

very women who need it most.

A spokesman for Myriad, William Hockett, denied that the patent would lead to such problems.

"This has been a campaign of misinformation, sponsored by a few who oppose all patenting of genes," he told the Forward. "The cost for a test to detect this mutation," he said, "is no more or less than it was before the patent was issued."

"Public or private," he added, "the royalties asked of our licensees on the mutation test are very reasonable." As for the question of enforcing the patent in Israel, Hockett wrote in an e-mail, "We have not had any requests for licensing or running tests there."

Although the patent's language seems to indicate otherwise, Hockett insisted it "does not legally or otherwise require anything of doctors. No additional questions are required."

Hank Greely, an ethicist at Stanford University Law School, noted that the relative ease with which one can test Ashkenazic Jewish women for breast cancer mutations could have been a factor in Myriad's wording of its patent.

"The easiest and cleanest and cheapest test focuses on the Ashkenazim because they tend to have only a few very easily tested mutations," Greely said, adding, "I don't think this patent is racist. I do think it is a blunder."

Greely was skeptical that Myriad could enforce its patent if clinicians weren't legally bound to ask women

if they were of Ashkenazic Jewish descent. Even if doctors are required to obtain such information, the patent still seems impossible to enforce. "What if women lie?" he asked.

The Myriad case begs the much larger question of whether it is ethically sound to harness race or ethnicity as a means of marketing a medicine or patenting a genetic test.

The Myriad patent recalls the recent controversy over Food and Drug Administration approval of

### *Will a patent for an 'Ashkenazic gene' result in discrimination?*

BiDil, marketed by NitroMed Inc. BiDil is the first approved so-called "ethnic drug" in the United States, a heart failure medication targeted at blacks.

Jonathan Kahn, a law professor and ethicist at Hamline University in St. Paul, Minn., who wrote a history of BiDil's development in the Yale Journal of Health Policy, Law and Ethics last year, sees similarities in the two cases.

Kahn said BiDil's original 1987 patent, which was set to expire in 2007, was not race specific. NitroMed reapplied in 2001, this

time receiving race-specific approval.

"They use race to transform a pre-existing patent purely to get extra, extended patent protection — or to extend the reach of the patent," said Kahn, who said Myriad's patent seemed similarly amended in that it became specific to Jews only when it faced a legal challenge. Both BiDil and the Myriad test were available to their desired subjects before the companies targeted their patents at them.

Kahn pointed out that Ashkenazic Jewish women already know by and large that they have a higher incidence of the BRCA mutation. "This special patent doesn't help identify at-risk people," he said. "They can already take the test."

Kahn sees such legal maneuvering as disrupting the balance between commerce and medicine. It is fine, he said, to make money by diagnosing and identifying people, for example, who have a BRCA mutation. However, "trying to exploit their ethnic identity to make even more money for that process, I think, is not fine. That is the choice Myriad is making in styling this sort of patent."

Having such a patent, said Kahn, implied that Ashkenazic Jews are "are biologically and genetically identifiable as different from everybody else." From there, he said, it is not a big step to say some groups are better than others.