

# **Research Tool Patents: Have Reports of Their Death Been Greatly Exaggerated?**

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## **Introduction**

Judge Pauline Newman of the Court of Appeals for the Federal Circuit characterized a research tool as “a product or method whose purpose is use in the conduct of research, whether the tool is an analytical balance, an assay kit, a laser device (*citation omitted*), or a biochemical method such as the PCR (polymerase chain reaction). It is as subject to the patent right as is any other device or method, whether it is used to conduct research or for any other purpose.<sup>1</sup>”

Research tool patents are a mainstay of many life science companies. In fact, some companies center their entire business plans around the use or sale of particular research tools. The value of research tools in life science research is unquestionably high; however, recent developments in patent law and tightening budgets have forced companies and universities to decide whether to devote precious resources to drafting and prosecuting research tool patents. The purpose of this article is to set out the current state of the law and discuss whether it makes sense to attempt to obtain and enforce research tool patents.