

Supreme court to rule on patent for your thoughts

Oliver Burkeman in New York
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The US supreme court is due to hear arguments in a case today that could overturn thousands of controversial patents, after a lower court ruled that doctors could infringe a drug company's ownership rights "merely by thinking" about the relationship between two chemicals in the human body.

The case concerns a patent granted in 1990 to scientists at the University of Colorado and Columbia in New York. They discovered that high levels of an amino acid, homocysteine, in the blood or urine tended to be associated with a deficiency of B vitamins. But their patent does not just relate to the test they invented. It asserts their ownership of the idea of correlating the two chemicals - leading to the charge that they have patented a law of nature, rather than a human invention.

"Unfortunately for the public, the Metabolite case is only one example of a much broader patent problem in this country," the bestselling novelist Michael Crichton wrote in the New York Times at the weekend. "We grant patents at a level of abstraction that is unwise, and it's gotten us into trouble in the past."

The idea that even thinking about a correlation could infringe a patent "smacks of thought control, to say nothing of unenforceability", he added.

Allowing the trend to continue could be disastrous, he warned. "Do you want to be told by your doctor, 'Oh, nobody studies your disease any more because the owner of the gene/enzyme/correlation has made it too expensive to do research'?"

The current dispute began in 1998 after LabCorp, a medical testing firm, stopped paying royalties to Metabolite Laboratories, which owns the patent. LabCorp said it had started using a different testing method for the same correlation, but Metabolite sued and won.

LabCorp was ordered to pay \$7.8m (£4.5m) in damages, and is now asking the supreme court to overturn that judgment.

If the court finds in favour of LabCorp, thousands of patents could be at risk, including many of those granted in connection with the human genome.

A number of medical, software and financial companies are supporting Metabolite as "friends of the court", suggesting that they too see implications for their businesses if the court rules against the firm.

"The test itself is obvious when you have the correlation. It is the discovery of the correlation that is the real novelty here," Mark Lemley, a Stanford University law professor who is helping represent Metabolite, told the Washington Post.

But a pressure group called Patients Not Patents cited a recent patent application for "a method of evaluating a risk of occurrence of a medical condition in a patient, the method comprising: receiving a patient dataset for the patient; and evaluating the dataset with a model predictive of the medical condition" - which would, if granted, have patented the most basic aspects of being a doctor.