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October 13, 2021

## **The Story of Henrietta Lacks and the Biotechnology Company Accused of Selling Her Cells for Profit**

By **Hugh B. Wellons**

These two articles ([Newsweek](#) and [Fierce Biotech](#)) describe the new lawsuit by the Henrietta Lacks Estate surrounding the HeLa cell line. The claim is "unjust enrichment," a difficult claim to win, but one that seems to fit this case, if any does. If you don't know this story, I recommend *The Immortal Life of Henrietta Lacks*, by Rebecca Skloot. It is the true story of an apparently wonderful woman, Ms. Lacks, who tragically died of cervical cancer at Johns Hopkins (now) Medical Center in 1951 at the age of 31. Human cell lines are notoriously hard to keep alive in a lab. Ms. Lacks' cancer cells were and are amazingly robust. Johns Hopkins saved some of those cells, identified them as extraordinary, used them in research, and later shared clones of the cells with others, who also used and shared them. Universities and companies still use that cell line today for research. There is no evidence that Johns Hopkins made a dime from the cells, but some biotech companies have used those cells in developing and testing new products. The plaintiff alleges systemic racism and many other things.

Click [here](#) to read the entire article.

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## **IP 101: Patentable Subject Matter**

By **William P. Smith**

Under the patent statute, any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent," subject to the conditions and requirements of the law. The word "process" is defined by law as a process, act, or method, and primarily includes industrial or technical processes. The term "machine" used in the statute is self-explanatory. The term "manufacture" refers to articles that are made, and includes all manufactured articles. The term "composition of matter" relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything that is made by man and the processes for making the products.

Click [here](#) to read the entire article.

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## **5 Situations in Which Cyber Liability Insurance Would be Helpful**

*"Ransomware attacks increased 93% in the first half of 2021 — having cyber liability coverage can help your company recover from damages that these attacks cause."*

**Why this is important:** As most litigators can agree, insurance coverage is the gift that business owners can get themselves to help reduce financial headaches associated with unmitigated or unknown risk. In addition to traditional liability insurance, business owners should consider additional cyber security insurance in order to minimize the risk of a cyberattack. Setting aside the costs to pay off a ransomware attack, even a seemingly tiny phishing effort could cause the inadvertent exposure of anything in a mailbox, which can sometimes include thousands of pieces of protected information. Just the cost to determine the scope of a breach can quickly reach tens of thousands of dollars, and that is before considering the costs of terminating access, remedying the security vulnerability, identifying compromised individuals, and providing notice to relevant individuals, attorneys general, or federal entities. Unlike litigation, where the expense usually follows the filing of a lawsuit, cyber breach expenses begin to mount at the moment of discovery, and add up quickly whether or not any litigation arises out of the breach. Having sufficient coverage to support breach response efforts can often pay dividends in money saved by avoiding enforcement or litigation. All entities should include cyber insurance in their risk management strategy and budget. --- [Risa S. Katz-Albert](#)

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## **Blockchain Technology Could Provide Secure Communications for Robot Teams**

*"The transaction-based communications system ensures robot teams achieve their goal even if some robots are hacked."*

**Why this is important:** Researchers at MIT and the Polytechnic University of Madrid are studying the extent to which robot teams can securely communicate by uploading their communications onto a blockchain. They've created a scenario where a team of autonomous drones are used to fight forest fires. Leader drones relay directions to the firefighting drones to coordinate their movement toward a fire. The leader drones relay those communications by incorporating them into a block that is added to a blockchain. The researchers argue the benefit of this arrangement is it allows the firefighting drones to read all of the directions from all of the leader drones and spot, and ignore, any directions that appear to be an aberration. The use case here is to protect against situations where one of the leader drones may be malfunctioning or hacked by a threat actor. Also, leader drones can be given a fixed number of tokens, a certain number of which must be spent whenever the leader uploads directions to the blockchain. This arrangement could minimize the amount of incorrect directions a leader drone can attempt to upload as it will eventually deplete its tokens. The MIT/Madrid study is another possible use case for incorporating blockchain into our lives beyond its use as a record of cryptocurrency transactions. --- [Nicholas P. Mooney II](#)

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## **Aldi is Piloting a Frictionless Grocery Store Shopping Experience**

*"The tech will track shoppers' movements and product selections within the store to let shoppers pay digitally without stopping at cash wrap."*

**Why this is important:** Aldi is seeking to provide their customers with the ability to shop without the need to check out with a cashier. This "frictionless" experience will allow consumers to select their items and exit the store without stopping and interacting with a cashier or a scanner. The payment will be handled digitally. This will allow consumers to avoid additional in-person interaction, streamline their shopping experience and save time. Aldi plans to pilot this model in one of their Netherlands stores using Trigo technology that tracks the movement of shoppers and the items in the stores.

