Comment 1 Sailen Barik

From: Sailen Barik [sbarik@jaguar1.usouthal.edu]
Sent: Thursday, February 03, 2000 2:49 PM
To: mark.nagumo@uspto.gov
Subject: Genome patent

Dear Dr. Nagumo,

Kudos to the PTO for finally realizing that the "utility" clause needs to be added. Human genome or any genome for that matter is not a novel commodity nor an invention or a synthetic product. The sequencing technology is nothing new, either. Therefore, the only credit that Venter et al can claim is that they had done it first. Big deal. If he didn't do it, it would take us, maybe, 2 extra years. That's fine with us. We have waited a million years; we will rather wait a few more than create another Bill Gates. The PTO office should know (as every elementary school kid does) that the obvious and the logical cannot be patented. The sole argument that "I did it first" or "no one has done it before" does not make either the procedure or the result patentable. Columbus could not have patented the Americas. When the Hubble telescope discovers new planets and galaxies, does NASA patent them? I doubt that President Clinton could patent "oral sex with an intern, inside Oval office, while talking to a Congressman through an electronic device", although he was the first.one to have done it! (Correct me if I am wrong, but I don't think anybody else has made that claim!).

If you let greedy companies and their lawyers patent naive sequences, just imagine the consequences. Tomorrow, Japan will sequence the whole rice genome, China will sequence Zebrafish, Bill Gates will own Plasmodium, Donald Trump will invest in the Sanger Center and own 80% of all coral reef anemones. And then, we, the Americans will pay to use those sequences. Even worse, Bin Laden might hire impoverished technicians from the third world to make royalty money on some sequences. Guess what he will do with that money?! This will be the New "Bioterrorism" that I call "the Lynching of the Human Genome". Most Americans do not read Science and Nature everyday, and will not immediately know what has happened, but they will find out soon enough to bring a class-action lawsuit, and all these patents will be thrown out of court. If they don't, do not be surprised if this issue sours global relationship among Nations, and actually precipitates the Third World War.

Celera asserts that anyone can use their sequence - of course with a

hefty fee. But the real issue is: Who will OWN the subsequent findings about their FUNCTION? Will there be strings attached to the function as well. If I identify the product of that gene, and/or discover an use / function of that gene, do I basically fatten Celera's checkbook? Does that mean the rest of the world will essentially work as Craig Venter's technicians and postdocs finding function of the genes that he virtually owns. Bottomline is, any subsequent research on that gene will only benefit him. How nice!

The PTO was initiated with a good intention: to protect the right of the inventor. Somewhere in the process though, it lost sight of the bigger truth that the general public and the future generation have rights too. And then came the brave new world of Biotechnology that started challenging the established arguments of patenting. This will continue as we break new grounds, but one thing is obvious: the pedulum must swing back a little.

So, good thinking folks! It took you a while to wake up, but it's about time. Please remain vigilant. Also, watch out for the "broad" term: "and uses thereof". That's a gaping loophole right there. I challenge you to put a brake on Craig Venter, Bill Haseltine and the likes. It may cost us legal money, but it will be worth every penny. Tell the Congress this is what we want. The American taxpayers will do nothing but bless you. Remember, patents are not larger than the society. Do not lose sight of the simple truths. When in doubt, ask a fifth-grader. You want a patent to be a legacy that will help everybody for years, not become nightmare that will come back to haunt us. Thanks for listening.

Sinecerely,
Sailen Barik.

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