

Patenting Human Genes in Europe:

Is it possible to set an ethical *minimum* based on common values?

Paper presented at the 4th Conference on Information Law and Ethics Thessaloniki,
May 20-21, 2011

Dr. Leandros K. Lefakis

Abstract

Dealing with the issue of patents on human genes has proved to be quite challenging and complex due to a variety of factors. Firstly, many different interests are involved in patenting. For instance, interests of legal, financial, diagnostic, therapeutic and ethical nature. Secondly, the patent law allows room for various interpretations. Often, the debate on human gene patents is so complicated that it is not easy to reach a *consensus* on what is actually being discussed. Thirdly, the connection between law and ethics in this area is another obstacle as it makes matters more complicated. Is it ethical to patent human genes and gene sequences? As with many questions regarding what is ethically permissible, this query has more specific issues of complexity, which include fundamental questions about what should be patentable from an ethical perspective, as well as what is patentable under existing patent legislation in Europe. Legal practice has proved that although current patent laws can be interpreted to allow gene patenting, this may always pose an ethical challenge. And even if –contrary to expectations- it is feasible to reach a common understanding in the wording, the practical implementation of the values would still be disputed, leaving only a set of “common values” to apply as an ethical *minimum*. This might possibly initiate a dialogue about the formulation and implementation of ethical principles on human gene patents.

Key words: genes, patent law, ethics, common values