

New York Federal District Court Rules Gene Patent Invalid (April 2010)

On March 29, 2010, a federal district court ruled that Myriad Genetics' patent regarding BRCA1/2 gene sequences was invalid as being directed to unpatentable subject matter. The decision, if not overruled on appeal, calls into question the patentability "isolated DNA" used for testing and/or therapeutic purposes. Myriad's test looks for mutations that are markers for about an 85% chance of development of breast cancer and about a 50% chance of risk of ovarian cancer.

The court's decision seems to turn on the question as to whether isolated DNA is something found in nature or is, rather, something transformed from nature by humans (and thus patentable).

It is highly likely that the decision will be appealed to the U.S. Court of Appeals for the Federal Circuit, which is the appellate court that hears all patent matters. There is then some chance of appeal to the U.S. Supreme Court, which has the option whether to hear that further appeal or not.

Janeen Vilven-Doggett has reviewed the case in some detail. Please contact Janeen (jvilven@peacocklaw.com; (505) 998-6134) if you have questions regarding the decision and its potential impacts.