



The Million-Dollar Baby Question

A new at-home test claims it can tell pregnant moms whether their unborn child is a boy or a girl. The real mystery: whose bright idea was that?

ON THE STORE SHELF, BETWEEN THE BELLY OIL AND THE OVER-THE-SHOULDER, around-the-back, below-the-abdomen prenatal support harness, sits a box. Its contents offer an answer for pregnant gals who simply can't wait to know. Or it claims to, anyway. "The world's first at-home gender prediction test" recently hit the maternity market, giving impatient mommies-to-be yet another chance to play chemist in the bathroom.

The IntelliGender Gender Prediction Test, invented in Dallas, purports to reveal the sex of an unborn baby with just a few drops of urine, plus \$34.95 (or \$29.95 online, plus shipping). What's more, the makers of the product say it's 90 percent accurate and works at just 10 weeks into a pregnancy, compared to the 16 for amniocentesis and 20 for ultrasound. Whether women will actually paint nurseries based on what color their urine turns in a cup, or if shower-goers see it as simply another Saturday afternoon party game, the little box is making it into maternity stores here—and wherever babies are made.

But the skeptical among us squint our eyes and ask: can it possibly work? The an-

swer, without delving into stoichiometry and valence bonds, can be gleaned from the test's provenance. Let's start with the longshoreman.

IN A SINGLE-STORY BUILDING ON STEWART Street in Irving, Connie M. Hendrickson, Ph.D., putters about in a white coat, among pipettes, graduated cylinders, and shelves lined with bottles and jars. "Glycerine," reads one label. "Magnesium Fluorosilicate," says another, in red. Lab tables are covered with trays of prickly pear cactus pads, dotted with cochineal insects from which she will extract carmine, a red dye used in foods and cosmetics. For 27 years, Hendrickson, a Certified Professional Chemist, has run her own lab, developing formulations for industry and individuals, as well as testifying often as an expert witness in legal cases.

In the spring of 2002, a man who works on an oil rig in the Gulf of Mexico, an East Texan named John Spurgeon, called Hen-

POLLY BECKER

drickson with a job. Spurgeon wanted to know if the chemist could devise a test that could determine the gender of a fetus. "He heard it from somewhere and thought it had animal applications," Hendrickson says. "It sounded feasible, so I said okay."

For six months, she worked to invent a solid composition that could be housed in one small container. "If it wasn't in one collection vial, it would be no good commer-

"I found an abandoned patent that laid out certain ingredients. It's free property, you know. You don't need to know science from the ground up."

cially. It was the devil to get it in that form," she says. The mixture was comprised of a metal, a salt, and a base, which, when combined with urine containing testosterone, will change the color of that urine. Voila, it's a boy. But when they are combined and moisture is added prematurely to the system, a reaction occurs. "The crux of the project was to get the entire system in one container—and stabilize it," Hendrickson says. "You don't want it to react before the urine is added."

To do this, she added a chemical barrier to the mix, a neutral filler that separates the metal shavings from the base. "It clumps together and it's very annoying. You have to dry it and weigh it fast," she says. She perfected the recipe in 2003. Two years later, Spurgeon filed patent application No. 20060063270 with the U.S. Patent Office in Washington, D.C. As is standard operating procedure, the Patent Office eventually published that application—including a 10-page abstract describing how the test works. The application went online, for anyone to peruse, on March 23, 2006.

All of which, according to the makers of "the world's first at-home gender prediction test," has nothing whatsoever to do with IntelliGender.

A FUNNY THING: WHILE HENDRICKSON was busy in her Irving lab, a woman named Rebecca Griffin, just a few miles across town, got an idea. Griffin is a mother of four and a managing principal at Newmark Knight Frank, an international commercial real estate firm. "What

if," Griffin remembers telling a friend, "we could make a test that would tell you if you were having a boy or a girl? We thought this might be something."

Say there are roughly 4 million babies born in the United States every year. What if you could get just 10 percent of those babies' moms to buy a urine-based, in-home gender test? Pick a \$30 price point. That would mean \$12 million in annual sales.

The ladies pondered the concept. First, Griffin and her friend, who has become a silent partner in the enterprise, needed someone with the technical expertise to create such a system. Sometime around September 2005, they were referred to Bill Kling, chairman and "chief idea officer" of Carrollton-based Swiss-American Products, which manufactures wound- and skin-care products—moisturizers, sunblocks, massage lotions.

