

Report From Bio International Convention in DC– Everyone In the Patent Pool!

Article By:

I have been hearing about “**patent pools**” for **biotech patents** for years, but [Kristen Neuman](#) made it much more real at a Break-Out Session on Diagnostics and Personalized Medicine at the BIO International Convention in DC today (6/29/11). The session was chaired by [Jennifer Gordon](#) of BakerBotts but the star was Ms. Neuman of Proskauer who appeared on the panel representing Libreasse, a program sponsored by [MPEG-LA](#), the group that settled the MPEG-2 patent disputes by setting up a patent pool where electronics’ manufacturers could license the patent rights they needed to develop say, iPods, by paying a single royalty.

Ms. Neuman proposed a similar model for patents directed to biomarkers and their use in diagnostic/predictive assays that are the foundation of personalized medicine – such as the Myraid patents. She said that the group had studied patents relating to diagnosing Lynch Syndrome, a condition involving colorectal cancer and endometrial cancer and had found at least 12 patents relating to gene mutations associated with this disorder owned by 12 institutions and private companies. As a model, she proposed that these rights owners would form a patent pool. Any entity wishing to develop a clinical assay for this syndrome would be able to cut through this patent thicket by pulling their cart through the resultant patent “supermarket” online and obtaining non-exclusive, field-of-use limited licenses to the patents they needed to proceed. She identified other patent thickets as associated with hereditary hearing loss, CV disease, and schizophrenia.

The audience was not totally receptive to the concept, and pointed out the exclusionary value of such “companion diagnostic” patents in innovator labeling (read [Caraco](#) for background) and in business models that depend on developing marketable assays from just a small group of the patents. Both admissions criteria and enforcement issues were also raised as concerns. Still, this was an inspiring proposal for those who believe that patent thickets pose a real danger to innovation. I am not quite ready to shop at this patent boutique but, given that draconian remedies such as exempting certain diagnostic assays from liability for infringement have been proposed in Congress, this proposal deserves our attention.

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