Aldi is not the first retailer to utilize such technology as Amazon has used the "Just Walk Out" system at Amazon Go, Amazon Fresh and some Whole Foods stores. Although many consumers will find such

advances in technology beneficial, there are other things to consider. Retailers may no longer require as many cashier positions and some consumers may find the technology challenging or miss the human interaction during their shopping trip. --- [Anmarie Kaiser Robey](#)

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## **What Merck's New COVID Pill Can Actually Do**

*"If approved by the FDA and other global regulators, it will offer an easier way to treat people who have been infected with COVID, but not yet hospitalized."*

**Why this is important:** Merck developed a new anti-viral drug that is aimed at COVID-19. Still in trials, early results are promising. In a recent test of 775 high-risk COVID-19 patients, the half who received the treatment were half as likely to be hospitalized, and none died, versus four dead on the "control" (placebo) side of the test. --- [Hugh B. Wellons](#)

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## **Hackers Drain Cryptocurrency Accounts of Thousands of Coinbase Users**

*"They apparently phished for passwords and then used a flaw in Coinbase's 2FA to empty the victims' accounts."*

**Why this is important:** This article highlights the importance of being wary of e-mail phishing attacks. Coinbase, a leading cryptocurrency platform, recently notified more than 6,000 customers that they were victims of a targeted campaign to gain access to their accounts. The campaign involved a sophisticated phishing e-mail that appeared to be from Coinbase. When victims entered their account credentials, hackers harvested those credentials. The hackers then took advantage of "a flaw in Coinbase SMS Account Recovery process to receive an SMS two-factor authentication token and gain access" to the accounts. Coinbase hasn't revealed what the flaw in two-factor authentication process was, but it reports that it has updated that process to resolve this issue. This is another warning to be on guard for sophisticated e-mail phishing attacks. They are becoming more and more realistic every day. Think twice before entering your credentials in response to any e-mail. --- [Nicholas P. Mooney II](#)

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## **Acon Gets FDA Nod for Home COVID-19 Test Kit Amid Surging US Demand**

*"Acon Laboratories has received emergency use authorization for a COVID-19 antigen test, positioning it to start shipping a kit that is expected to double U.S. rapid at-home testing capacity over the next few weeks."*

**Why this is important:** Due to increased demand for rapid COVID-19 testing because of the delta variant, additional capacity following the FDA's emergency use authorization for Acon Laboratories' new antigen test is a welcome relief. In fact, both Walgreens and CVS are experiencing a shortage of rapid tests, which has resulted in some locations no longer being able to provide rapid COVID-19 testing. Current COVID-19 antigen test manufacturers, Abbot and Quidel, are already rushing to meet both current and future demand. Demand is expected to continue to rise when OSHA issues its anticipated rule for businesses with 100 or more employees, which will require employees to be either vaccinated or receive weekly testing. While it is unknown what type of testing OSHA's new rule will require, either PCR or antigen testing, additional rapid testing will nonetheless ease the current and future demand. Acon's new test has a 93 percent positive agreement and a 100 percent negative agreement with the PCR test. Unlike most current antigen tests that require two tests over multiple days to mitigate the risk of a false negative test, Acon's test does not require multiple testing. Acon anticipates shipping 100 million tests a month by the end of the year. --- [Alexander L. Turner](#)

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## **Crypto Marketplace Sent \$90 Million to Users, Thanks to a Bug. Now It Wants the Money Back.**

*"Compound Labs noticed 'unusual activity', but at that point the tokens were already distributed with no easy way of getting them back."*

