting research on patented genes.

That said, Obranovich acknowledges that there are genuine concerns over this issue and that the law could be tightened to prevent any restriction on research.

"There's no problem with looking at this issue and tightening the hole in the Act now," she said.

Obranovich also stressed that gene patents are important for ensuring that researchers and biotechnology companies can get a return on their effort in making discoveries concerning genes. Without that return on investment, many institutions and biotechs may not engage in costly genetic research. And government can't be expected to foot the bill itself.

"It costs hundreds of millions of dollars to bring a drug or diagnostic to market," said Obranovich. "And nobody is going to invest that money if there isn't a possibility of a return. We can't expect them to donate that money to the community."

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The final 'myth' busted by Obranovich is that diagnostics, such as the controversial BRCA1 test, should be made free for all.

"This is the wrong analysis," said Obranovich. "In the absence of patenting over that diagnostic, the question is not one of who owns it, but whether it would exist at all."

The Senate Inquiry into Gene Patents is ongoing, and some, such as CEO of Cancer Council Australia, Ian Olver, believes patent law should be changed to exclude the patenting of genetic material.

Others, such as AusBiotech CEO, Anna Lavelle, believe gene patents are crucial for the biotechnology industry.

"Protection for gene-based technologies, in the form of patents, is an essential element for the continued development of future life-changing health products," said Lavelle in a statement.

"The future of gene-based biomedical innovation could be jeopardised by a decline in investment by the biotechnology sector if it were to lack the certainty derived from patents."

The panel discussion was held at AusBiotech 2010, which is on this week in Melbourne.