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**Abstract:**

The patent systems of most countries have gradually extended patent protection to inventions involving, and even consisting of, living organisms. In fact, the World Trade Organization ("WTO") Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") mandates that, in all of its member countries, "patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application." By allowing member countries to deny patentability to "plants and animals other than micro-organisms," TRIPS implies that the default rule is that the full range of organisms, from microbes to macrobes, are indeed potentially patentable subject matter. Canada represents a marked exception. The Supreme Court of Canada ("Supreme Court") negated the patentability of animals and plants, in general, and a genetically engineered mouse, in particular, despite the fact that Canadian statutory patent law is silent on the issue. Although the Canadian government had never availed itself of the escape clause of TRIPS Article 27(3)(b), which allows member states to exclude from patentability "plants and animals other than micro-organisms," a bare majority of the Supreme Court divined that the intent of Parliament was to exclude "higher life forms" from patentability. The Supreme Court variously justified its decision on the basis of "commonly understood" distinctions of "higher" and "lower" life forms, and the striking hypothesis that "higher," though not "lower," life forms "transcend" their genomes. The Supreme Court offered no scientific evidence whatsoever to justify its demarcation of the border between patentable and unpatentable organisms, nor could they because no scientific evidence exists. Failing to cite supporting evidence in this way might be acceptable if the science purported to underlie the decision were self-evident, either through overwhelming abundance or general acceptance among the scientific community. However, far from abundantly available or generally accepted, the scientific evidence needed to justify the Supreme Court's decision does not exist. Rather, through its rhetoric the Supreme Court majority reveals its prescientific Weltanschauung in which evolution progresses ever onwards and upwards toward an identifiable endpoint (notably the apex of evolution, Homo sapiens). From the Supreme Court's biologically unsupportable perspective, "complex" organisms are accorded privileged status over "simpler" life forms, and "higher" life forms somehow "transcend" their genomes while "lower" organisms apparently remain earthbound by their mundane genomes. In essence, the reasoning of the Supreme Court majority, in denying patentability to animals and plants, owes more to the ancient "Chain of Being" than it does to the accepted scientific view of evolution first published a full century and a half ago in Charles Darwin's The Origin Of Species. In effect, the subsequent Monsanto Canada Inc., v. Schmeiser decision went some distance towards reversing the rule of Harvard College, allowing the de facto patenting of at least one category of "higher" life forms: crop plants. However, even that decision failed decisively to disavow the dichotomy of "higher" and "lower" organisms. The strong influence that prescientific reasoning appears to hold on Canada's Supreme Court has worrying implications for the rational administration of a patent system whose existence is premised on the societal value of scientific advances, not to mention for other legal questions significantly influenced by modern science.