

June 14, 2011

Representative
US House of Representatives
ADDRESS
Washington, DC 20515

Dear :

On behalf of FRCAction, the legislative partner of Family Research Council, and the families we represent, I want to urge you to vote against any amendment or motion offered to the America Invents Act (H.R. 1249) that would strike or undermine language included to codify the “Weldon Amendment,” which bans the patenting of human organisms. FRCAction will score against any such amendment or motion

The Weldon Amendment is contained in the annual Commerce, Justice and Science Appropriations bills (CJS) and prevents the patenting of humans, and has passed into law each year since 2004. The text of the language included in H.R. 1249 to codify the Weldon Amendment is contained in Section 30: “Notwithstanding any other provision of law, no patent may issue on a claim directed to or encompassing a human organism.” It would apply to any patent claim that is pending on the date of enactment.

The Weldon language on the CJS bill prevents funding to the USPTO from being used to issue patents on claims directed to human organisms. This language reflected the long-standing policy of the USPTO as outlined in several official documents. However, the America Invents Act would change the funding mechanisms of the USPTO by authorizing the USPTO to collect and spend patent fees without those funds going through the appropriations process. One effect of this system is that USPTO funds would no longer be subject to the CJS bill or the Weldon Amendment that governs those funds. Therefore, the Weldon language included in H.R. 1249 would ensure the continued policy against patenting humans.

Patenting human beings at any stage of development would overturn the long-standing USPTO policy against issuing such patents. As the Quigg Memo stated in 1987, a grant of a property right in a human being is unconstitutional, and patents on any human organisms are grounds for rejection. Moreover, as then Secretary of the USPTO, James Rogan, wrote to Appropriators in 2003, “The Weldon Amendment would prohibit the U.S. Patent and Trademark Office from issuing any patent ‘on claims directed to or encompassing a human organism.’ The USPTO understands the Weldon Amendment to provide unequivocal congressional backing for the long-standing USPTO policy of refusing to grant any patent containing a claim that encompasses any member of the species *Homo sapiens at any stage of development*. It has long been USPTO practice to reject any claim in a patent application that encompasses a human life-form at any stage of development, including a human embryo or human fetus...” (italics original).

The new language in H.R. 1249 would continue the policy of the Weldon Amendment to prevent the patenting on any claims directed to human embryos or fetuses. This language, like the Weldon Amendment, would not prevent patents on methods of creating human embryos through cloning or other techniques, nor would it affect patents on human genes, human stem cells, tissues or body parts. For more information on the Weldon language and history of USPTO policy, see here: <http://downloads.frcaction.org/EF/EF11F02.pdf>.

To maintain the U.S. policy against patenting humans, the America Invents Act must maintain the Weldon language. Any amendment or motion to strike or undermine this language would open the door to a major change in U.S. policy for patenting humans. We, therefore, urge you to reject any such amendment or motion. FRCAction will include votes on these issues in our scorecard for the First Session of the 112th Congress to be published this fall. If any such amendment or motion successfully undermined the Weldon language, we would score against the underlying bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom McClusky", written in a cursive style.

Thomas McClusky
Senior Vice President