

Research Discoveries after Kubin

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Introduction

In re Kubin, decided by the U.S. Court of Appeals for the Federal Circuit on April 3, 2009, substitutes the old rule on awarding patents for DNA research with a new one. Specifically, the existence of a general method of isolating DNA molecules is now relevant to the question of whether the DNA molecules themselves would have been obvious under 35 U.S.C. § 103. With the commercialization of biomedical discoveries made at academic or basic research centers being highly dependent upon patents to protect the substantial investment of risk capital for product development, will this new rule adversely affect those technologies based upon DNA—technologies at the forefront of today's molecular medicine?