

Executive Summary

Legal Challenge to U.S. Patent and Trademark Office on Patenting of Animals

On February 25, 2004, the American Anti-Vivisection Society (AAVS) and PatentWatch Project (PWP) of the International Center for Technology Assessment (ICTA) filed a legal Request for Reexamination with the U.S. Patent and Trademark Office (USPTO) demanding the cancellation of a U.S. patent for a beagle dog intended to be used in experimentation. This is the first-ever challenge by public-interest organizations to a single patent on animals in the United States.

Summary of Legal Action

Since 1987, the USPTO has had a policy of issuing government patents—legal monopolies—to corporations claiming to have ‘invented’ a ‘new’ animal. Despite having no basis in statutory law for doing so, the USPTO has accepted almost 500 applications for patents, ranging from genetically engineered mice to rabbits who have been merely conventionally sexually bred. These patents have formed the commercial basis for a highly profitable trade in ‘test’ animals. The legal lynchpin upon which the USPTO allows such patents is their categorization of all animals, from mice to monkeys, as mere ‘manufactures’ or inventors’ ‘compositions of matter.’ To date, their strained interpretation of patent law has neither been directly challenged nor confirmed in a court of law.

On September 3, 2002, the USPTO issued a patent to the University of Texas, US-6,444,872-B1, claiming a beagle dog who had been immunosuppressed with gamma rays and steroids, then given a fatal fungal infection. This ‘invention’ purports to provide a large-animal ‘model’ for humans having fungal lung infections. Available information indicates that the patent has been licensed to one start-up company.

Recent changes in U.S. patent law now allow any person to not only request a reexamination of certain issued patents, but also participate in the proceedings as they progress in the USPTO. Jointly, AAVS and PWP are requesting that the USPTO cancel the claims of this beagle patent based upon voluminous scientific evidence that:

- its claims would have been obvious to a person working in that field; and because
- neither beagles, nor any other animals, fit into any of the statutory categories of patentable subject matter.

This Request for Reexamination calls into question not only the appropriateness of a patent on a diseased dog, but also the 1987 agency policy of the USPTO that allows for patents on sentient beings such as animals. The Request is an attempt to change this inappropriate government policy.

Under existing regulations the USPTO has three months to furnish a response to the Request for Reexamination. Additionally, the Requesters will be organizing to assist the public in transmitting their concerns about animal patenting to the Director of the USPTO.

Should you like to discuss the legal action in greater detail, please do not hesitate to contact AAVS at (215)887-0816, or PatentWatch Project at (202)547-9359, or visit www.stopanimalpatents.org.

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