

# Mediaportal Report

23/10/2008

▶ **Labs ordered to stop breast cancer tests**

Sydney Morning Herald, 23/10/08, General News, Page 1  
By: Julie Robotham

Clip Ref: **00042788245**

520 words

▶ **Cancer gene test ban may spark legal bid**

Age, 23/10/08, Edition Changes - Metro General News, Page 3  
By: Julie Robotham And Erik Jensen

Clip Ref: **00042794841**

433 words

▶ **ABC 774 Melbourne (Melbourne)  
Breakfast - 23/10/2008 7:11 AM  
Red Symons**

Symons says according to patent law, people do not own their own bodies. He wonders how this can be, saying it is 'absurd'. He says because of this, women will no longer be able to go to a public hospital to find out if they have a particular gene structure that may cause breast cancer without paying a licence fee. Symons introduces Luigi Palombi, patent law expert, ANU. Palombi says it is interesting that suddenly patents are needed to advance medical science. He says he has been arguing that patents for isolated biological materials should be made illegal. He notes there is no research exemption in patent legislation. He says the company that holds the rights to certain genes will be able to go to court and seek injunctions to stop laboratories using them in research. SMS: If I get breast cancer, can I sue the owner of the gene? Symons mentions a company has a patent on hepatitis; Palombi reveals it is Chyron Corp. He urges the public to get in touch with their MPs and raise their concerns about this 'ridiculous situation'. He says the only way for the validity of patents to be tested is if someone has a lot of money, saying the ACCC does not have the power to do so, while the Cancer Council cannot afford it. He says it is still unknown, according to the Federal Court, if an isolated biological material is patentable.

Demographics

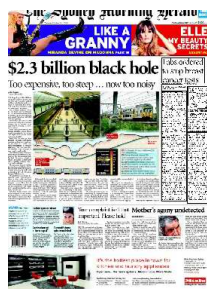
Male:	57000
Female:	60000
AB:	55000
GB:	67000
All People:	117000

**Interviewees:** Luigi Palombi, patent law expert, ANU

**Duration:** 11.08

**Summary ID:** M00032509729

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# Labs ordered to stop breast cancer tests

**Julie Robotham, Mark Metherell and Erik Jensen**

WOMEN will no longer be able to go to a public hospital to find out whether they have inherited a genetic mutation that causes breast cancer, after the company that holds the licence to the gene patents set a deadline of November 6 for other laboratories to cease testing.

This would force testing for the genes – widely used by women with a family history of the disease – into Genetic Technologies Ltd's own Melbourne laboratory, at \$2100 per test.

The controversial move marks the first time in Australia that a company has enforced its proprietary rights over the human body's genetic code, which some argue is inherently publicly owned. It could trigger an urgent challenge to the validity of patent laws.

The Liberal senator Bill Heffernan said yesterday the move would stifle research and increase health care costs. "The question is, do we agree with the principle of patenting and restricting research on naturally occurring genes?"

Graeme Suthers, medical adviser to the Cancer Council Australia, said the law should be revised. "As a society we have to bite that bullet," he said. "It is essential that Australian families can access testing of genes [through public hospitals]."

The genes in question – BRCA1 and BRCA2 – are implicated in up to 10 per cent of breast cancers. They confer a greatly increased risk of developing the disease, and at a younger than usual age.

The chairwoman of the Breast Cancer Action Group, Janet Green, said testing allowed women to make "an informed decision about prophylactic surgery or certain treatments," and should not depend on ability to pay.

But Michael Ohanessian, the chief executive of Genetic Technologies, insisted the change would benefit patients, guaranteeing a four-week maximum to complete a test.

"In 2005 some laboratories were averaging 11 months. Anyone in government would be hard-pressed to defend that ... I believe [the laboratories] are all sub-scale and I believe there would be benefits to taxpayer funds and women's health."

He said the \$2100 fee was similar to other laboratories – about 10 nationwide. He believed complaints were motivated by "a certain emotiveness when people think about patents in the field of genetics," and "an ideological objection to the private sector".

The company, which is listed on the stock exchange, licenses the genes exclusively from Myriad Genetic Laboratories in the US.

Luigi Palombi, an expert in patent law at the Australian National University, said state or federal governments could allow

laboratories to continue testing under a crown-use provision in the Patents Act, but he was unaware of this ever being used.

Dr Palombi said patent law referred only to inventions, not discoveries, and he believed a federal court would find against Genetic Technologies. But the issue had never been tested, and he was not aware of a body that could afford to mount the case.

A Government spokesman said the matter was being investigated by the Australian Consumer and Competition Commission.

## COUNTING THE COST

- ▶ Breast cancer affects about 13,000 Australian women a year.
- ▶ Between 5 and 10 per cent of breast cancer is linked to BRCA1 and BRCA2 gene mutations.
- ▶ Women with a gene mutation have up to a 92 per cent risk of breast or ovarian cancer by 70, and can get cancer younger.





# Cancer gene test ban may spark legal bid

By **JULIE ROBOTHAM**  
 and **ERIK JENSEN**

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**MICHAEL OHANESSIAN,  
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