**Why this is important:** Compound, a cryptocurrency platform, recently ran "what should have been a routine update to the code that governs users' transactions." However, the update contained a bug that sent \$89 million worth of Compound tokens into some users' accounts. This mistake raises a few legal issues. Generally speaking, when money is mistakenly deposited into a bank account, the account holder is not entitled to keep that money. The same principle could be argued to apply here. However, one aspect of distributed ledgers that often is praised is the fact that transactions are immutable. Immutable transactions can't be unwound. Thus, Compound had no way to forcibly recover the tokens. The company's founder realized this dilemma and quickly took to Twitter to, among other things, threaten to publicly reveal private information about users who received the tokens and did not return them. In addition to being a breach of decorum in the crypto world, publicly revealing individuals' private information could give rise to another legal issue. The article reports that at the time of its publication, approximately \$36 million in tokens have been returned. --- [Nicholas P. Mooney II](#)

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## **Twitch Blames Data Breach on Server Configuration Error**

*"The massive data leak allegedly included the streaming platform's source code and data on creator payouts."*

**Why this is important:** Online E-Sports platform Twitch (owned by Amazon) has released news that an alleged hacker gained access to, and released, sensitive user information. Citing a configuration change, Twitch explained that they believe the hack was primarily to disrupt online video streaming, and that they do not store sufficient financial information for that to be an exposure risk. Source codes for users may have been accessed, which constitutes a significant breach of users' confidential financial information. Along with other recent hacks, this demonstrates yet another avenue of attack by hackers to obtain individuals' confidential information.. --- [Risa S. Katz-Albert](#)

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## **Brain Stimulation Acts 'Like a Switch' to Turn Off Severe Depression for One Patient**

*"After years of suffering, a patient with severe and untreatable depression has finally found relief with an experimental brain implant originally developed to help people with epilepsy."*

**Why this is important:** Depression probably kills millions each year, factoring in both suicides and the stress impact on health. Depression also costs 200 million workdays each year (estimated). Therapy and/or medication effectively treat most depression. Physicians have used TMS (transcranial magnetic stimulation) for years to treat depression that did not improve with therapy and/or medication. An instrument on the head creates a magnetic field to create small electric currents in the areas of the brain that are associated with depression. Success is mixed, but many patients become better and do not need medication for depression after that. A new treatment under study involves actually implanting a device in the brain that monitors and reacts to activity in the brain in the location most associated with that person's depression. This technique first was used to prevent epileptic seizures, but its first human test for depression succeeded. Small sample size (one!), but there is hope that this might help those with depression for whom therapy/medication and TMS are ineffective. --- [Hugh B. Wellons](#)

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## **China's Cryptocurrency Ban Didn't Halt Asia as Crypto Transaction in the Continent Grows by 706%**

*"Per the report, Central & Southern Asia and Oceania (CSAO) is currently the fourth largest cryptocurrency market."*

**Why this is important:** As readers of *Decoded* likely know, China recently banned cryptocurrency transactions. Regardless of its stated reasons, the more skeptical among us believe that China's move is about protecting and incentivizing the use of its digital yuan, which it has been testing and which it hopes to export beyond its borders. A new report by Chainalysis revealed that, despite China's latest ban, cryptocurrency transactions in Asia grew by over 706 percent last year. Cryptocurrency adoption in Europe leads the rest of the world, and adoption continues to grow around the world. China's latest

move caused a dip in the cryptocurrency market, but it did nothing to the world's appetite to adopt these currencies. --- [Nicholas P. Mooney II](#)

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## **Ransomware Attacks Put Availability of Medical Devices at Risk**

*"More recently, a quarter of healthcare delivery organizations in a Ponemon Institute survey said they saw an increase in mortality rates following a ransomware attack."*

**Why this is important:** Obvious, when you think about it. Ransomware attacks on hospitals also affect those whose medical devices automatically report to medical personnel in that hospital. If the pacemaker turns on too often, often the cardiologist is getting the reports. This is further evidence of how dangerous, insidious and yes, evil, ransomware is. --- [Hugh B. Wellons](#)

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Thank you for reading this issue of *Decoded!* We hope you found the information timely and useful. If you have topics you would like us to cover or would like to add someone to our distribution list, please [email us](#).

[Nicholas P. Mooney II](#), Co-Editor of *Decoded* and Chair of Spilman's [Technology Practice Group](#)

and

[Alexander L. Turner](#), Co-Editor of *Decoded*

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