



Experts denounce gene patents

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Medical Editor

CANCER researchers, including the inventor of the cervical cancer vaccine, Professor Ian Frazer, have stepped up calls for a revision of patent laws that allow private firms to claim ownership of human genes, as concern mounts that the laws could hinder the development of new treatments.

Their calls come amid growing debate about the legitimacy of awarding patents to those who isolate portions of human DNA relevant to a range of diseases.

"A patent holder can determine whether or where your genes are tested," Graeme Suthers, the head of the familial cancer unit at the South Australian Clinical Genetics Service, told the Clinical Oncological Society of Australia's annual scientific meeting in Sydney yesterday.

He said it was unlikely the legitimacy of gene patents would be challenged in Australia because anyone bringing such a case could not gain financially from it, merely depriving the patent holder of potential gains. He said such a case would cost at least \$3 million.

Overseas, companies that aggressively protected their patent rights had reduced the number of cancer gene tests performed and had increased the cost of testing, he said.

Terry Moore, manager of the Office of the Director General of the Federal Government's intellectual property organisation IP Australia, said patent law developed before the explosion of bio-

logical discoveries and might not be suited to cope with them.

But she defended the concept of patenting human DNA. "We have courts that have considered that issue and have held that biological inventions are patentable," she said. "Regardless of whether it's right or wrong we do have a situation where genes are patentable."

Ms Moore said more research was required into how well the patent system was working to promote and reward innovation, and whether it was meeting its remit of fostering public benefit while giving an appropriate incentive to people who came up with new discoveries.

Their comments come after the announcement of a Senate inquiry into gene patenting, initiated by the NSW Senator Bill Heffernan, and a backdown this week by the Melbourne company Genetic Technologies, whose former chief executive and major shareholder, Mervyn Jacobson, said he would not pursue an earlier demand that public hospitals send all samples from breast cancer patients suspected of having mutations in the genes BRCA1 and BRCA2 to the company's laboratory for testing.

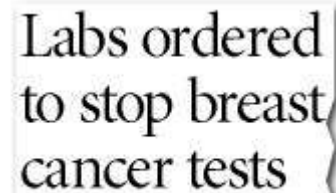
The company's aggressive earlier stance, in which it threatened public clinics with legal action if they continued to offer breast cancer gene testing, provoked outrage from doctors and patient groups after it was reported by the *Herald* last month.

Professor Frazer, of the Univer-

sity of Queensland, told the conference in a pre-recorded statement that gene patenting had the potential to frustrate investigations into new cancer therapies and vaccines, and that researchers needed to be able to proceed with their work without having to consult private companies that owned patents the work might infringe.

Dr Suthers said cancer was at the centre of the gene patenting debate because it was common and had a high public profile, though people with rarer diseases stood to lose at least as much from company ownership of genes. The fact that few companies had sought to enforce gene patent rights was not reassuring. "A core fundamental principle has been violated," he said.

Luigi Palombi, an expert in patent law at the Australian National University, said the fact that human genes could be patented in Australia represented, "a big failure [and] a misuse of power".



Labs ordered
to stop breast
cancer tests

How the *Herald* broke the news about gene patent holders.