This Essay Breaks the Law

• The Earth revolves around the Sun.

• The speed of light is a constant.

• Apples fall to earth because of gravity.

• Elevated blood sugar is linked to diabetes.

• Elevated uric acid is linked to gout.

• Elevated homocysteine is linked to heart disease.

• Elevated homocysteine is linked to B-12 deficiency, so doctors should test homocysteine levels to see whether the patient needs vitamins.

ACTUALLY, I can't make that last statement. A corporation has patented that fact, and demands a royalty for its use. Anyone who makes the fact public and encourages doctors to test for the condition and treat it can be sued for royalty fees. Any doctor who reads a patient's test results and even thinks of vitamin deficiency infringes the patent. A federal circuit court held that mere thinking violates the patent.

All this may sound absurd, but it is the heart of a case that will be argued before the Supreme Court on Tuesday. In 1986 researchers filed a patent application for a method of testing the levels of homocysteine, an amino acid, in the blood. They went one step further and asked for a patent on the basic biological relationship between homocysteine and vitamin deficiency. A patent was granted that covered both the test and the scientific fact. Eventually, a company called Metabolite took over the license for the patent.

Although Metabolite does not have a monopoly on test methods — other companies make homocysteine tests, too — they assert licensing rights on the correlation of elevated homocysteine with vitamin deficiency. A company called LabCorp used a different test but published an article mentioning the patented fact. Metabolite sued on a number of grounds, and has won in court so far.

But what the Supreme Court will focus on is the nature of the claimed correlation. On the one hand, courts have repeatedly held that basic bodily processes and "products of nature" are not patentable. That's why no one owns gravity, or the speed of light. But at the same time, courts have granted so-called correlation patents for many years. Powerful forces are arrayed on both sides of the issue.

In addition, there is the rather bizarre question of whether simply thinking about a patented fact infringes the patent. The idea smacks of thought control, to say nothing of unenforceability. It seems like something out of a novel by Philip K. Dick — or Kafka. But it highlights the uncomfortable truth that the Patent Office and the courts have in recent decades ruled themselves into a corner from which they must somehow extricate themselves.

For example, the human genome exists in every one of us, and is therefore our shared heritage and an undoubted fact of nature. Nevertheless 20 percent of the genome is now privately owned. The gene for diabetes is owned, and its owner has something to say about any research you do, and what it will cost you. The entire genome of the hepatitis C virus is owned by a biotech company. Royalty costs now influence the direction of research in basic diseases, and often even the testing for diseases. Such barriers to medical testing and research are not in the public interest. Do you want to be told by your doctor, "Oh, nobody studies your disease any more because the owner of the gene/enzyme/correlation has made it too expensive to do research?"

The question of whether basic truths of nature can be owned ought not to be confused with concerns about how we pay for biotech development, whether we will have drugs in the future, and so on. If you invent a new test, you may patent it and sell it for as much as you can, if that's your goal. Companies can certainly own a test they have invented. But they should not own the disease itself, or the gene that causes the disease, or essential underlying facts about the disease. The distinction is not difficult, even though patent lawyers attempt to blur it. And even if correlation patents have been granted, the overwhelming majority of medical correlations, including those listed above, are not owned. And shouldn't be.

Unfortunately for the public, the Metabolite case is only one example of a much broader patent problem in this country. We grant patents at a level of abstraction that is unwise, and it's gotten us into trouble in the past. Some years back, doctors were allowed to patent surgical procedures and sue other doctors who used their methods without paying a fee. A blizzard of lawsuits followed. This unhealthy circumstance was halted in 1996 by the American Medical Association and Congress, which decided that doctors couldn't sue other doctors for using patented surgical procedures. But the beat goes on.

Companies have patented their method of hiring, and real estate agents have patented the way they sell houses. Lawyers now advise athletes to patent their sports moves, and screenwriters to patent their movie plots. (My screenplay for "Jurassic Park" was cited as a good candidate.)

Where does all this lead? It means that if a real estate agent lists a house for sale, he can be sued because an existing patent for selling houses includes item No. 7, "List the house." It means that Kobe Bryant may serve as an inspiration but not a model, because nobody can imitate him without fines. It means nobody can write a dinosaur story because my patent includes 257 items covering all aspects of behavior, like item No. 13, "Dinosaurs attack humans and other dinosaurs."

Such a situation is idiotic, of course. Yet elements of it already exist. And unless we begin to turn this around, there will be worse to come.

I wanted to end this essay by telling a story about how current rulings hurt us, but the patent for "ending an essay with an anecdote" is owned. So I thought to end with a quotation from a famous person, but that strategy is patented, too. I then decided to end abruptly, but "abrupt ending for dramatic effect" is also patented. Finally, I decided to pay the "end with summary" patent fee, since it was the least expensive.

The Supreme Court should rule against Metabolite, and the Patent Office should begin to reverse its strategy of patenting strategies. Basic truths of nature can't be owned.

Oh, and by the way: I own the patent for "essay or letter criticizing a previous publication." So anyone who criticizes what I have said here had better pay a royalty first, or I'll see you in court.