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August 28, 2009

BY ECF

Hon. Robert W. Sweet  
United States District Judge  
United States Courthouse  
500 Pearl Street, Room 2510  
New York, NY 10007

RE: ASSOCIATION FOR MOLECULAR PATHOLOGY, ET AL., v. UNITED STATES PATENT AND TRADEMARK OFFICE, ET AL., CASE No. 09 CV 4515 (RWS)

Dear Judge Sweet:

Susan Berke Fogel and we represent proposed *Amici Curiae National Women's Health Network, Asian Communities for Reproductive Justice, Center for Genetics and Society, Generations Ahead, and Pro-Choice Alliance for Responsible Research*, (collectively "*Amici Curiae*"). We write to seek the Court's leave to file a brief on behalf of *Amici Curiae* to assist the Court in understanding some very important issues in the above-referenced action. All plaintiffs and defendants have consented to the filing of an amicus brief by *Amici Curiae*, except that two defendants have objected only to the timing of the filing.<sup>1</sup>

This action challenges the legality and constitutionality of granting patents of genes and sequences of genes associated with hereditary forms of breast and ovarian cancers. *Amici Curiae* have a substantial interest in this case. *Amici Curiae* are non profit organizations that advocate in favor of women's health and social justice. The organizations have expertise in public policy,

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<sup>1</sup> Counsel for defendants Myriad Genetics and the Directors of the University of Utah Research Foundation (the "Myriad Defendants") represented that the Myriad Defendants will consent to an amicus brief "in support of plaintiffs' substantive position on the merits in this action at an appropriate time", but do not consent to the filing of such a brief at this time because the Court has not decided the Myriad Defendants' motion to dismiss the action on jurisdictional grounds.

women's health, and health disparities as they impact the health and well-being of women and, in particular, women of color and low income women. Collectively, *Amici Curiae* conduct research, advocate for just public policy, and educate community-based organizations about the implications of new technologies for women's health and rights. The patenting of genes and gene mutations are of vital concern to *Amici Curiae*. As *Amici Curiae* more fully explain in their proposed brief, it is not just sufficient to evaluate gene patents in general, or Myriad Defendants' patents in particular, in the context of intellectual property law. The patents at issue in this case have real life consequences for the health and well-being of women. The purpose of the proposed brief by *Amicus Curiae* is to illustrate to the Court how patents on genes and gene mutations prevent women at risk for breast and ovarian cancer from obtaining the information they need about their own bodies to take steps to improve their health outcomes, and possibly save their own lives and the lives of their children. As access to information is restricted, as happens under the Myriad Defendants' patents, women are harmed.

"Federal courts have discretion to permit participation of amici where such participation will not prejudice any party and may be of assistance to the court." *Strougo v. Scudder, Stevens & Clark, Inc.*, 1997 WL 473566, at \*3 (S.D.N.Y. Aug. 18, 1997) (citing *Vulcan Society of New York City Fire Dep't, Inc. v. Civil Service Comm'n*, 490 F.2d 387, 391 (2d Cir. 1973)); *Onondaga Indian Nation v. State of New York*, 1997 WL 369389, \*2 (N.D.N.Y. June 25, 1997) (participation as *amicus curiae* should be allowed when it will help "insure a complete and plenary presentation of [potentially] difficult issues so that the court may reach a proper decision") (citing *United States v. Gotti*, 755 F. Supp. 1157, 1158 (E.D.N.Y. 1991)).

In light of the far reaching public policy implications for women of allowing patents on genes and gene mutations, it is appropriate for the Court to exercise its discretion to permit the *Amici Curiae* to file their proposed brief. Such filing will not prejudice any party.

Accordingly, *Amici Curiae* respectfully request that the Court grant them leave to file their proposed *amicus curiae* brief. Thank you for your consideration.

Respectfully submitted,

/s/ Jennifer Rubin

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