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Full Federal Circuit Nixes Sequenom Patent Eligibility Request

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The full membership of the Federal Circuit [will not rehear](#) a three-judge panel's ruling that Sequenom's methods for detecting paternity DNA in a prenatal sample are ineligible for patenting.

The life sciences industry had severely criticized the panel's view that the appeals court was bound by U.S. Supreme Court precedent. One brief supporting en banc review cited a "dark cloud overshadowing thousands of issued and maintained biotechnology patents."

Only Judge Pauline Newman voted in favor of rehearing, prompting two opinions supporting the decision to decline to rehear the case. Judge Alan D. Lourie disagreed with the high court's view on the ineligibility of patenting inventions on natural phenomena. But he nevertheless concluded that the court's opinions in Mayo, Myriad and Alice had left the appeals court "no option" but to go with the decision the panel had made. Judge Timothy B. Dyk said that "the framework of Mayo and Alice is an essential ingredient of a healthy patent system, allowing the invalidation of improperly issued and highly anti-competitive patents without the need for protracted and expensive litigation."

However, Dyk also said that he was concerned that the framework was "a too restrictive test for patent eligibility under 35 U.S.C. §101 with respect to laws of nature." Dyk argued that "Mayo may not be entirely consistent with the Supreme Court's decision in Myriad," which Sequenom can use in its highly likely petition for Supreme Court review of its charge of patent infringement against Ariosa Diagnostics.

But Dyk's solution was to take the breadth of patent claim scope into consideration in the patent eligibility question, and Lourie's view was that Sequenom's claims, if analyzed for scope, "might be indefinite or too broad." Newman said she would have distinguished Sequenom's patent, arguing that the facts of the case "diverge significantly from" the facts at issue in the high court's recent decisions on Section 101.

[Ariosa Diagnostics, Inc. v. Sequenom, Inc.](#), No. 2014-1139 (Fed. Cir., en banc rehearing denied Dec. 2, 2015)