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Delaware Jury: Guardant Willfully Infringed Patents With DNA Sequencing Kits

(November 16, 2023, 10:55 AM EST) -- WILMINGTON, Del. — Jurors empaneled in Delaware federal court delivered a win to the owner and exclusive licensee of two cancer-detection patents, deeming the technology willfully infringed by Guardant Health Inc.

(TwinStrand Biosciences Inc., et al. v. Guardant Health Inc., No. 21-1126, D. Del.)

(Redacted verdict available. Document #16-231120-083V.)

The University of Washington and TwinStrand Biosciences Inc. (TwinStrand, collectively) on Nov. 14 were awarded \$83.4 million by the jury, representing a 6% royalty on Guardant's \$1.39 billion royalty base.

Blood Plasma Analysis

At issue in the dispute are U.S. patent Nos. 10,760,127 and 10,287,631. TwinStrand in an August 2021 complaint accused Guardant's DNA sequencing kits and services of infringing not only the '127 and '631 patents but also U.S. patent Nos. 10,752,951 and 10,689,699. Each of TwinStrand's patents purportedly relates to "duplex sequencing methods that allow reliable, early, non-invasive cancer detection and post-treatment cancer monitoring in patients by analyzing blood plasma."

Guardant responded by leveling patent infringement allegations of its own, with regard to U.S. patent Nos. 10,801,063, 10,889,858, 11,118,221 and 11,149,306, each of which is purportedly directed to "methods and systems for detecting genetic variants using liquid biopsy cancer assays, which are less painful, less expensive, quicker, and more comprehensive than traditional tumor-based genotyping assays."

No Stay

Both sides petitioned the U.S. Patent and Trademark Office's Patent Trial and Appeal Board for inter partes review (IPR) and sought stays of the U.S. District Court for the District of Delaware litigation. In October 2022, Magistrate Judge Sherry R. Fallon denied the request by TwinStrand, which also sought to sever Guardant's infringement counterclaims. In March, the magistrate judge addressed Guardant's request to stay, based upon the board's institution of IPR of the '127 and '951 patents. She denied the motion upon finding, among other things, that TwinStrand would be prejudiced if the litigation was delayed.

The board concluded that Guardant failed to establish that any challenged claim of the '127 patent would be obvious to a person of skill in the art. A decision with regard to the '951 patent is not expected until early 2024.

Case Trimmed

Meanwhile, in the District Court, the parties entered a stipulated dismissal on Sept. 22 of Guardant's infringement counterclaims and TwinStrand's declaratory judgment challenge to the validity of Guardant's patents. Less than one month later, on Oct. 17, they similarly stipulated to dismissal of TwinStrand's allegations of infringement of the '951 and '699 patents, along with Guardant's allegation that the '951 and '699 patents are invalid. Also in October, according to a docket entry, Judge Woods denied a pending motion for summary judgment by Guardant on the question of

infringement of the '631 patent; the order was sealed by the court.

Trial in the case began Nov. 6, and shortly thereafter, Guardant indicated that it would not argue invalidity of the remaining TwinStrand patents. Accordingly, jurors were presented only with the question of infringement and damages. They deliberated approximately four hours before rendering their verdict, according to sources.

Counsel

TwinStrand, et al. are represented by Adam W. Poff, Samantha G. Wilson and Rodney Square of Young, Conaway, Stargatt & Taylor LLP in Wilmington and Byron L. Pickard, R. Wilson "Trey" Powers III, Chandrika Vira, William H. Milliken, Anna G. Phillips and Tyler J. Dutton of Sterne, Kessler, Goldstein & Fox P.L.L.C. in Washington, D.C.

Guardant is represented by Brian A. Biggs, Jeff Castellano and Erin E. Larson of DLA Piper LLP US in Wilmington.

(Additional documents available: Final jury instructions. Document #16-231120-084J. September 2023 stipulation of dismissal. Document #16-231120-085X. October stipulation of dismissal. Document #16-231120-086X. Complaint with attachments. Document #16-231120-087C.)