


# Patenting Life: Genes and Generations

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# Isolated DNA: just another chemical compound?

- ▶ *Amgen v Chugai* [1991]
  - ▶ Successful challenge in US precisely on grounds which support patentability in Europe
  - ▶ Wellcome Trust Sanger Institute: quest to understand genetic nature still remains a long way from completion, with “unknowns abounding”
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# AMP v Myriad Genetics

- ▶ Focus placed on ‘*location and order* of the nucleotides’ and whether the genetic *structure* is ‘created or altered’ by the inventor
- ▶ Subtle shift from Sweet’s JD analysis, that the *function* of isolated DNA no different to that of native DNA

# Wider effects of litigation?

- ▶ Pharmacogenetic test development – major gene candidate should be, “*well documented as being functionally relevant*”.
- ▶ *In re Kubin* [2009] CAFC ‘Unpatentably obvious’
- ▶ *Myraid* – no effect on method claims
- ▶ *Mayo v Prometheus* [2012] – purified DNA?
- ▶ *HGS v Eli Lilly* [2011] UKSC, Strata of principles for IA in biotechnology