Session on Gene Patents and Licensing Practices
Q&A

DR. EVANS: So I'm going to take the liberty of eating into our break for just a few minutes to ask for questions or comments for Judge Newman.

I just had one question that maybe you could comment on. You alluded early on in your points about the discrepant effects of weak and strong patenting law on different parts of industry. For example, pharma would like very strong patent law. Software traditionally has argued for weakening patent law.

Do you think that that demonstration which certainly goes to within medicine that exists to some extent -- do you think that that argues for licensing practices that might remedy that type of thing? In other words, do you think that there are remedies that can be brought to bear on different aspects of patent practice that would mitigate some of that bluntness of patent law?

JUDGE NEWMAN: I have pretty much come to the conclusion, based on the power of the arguments made by the software industry, that perhaps it would be appropriate to think about whether the rules should be modified where the patentee is not in business, has not made a commercial investment. Now, that would have one impact, however, on the computer programmers who have ingenious ideas such as the idea that caused the BlackBerry producers so much grief and enter the Patent Office without a major investment. But the other side, the same principle might very well apply to scientists in universities who are seeking to license their inventions and who are not themselves exploiting and developing it.

I don't know an easy answer to that question. To strengthen the role of the licensing entity I think is very much on the table at the moment because of the new decision of the Supreme Court which says that a licensee can challenge the patent at any time. For scientists and their supporters in the universities whose interest is in licensing, not just to provide a financial return to the university, but to move the scientific development into public use, the balance of the negotiation shifts. Whether it shifts disadvantageously, I'm not so sure because, after all, if a patent can't stand --

(Audio system failure.)

JUDGE NEWMAN: -- incremental steps are no longer going to be favorably viewed by decision-makers in patenting, what will that do to the development of the science and to then the movement as the science evolves from the laboratory bench into public use and in the private sector, whether it will even get to the laboratory bench at all. All of these aspects are intertwined in a very complicated way.

DR. EVANS: And I think making our task more difficult. Something to reinforce to the committee is that arguably issues with regard to diagnostic tests and predictive tests -- we're not just talking about commerce. We're talking about another imperative too, which is patient access and the public's health. So we have to take into account the types of remedies that get to that and aren't just focused on commerce.

Thank you very much. We can have our break now, and return at 10:50. So thanks.

(Applause.)

(Recess.)