"They were interested in coming up with a urine-based test," says Kling, who started Swiss-American 20 years ago with a background in marketing and new product development. The gender predictors on the market then, and now, cost a couple hundred dollars and require that women send blood samples to a lab and wait for results. "They wanted me to mix up a substance that could indicate 'boy' or 'girl' immediately, by color," Kling says. So he got to work. "I looked on the U.S. Patent Office website to see what patents existed for urine tests. I found an abandoned patent that laid out certain ingredients, and I started with those. It's free property, you know. And," he adds, before getting up from an interview to phone his attorney, "you'd be surprised, you don't need to know science from the ground up."

"He said that same thing in court on a case for which I was the expert witness," Hendrickson says. Yes, as it turns out, the paths of Connie Hendrickson, freelance chemist, and Bill Kling, unguent marketer, have crossed before. "But you do need to know science to do science, unfortunately. I'd like to see his notes," Hendrickson says.

"Mine are an inch thick in paper."

Though Kling volunteers that he scoured the Internet for urine-test recipes, and found one, he denies that the one he found was Hendrickson's 10-page abstract, which was published eight months before IntelliGender hit the shelves. Also, Kling says he completed work on Griffin's project in just three months, before the March 26, 2006, publication of Hendrickson's patent application. He says he billed Griffin in December of 2005, though he would not produce an invoice to back up this claim. He also says he signed a confidentiality agreement with Griffin in March 2006, but he could not find a copy of the document.

CONNIE HENDRICKSON IS EAGER to tear into the competition. As a freelance chemist (and one who's not pregnant), she didn't have much motive to buy an IntelliGender test when it appeared in stores, though she had heard of it. Following the at-home gender test market really falls to the longshoreman who hired her. Spurgeon is aware of it, but he's on a rig in the Gulf of Mexico. Hendrickson didn't get her hands on a kit until I gave her one.

"Let's see the sample," she says, removing the plastic vial from its box. In seconds, she has sprinkled IntelliGender's gray powder onto a slide and has it under a microscope. "Oh, yeah, that's what it is," she says. "Sodium and the metal. Oh, look at that reaction at the interphase. I love watching microreactions under the scope."

"Does it look like yours?"

"Oh, yeah," she says.

The sodium-metal combination is nothing new. But the third element in Hendrickson's formula, the filler that keeps the two substances from bubbling when exposed to air, is critical—and absent from Kling's system. "These people tried to stop the reaction by taking out the water at the beginning and making the container airtight," Hendrickson says. "But you can see it reacts the second you open it up."

The difference, then, between the two formulations is how they keep the substances dry before the urine is introduced. Hendrickson relied on chemistry; Kling, packaging. IntelliGender packages

its agents in an airtight container to keep them dry. Urine is injected into the sodium-metal mixture via a syringe after the airtight barrier is removed.

Griffin says the complex housing of her product's design, with its syringe applicator, "makes it easier for people to use." She is adamant that IntelliGender did not take its inspiration from Hendrickson's work. "We do not want the other people to perceive that their application has anything to do with our product," she says. But as for providing proof? "It simply creates issues that need addressing, and, as you can only imagine, with four kids, a national company [Newmark], and a newly launched company [IntelliGender], my time is quite crunched."

Whatever transpired will come out when IntelliGender's patent application is reviewed, says Gregory Carr, of Carr Intellectual Property Law, who says he wrote the application. He would not let me handle a copy of the document, however—or even hold it up for me to see from across a table. "The story sounds very plausible," Carr says. "The timing is interesting. The people are in the same town. Ultimately, the patent examiners will read it and analyze all the claims. If that third element of Connie's [Hendrickson's], the chemical barrier, is what's claimed, then only a chemical barrier in Rebecca's [Griffin's] product will infringe on that claim," Carr says.

Meantime, it is certain that a man on an oil rig had an idea. And, it is certainly possible that a real estate executive had the same thought. They would not be the only two. What remains to be learned is whether the first to market got there on her own merits.

John Fortkort, a patent attorney with Austin-based Fortkort Houston PC, explains it this way: "It's very common for competitors to reverse-engineer something that has come out, and then see if it's possible to tweak the composition to get outside of the patent. There is nothing 'illegal' about that, but it's the reason why people should hire a good attorney."

And, for now at least, take their vitamins and wait for an ultrasound. **D**

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