



Validity of breast cancer test patent needs to be examined, specialist says

By Tamara McLean

A patent lawyer has claimed that exclusive rights over a breast cancer gene test used by thousands of Australian women may be illegal and unenforceable.

Biotechnology company Genetic Technologies has announced it will enforce its patent rights over tests for two genetic mutations, BRCA1 and BRCA2, which increase breast cancer risk.

Under the arrangement, the company has ordered the nation's eight public laboratories to stop doing the test so it can offer it exclusively.

The move enforces the company's

rights granted by the patent owner, US firm Myriad Genetics. But Australian cancer experts fear the arrangement will drive up the \$2500 price of the test, limiting availability to Australian women and stifling genetic research.

Now a specialist in biotechnology patents, Australian National University academic Luigi Palombi, says the tests are "unpatentable" and the validity of the patents needs to be tested in an Australian court.

"In my view they're not patentable and should be revoked," he said.

"The Patents Act requires that there be an invention and quite frankly discovering that there is a link

between a particular gene mutation and human disease is not what I would call an invention.

"It's a discovery, a great discovery, but not something that should be the subject of a patent that affects price and prevents other scientists using that genetic material to make more discoveries." Dr Palombi said patents were relevant for medicine and tests developed with cutting-edge technology, "but finding an association is not enough".

He is garnering interest from cancer researchers, awareness groups and ministers in mounting a legal test case to challenge the move.

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