

## DNA Sequencing Patent Survives Guardant PTAB Challenge

By Ryan Lynch

*Law360 (October 11, 2023, 9:12 PM EDT)* -- The Patent Trial and Appeal Board has ruled that Guardant Health failed to show that challenged claims in a University of Washington patent for DNA sequencing were unpatentable, ahead of an infringement trial set for next month.

California-based Guardant Health argued that every claim of the patent was invalid as obvious. But in its final decision Tuesday, the board found that the company did not meet its burden of showing that a skilled person would have combined earlier inventions to arrive at the university's patented method of reducing the error rate in DNA sequencing.

"Because petitioner relies on this combination in all its challenges, petitioner has not shown, by a preponderance of the evidence, that [the claims] would have been obvious over the asserted prior art," the board concluded.

Guardant filed two petitions challenging the university's patent, each making different invalidity arguments. After the board agreed to review only one of the challenges, Guardant requested a panel rehearing and Precedential Opinion Panel review in the second case, both of which the PTAB denied.

The University of Washington has sued Guardant Health over this patent in a case in the District of Delaware, which is set for trial in early November.

According to the complaint, the patented DNA sequencing technology was invented by a medical student at the university, and its "unprecedented accuracy" allows for early noninvasive cancer detection.

The student, Jesse Salk, later founded a company called TwinStrand Biosciences Inc., which licensed the university's patents and is also a plaintiff in the case. It makes DNA sequencing kits and alleges that Guardant's competing kits infringe the patents.

Administrative Patent Judges John G. New, Zhenyu Yang and Tina E. Hulse issued the decision, which followed an oral hearing in June.

Counsel for University of Washington declined to comment Wednesday. Attorneys for Guardant Health did not immediately respond to a request for comment.

The patent-at-issue in both cases is U.S. Patent No. 10,760,127 B2.

Guardant Health is represented by Michael T. Rosato, Jad A. Mills and Sonja R. Gerrard of Wilson Sonsini Goodrich & Rosati.

University of Washington is represented by Ralph Wilson Powers III, David H. Holman, Kristina C. Kelly, Christopher M. Gallo, Byron L. Pickard and Tyler Liu of Sterne Kessler Goldstein & Fox PLLC.

The PTAB case is Guardant Health Inc. v. University of Washington, IPR2022-00817, at the Patent Trial and Appeal Board.

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

--Editing by Rich Mills.

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