



## **HUMANIST SOCIETY OF VICTORIA Inc.**

**Affiliated with the Council of Australian Humanist Societies (CAHS) and  
the International Humanist and Ethical Union (IHEU) London, UK.  
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Patentable Subject Matter Review

ACIP Secretariat

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Re: PATENTABLE SUBJECT MATTER - OPTIONS PAPER

### SUBMISSION FROM THE HUMANIST SOCIETY OF VICTORIA INC. (HSV)

The HSV is a secular organisation whose members foster an ethical, reasoned and responsible approach to life. It supports human rights, democratic processes, and a just and inclusive governance.

It seeks to alleviate suffering, to promote well-being and the circumstances where all individuals can attain their full potential. It engages in educational, counselling and charitable activities.

The views that follow have been formulated at specially convened group discussions to which all HSV members are invited. Further supportive information is obtained from print publications, the Internet, public lectures and from individuals with relevant expertise.

The Convenor of the HSV Submissions Committee is authorised to present these views.

In response to the Options Paper on Patentable Subject Matter (Sept 2009) we complement members of ACIP on presenting a complex and legalistic subject in terms that are clear and comprehensible to the general public and we comment as follows:

Section 1.

In the matter of the Economic Test we favour Option C i.e. replacement of the "manner of manufacture" with "any invention in a field of technology".

In this we are persuaded by its consistency with language and concepts of other jurisdictions and the TRIPS Agreement. We see the wisdom of having a list of subject matters specifically excluded, as in the European Convention. Such a list should be periodically reviewed.

Section 2.

In the matter of social filters, we support the combination of specific exclusions and general filters. We clearly see the need for a list of specific subject matters that are not patentable. a "mere discovery" should certainly be one of exclusions. Given the rapid developments in technology and changing social mores, both the Specific Exclusions (Option F) and the General Filters (Option G) should have short sunset clauses and be reviewed frequently. This should also apply to the set of regulations and criteria provided for patent examiners to help in assessing patent applications.

The social filter should certainly be a ground for revocation of a patent where its use might cause unforeseen and socially unacceptable consequences.

We strongly support the role of the courts in assessing such circumstances as the judiciary is not likely to be influenced by political or vested interests.

Section 3.

We support Options H and I for introducing clarity and simplification to this legislation. Of particular value, in our view, is the proposed Option J to establish an advisory panel to the Commissioner of Patents. Its strengths - a greater community input and its mechanism for proactive approach - far outweigh its additional cost.

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We reiterate our previously stated Humanist view that matters of ethics and human wellbeing should take precedence over the commercialisation of intellectual properties. The patenting of discoveries of some human genes, and monopolies on genetic testing, provide salient examples of unacceptable aspects of the present system.

We enclose a recent press article to illustrate this point: "Human gene patenting debated" The Age 4.8.2009.

Yours sincerely

*Halina Strnad*  
Halina Strnad

convenor, submissions committee.

5.10.2009.

# Human gene patenting debated

By **BRIDIE SMITH**  
SCIENCE AND TECHNOLOGY REPORTER

RESEARCHERS have defended the patenting of human genes — considered the blueprints of life — while those who could most benefit from their work have asked if a grab for intellectual property might slow down potentially life-saving medical research.

In an emotional submission to a Senate inquiry in Melbourne yesterday, breast cancer survivor and member of Breast Cancer Network Australia Heather Drum told the panel that her family was the "end user" of medical research and as such had an interest in genetic testing remaining affordable, accessible and timely.

The East Brunswick mother of two was diagnosed with breast cancer in 2001 — one of three members of her family diagnosed with the disease in 15 years. She expressed concern about the impact gene patenting could have

on research: "If someone owns a patent to one gene and someone else owns a patent to another gene associated with breast cancer, my question is, will they ever talk?"

Ms Drum said she was pleased her tissue samples and that of some members of her family were continually tested by the Peter MacCallum Cancer Centre.

"But I would feel really devastated if the tissues I have donated and my sister has donated are used [as part of a patent] and to make money. If you discover a treatment or cure, then patent that. Don't patent the gene. Patent the cure."

Last year, Melbourne-based Genetic Technologies asked hospitals to stop testing for a breast cancer gene because it owned the patent for the genetic mutation and the test.

But the head of business development at the Walter and Eliza Hall Institute, Julian Clark, told the hearing gene patents had never harmed the institute's work or its

ability to collaborate. Dr Clark said the Parkville institute received about \$50 million a year from the Federal Government, while royalty income from patents amounted to about \$3 million a year. He said the bulk of the royalties income was generated from three patents in the 1990s, although the institute held about 300 patent applications.

Dr Clark told the Senate standing committee on community affairs that patents were vital as they "maximised the chance of transition".

"In order to maximise the invention reaching the clinic, you have to have sound intellectual property protection," he said. "Patenting is an integral part of research and setting the scene for results . . . no one is going to go close if they are not assured some monopoly for a certain period."

The hearing will continue in Melbourne today before hearings in Sydney and Canberra. The inquiry is due to report by November 26.