Call for Submissions: Crichton v. Federal Circuit

by iBlawg

With two key cases before the United States Supreme Court, the blogosphere abuzz with discussion, and popular media eagerly reporting, patent law is all the rage. One of the more recent signs that patent issues have struck a cord with mainstream America came in the form of a *New York Times* Op/Ed essay by author Michael Crichton. Crichton's piece "This Essay Breaks the Law" (also available here.) strongly criticized the direction in which our patent system is headed, echoing criticism of the Federal Circuit's patent law jurisprudence.

This whirlwind of criticism has come about in light of Lab. Corp. v. Metabolite Labs., Inc., a case recently argued in front of the Supreme Court. At first glance, the controversy seems to stem from a harmless looking patent on a vitamin deficiency test. Claim 13 of the patent covers a method for detecting vitamin deficiency comprising the steps of (1) assaying for an elevated level of total homocysteine and (2) correlating an elevated level of total homocysteine with a vitamin deficiency. U.S. Patent No. 4,940,658 (filed Nov. 20, 1986).

Metabolite licensed this patent to LabCorp. Under the license, LabCorp. performed assays testing homocysteine levels—the first step of claim 13 of the '658 patent. But LabCorp. subsequently ended its deal with Metabolite. Metabolite sued for infringement when it found out that LabCorp. switched to a test from another company. Although LabCorp. only performed claim 13's first step, Metabolite claimed that LabCorp. actively induced doctors to perform the second step—correlating the test results—and thereby infringe the patent. LabCorp. assisted infringement, according to Metabolite, by publishing Continuing Medical Education articles that explained how to correlate the test results to determine the existence of a vitamin deficiency. Because of these

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publications, the Federal Circuit held that LabCorp. had actively induced infringement.

But the Federal Circuit's opinion ignored whether this patent effectively claims a "law of nature," which cannot be patented under long-standing doctrine. The Supreme Court granted review and asked parties to brief the Court on this issue exclusively.

While this case and the Federal Circuit's patent law jurisprudence have been the source of many animated debates among inventors and lawyers, Michael Crichton's Op/Ed essay has brought the issue to the attention of the general public, and we are undeniably in an era in which questions of patent law should be publicly scrutinized. The progress of science (or rather the "useful arts" for the sake historical accuracy) has a profound effect on our daily lives, and it would behoove all of us to consider these matters seriously. In light of this, the iBlawg seeks your thoughts on this issue or on Crichton's piece. We invite any and all interested in submitting a post to contact us at iBlawg@law.duke.edu.

Jim Sherwood, Editor-in-Chief
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