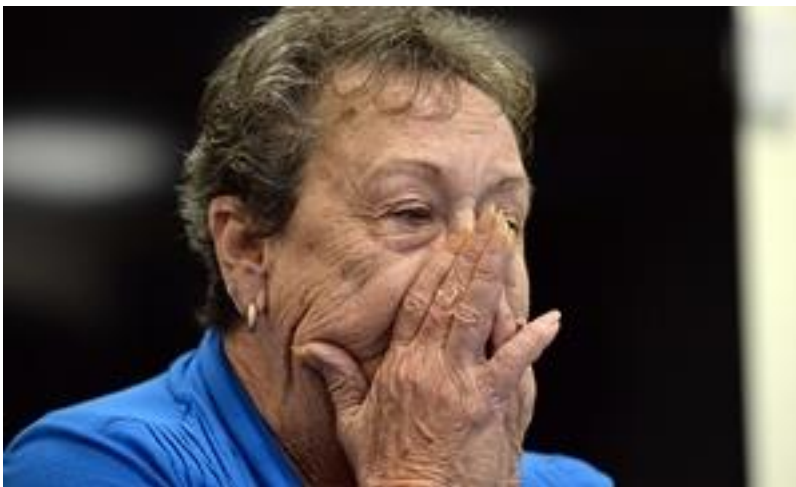


# Patient wins high court challenge against company's cancer gene patent

Yvonne D'Arcy took US-based biotech company Myriad Genetics to court over its patent of the BRCA1 gene linked to breast and ovarian cancer



Yvonne D'Arcy, who has breast cancer, is at the centre of a legal challenge to prevent corporations from controlling human genetic material, focusing on the BRCA1 gene. Photograph: Dan Peled/AAP

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A [Queensland](#) cancer patient has won her high court challenge against corporations owning human genes.

Yvonne D'Arcy took her fight against a US-based biotech company to Australia's highest court after losing a federal court challenge.

Myriad Genetics has a patent over the BRCA1 gene, which is linked to an increased risk of hereditary breast and ovarian cancers.

Darcy's lawyers had argued that genetic material is a product of nature, even where isolated from the body, and is therefore unpatentable.

They contended that allowing corporations to own patents over human genes stifled cancer research and allowed them to charge exorbitant rates for patients who wish to be tested for the BRCA1 mutation.

In an unanimous decision on Wednesday, the high court found that an isolated nucleic acid, coding for a BRCA1 protein, with specific variations from the norm that are indicative of susceptibility to breast cancer and ovarian cancer was not a “patentable invention”.

The federal court had dismissed Darcy’s appeal against a judge’s finding that the invention fell within the concept of a “manner of manufacture”.

But the high court disagreed.

“While the invention claimed might be, in a formal sense, a product of human action, it was the existence of the information stored in the relevant sequences that was an essential element of the invention as claimed,” the judges said.

Darcy said she was “ecstatic” at the decision after a long legal battle.

Taking on a corporation had been a David and Goliath match-up, she said.

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“I’m only a little person – but it’s not the size of the dog in the fight, it’s the size of the fight in the dog.”

D’Arcy said until the decision few people could afford testing “except for Angelina Jolie”, but the cost should now come down.

“For all those people who do have the genetic footprint, it’s a win for them,” she said. “Because now they’re forewarned and forearmed.”

D’Arcy’s two breast cancer diagnoses and one cervical cancer diagnosis are hormonally and not genetically based.

She said her opponents seemed motivated purely by their commercial bottom line. She said she never considered ditching her claim, despite the psychological toll of continuing legal procedures, because she knew she was in the right.

She hoped other countries would “see sense” and follow suit.

For now, she intended to celebrate.

“The bourbon bottle is going to come out tonight,” she said.

<http://www.theguardian.com/society/2015/oct/07/patient-wins-high-court-challenge-against-companys-cancer-gene-patent>