

# THE IMPACT OF HUMAN GENE PATENTS ON INNOVATION AND ACCESS: A SURVEY OF HUMAN GENE PATENT LITIGATION

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## I. INTRODUCTION

While opposition to so-called “gene patents” is nothing new, the rhetoric appears to be heating up. For example, a recent *New York Times* editorial by popular science fiction author Michael Crichton warns: “YOU, or someone you love, may die because of a gene patent . . . . Gene patents are now used to halt research, prevent medical testing and keep vital information from you and your doctor . . . . [B]y now one-fifth of the genes in your body are privately owned.”<sup>1</sup>

The editorial alleges that certain unspecified parties have used gene patents to secure “ownership” of diseases and entire genomes, and argues that by issuing patents on genes the United States Patent and Trademark Office (“USPTO”) has misinterpreted Supreme Court precedent.<sup>2</sup> Mr. Crichton is far from alone – similar concerns have been voiced by a diverse coalition of gene patent critics that includes prominent scientists, religious leaders, public policy advocates, academics, governmental agencies and members of Congress.<sup>3</sup>

Crichton’s editorial appears to have been timed to coincide with the introduction in Congress of the Genomic Research and Accessibility Act (“GRAA”), a bill sponsored by Congressmen Xavier Becerra and Dave Weldon, M.D., and intended to end the patenting of genes. The GRAA would prospectively bar the patenting of any “nucleotide sequence, or its functions or

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<sup>1</sup> Michael Crichton, Op-Ed., *Patenting Life*, N.Y. TIMES, Feb. 13, 2007, at A2.

<sup>2</sup> Crichton, *Patenting Life*, *supra* note 1.

<sup>3</sup> See, e.g., NATIONAL ACADEMIES OF SCIENCE, BOARD ON SCIENCE, TECHNOLOGY, AND ECONOMIC POLICY (STEP), REAPING THE BENEFITS OF GENOMIC AND PROTEOMIC RESEARCH: INTELLECTUAL PROPERTY RIGHTS, INNOVATION, AND PUBLIC HEALTH 125-27 (Stephen Merrill & Anne-Marie Mazza eds., National Academic Press 2006) [hereinafter REAPING THE BENEFITS]; The Institute for Science, Law & Technology, *Nobel Laureate Opposes Gene Patents*, <http://www.whoownsyourbody.org/sulston.html> (last visited Jan. 30, 2007); Letter from Bruce Alberts, President, National Academy of Sciences to Todd Dickinson, Assistant Sec’y of Commerce (Mar. 22, 2000), available at <http://www.uspto.gov/web/offices/com/sol/comments/utilguide/nas.pdf>; Press Release, College of American Pathologists, Gene Patents Put America’s Healthcare at Risk, says CPA (June 28, 2006), available at [http://www.cap.org/apps/cap.portal?\\_nfpb=true&\\_pageLabel=media](http://www.cap.org/apps/cap.portal?_nfpb=true&_pageLabel=media) (follow “News Release Index” hyperlink); American College of Medical Genetics, Position Statement on Gene Patents and Accessibility of Gene Testing (Aug. 2, 1999), available at <http://genetics.faseb.org/genetics/acmg/pol-34.htm>.