

*Whose Body Is It Anyway? Human Cells & The Strange Effects
of Property & Intellectual Property Law*

Robin Feldman

Whatever else I might own in this world, it would seem intuitively obvious that I own the cells of my body. Where else could the notion of ownership begin, other than with the components of the tangible corpus that all would recognize as “me”? The law, however, does not view the issue so neatly and clearly, particularly when cells are no longer in your body. As so often happens in law, we have reached this point, not by design, but by the piecemeal development of disparate notions that, when gathered together, form a strange and disconcerting picture.

This article examines both property and intellectual property doctrines in relation to human cells that are no longer within the body. In particular, the article discusses the *Bilski* decision, in the context of life science process patents, and the *Molecular Pathology* case, in the context of gene patents. For patent law, the article concludes that the problem lies not with the fact that genes constitute patentable subject matter, but rather with the extent of the reach that is allowed. For both property and intellectual property law, the article concludes that a more careful application of basic legal principles would better reflect the interests of society as a whole and the interests of individual human subjects, as well as the interests of those who innovate.