



Standing Committee Resolution

Standing Committee on Pharma and Biotechnology

Over the last few decades, isolated genes and genetic material have been regarded as constituting patentable subject matter in many jurisdictions. However, in recent years, various court decisions, most prominently the Myriad cases in the US and Australia, have called into question the patentability of such material. Additionally, the European Court of Justice in Decision C428/08 has ruled that member state law is precluded from offering “absolute protection” to patented DNA as such.

The Biotechnology Sub committee has recently published a Position Paper which concludes that the advancement of research in and with genetic material should be fostered in view of its contribution to the discovery of urgently needed therapies and medicaments. To this end, the patentability of genetic material should be promoted and harmonized. By contrast, exclusion from patentability deters efforts in genetic research, preventing beneficial developments being made available for the benefit of the public.

The Position Paper offers the view that genetic materials should not be regarded as patent ineligible subject matter by reason of TRIPs Article 27(2) and (3), and nor should inventions in relation to genetic material be considered contrary to ordre public or morality. The standard tests of novelty, inventive step and industrial applicability should apply. On the basis of this Position Paper, the Sub committee has proposed a resolution for adoption at the Congress in Sydney, which will be discussed in this Plenary Session.