

## Seattle Startup Wins \$83M In IP Spat With Silicon Valley Rival

By **Andrew Karpan**

*Law360 (November 15, 2023, 1:32 PM EST)* -- Guardant Health, a Silicon Valley cancer diagnostics startup run by ex-Illumina employees, said on Wednesday that it will appeal a patent infringement verdict of at least \$83.4 million it lost a day earlier to a rival startup based in Seattle.

The verdict reached in Wilmington, Delaware, on Tuesday followed a five-day trial that pitted TwinStrand Biosciences against Guardant Health. The suit has been simmering in Delaware federal court since 2021.

The jury unanimously agreed with the arguments made by TwinStrand's lawyers that a popular Guardant product did things described in a pair of TwinStrand patents, and did those things in a "willful" way, opening the door for the patent holder to ask U.S. District Judge Gregory B. Williams to as much as triple the verdict, if he can be swayed that such willful activity was also egregious.

"We strongly disagree with this decision and will vigorously appeal for its overturn," Guardant Health co-founder Helmy Eltoukhy said in a statement on Wednesday. "The company expects to file additional motions with the U.S. District Court for the District of Delaware and appeal to the U.S. Court of Appeals for the Federal Circuit."

At the center of the dispute was a "duplex sequencing" method, developed by University of Washington professor Jesse Salk, grandson of the polio vaccine developer Jonas Salk. Unlike his grandfather, the younger Salk took his ideas to the U.S. Patent and Trademark Office, where his company, TwinStrand, landed a handful of patents covering what its lawsuit called "a 10,000-fold increase in accuracy over standard [next generation sequencing] approaches."

"The patented technology at issue in the case enables the detection of ultra-low frequency DNA mutations," read a statement from TwinStrand issued Wednesday. Salk started TwinStrand in 2015, but he stepped down as CEO of the company in 2022, a move that followed the company's raising of \$50 million in Series B funding round, according to a press release.

The startup's lawsuit, which has been joined by Salk's other employer at the University of Washington, targeted a product called the Guardant 360, which uses advanced DNA sequencing to generate individualized cancer therapy treatments. According to Guardant's website, the product is "the first [U.S. Food and Drug Administration]-approved comprehensive liquid biopsy for all advanced solid tumors that delivers results in as soon as 7 days."

The lawsuit isn't the only legal trouble that's landed on Guardant's door over the past few years. Last year, San Diego-based gene sequencing company Illumina claimed that Guardant's Eltoukhy, as well as co-founder and Co-CEO AmirAli Talasaz, discussed their potential new venture while they were still employed at Illumina, and then stole thousands of confidential documents and emails to create dozens of patent applications claiming themselves as the inventors.

That row ended earlier this year, after a Delaware magistrate judge concluded that the bulk of the trade secret theft claims were conclusory and insufficiently pled, a ruling that led Illumina to drop the rest of the lawsuit.

The patents-at-issue are U.S. Patent Nos. 10,287,631 and 10,760,127.

The University of Washington and TwinStrand Biosciences are represented by Adam W. Poff and Samantha G. Wilson of Young Conaway Stargatt & Taylor LLP, 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 PLLC.

Guardant Health is represented by Brian A. Biggs, Mark Fowler, Jeff Castellano and Erin E. Larson of DLA Piper LLP

The case is TwinStrand Biosciences Inc. et al. v. Guardant Health Inc., case number 1:21-cv-01126, in the U.S. District Court for the District of Delaware.

--Additional reporting by Dorothy Atkins. Editing by Alex Hubbard.