In 2013, the Supreme Court held in *Association for Molecular Pathology v. Myriad Genetics* that isolated DNA does not comprise patentable subject matter but that cDNA does. This decision is both doctrinally important and has attracted wide attention for its social, technological, and economic ramifications. Much of the commentary has addressed the impact of "gene patents" on the availability of diagnostic tests. However, a significant background consideration permeating the litigation centered on the impact of gene patents on biomedical research. The plaintiffs challenging Myriad's patents as well as various amici argued that such patents stifled biomedical research and, ultimately, scientific progress. From this perspective, the Court's ruling that isolated DNA is not patentable subject matter would seem to remove a significant obstacle to biomedical research. This Article, however, offers a more measured view. Delving into the theoretical and empirical literature on gene patents and the tragedy of the anticommons, it argues that *Myriad* will have only a modest short-term impact on biomedical research. Moving beyond the Court's narrow holding to its overall reasoning, however, this Article argues that *Myriad* may ultimately have a significant impact on patenting in scientific research. In drawing (arguably incorrect) distinctions between isolated DNA and cDNA and articulating a strong policy approach to §101 inquiries, the Court exhibited a striking degree of malleability in its conception of patent-ineligible natural products. Such a policy-oriented approach to patentable subject matter, moreover, creates significant flexibility to challenge patents in scientific research going forward.

Email: ptrlee@ucdavis.edu