

## Gene patenting plot thickens

The long battle in the American courts over Myriad Genetics' patents of BRCA1 and BRCA2, the primary diagnostic genes for hereditary breast and ovarian cancer has been well-documented in the IPilogue (see coverage by Beatrice [yesterday](#) as well as previous posts [here](#), [here](#), and [here](#)). Now, Myriad is poised to defend their patents at the [Supreme Court for a second time](#), with arguments to be heard in Spring 2013. However, this time there is new information that has come to light regarding Myriad's practices as a patentee that may further harm their case, based on public health policy.

It [recently became public knowledge](#) that Myriad has been retaining clinical data concerning BRCA1/2 mutations as trade secrets, stemming from their control over BRCA1/2 research. By claiming mutation information from clinical trials as proprietary, Myriad is failing to disclose valuable information that is secondary to their patent of the initial genes, and potentially impeding research on the genes that could result in life-saving developments. This brings concerns around the circumvention of the parameters and breadth of their initial patent, as well as the convolution of the patent as a means of shrouding their company data in trade secrecy.

Typically, [patents are an alternative approach to keeping trade secrets](#); in exchange for disclosure of the information surrounding the invention (which is in the interest of furthering innovation), patent holders are granted legal protection from others using their patented invention. Trade secrets do not afford legal protection, and anyone obtaining the secrets (typically excluding those under contract) may use them freely. Of the greatest concern is that even if the BRCA1/2 patents are invalidated in court in the Spring, Myriad will still be privy to the clinical data collected under the invalid patent. Such unconscionable use of the patent system directly violates the [public interest factors](#) on which the system was built.

**View the original article here: [Live and Let Die: Gene Patenting Plot Thickens as the Patent/Trade Secret Line is Blurred](#)**