

Ravgen's Prenatal Test Patent Win Boosted To \$372M

By **Jasmin Boyce**

Law360 (May 15, 2023, 4:51 PM EDT) -- U.S. District Judge Alan Albright has agreed to enhance biotechnology company Ravgen's \$272 million jury award in its patent suit against rival Labcorp over a testing method for genetic disorders, adding \$100 million to the jury verdict partly because the infringement occurred "for a long time."

The Western District of Texas judge's order Friday boosted Ravgen Inc.'s 2022 damages judgment to more than \$372 million in its infringement feud with Laboratory Corporation of America Holdings. Ravgen initially aimed to triple its jury award last October, citing purported misconduct such as Labcorp "pirating the invention outside the courtroom." But Judge Albright ultimately found that although there was a "strong case for egregiousness," Ravgen didn't present enough evidence to land full treble damages.

According to the order, the patent owner failed to meet some enhancement factors established by the Federal Circuit in the 1992 case *Read Corp. v. Portec Inc.* — including Ravgen's inability to show that Labcorp's case was weak or its behavior during litigation was improper.

"Ravgen does not put forward sufficient evidence to show that Labcorp intended harm," Judge Albright said. "Yet Ravgen has presented a strong case for enhancement because Labcorp lacked a good faith belief, Labcorp is a large company, the infringement was for a long time, Labcorp conducted no remedial measures, and there is some evidence of possible concealment by Labcorp."

An attorney for Ravgen, Kerri-Ann Limbeek of Desmarais LLP, told Law360 on Monday that "we are very pleased with this ruling."

"It's a critical step showing the degree to which Ravgen's innovations in noninvasive prenatal genetic testing technology were infringed," Limbeek said. "This is just one example of several companies that were fully aware of these patents but declined to take a license prior to creating their own rival products built on Ravgen's breakthroughs."

The dispute dates back to October 2020, when Ravgen filed the suit in Texas federal court claiming Labcorp's MaterniT21 PLUS genetic test infringed its patent issued by the U.S. Patent and Trademark Office in February 2008.

The patent owner hit Quest Diagnostics Inc. with a similar patent suit that month over the same technology. Quest settled with Ravgen shortly before a 2022 trial.

After a five-day trial, jurors determined in September 2022, that Labcorp willfully infringed the asserted technology and awarded Ravgen \$272 million in damages.

The following month, Ravgen asked Judge Albright to enhance those damages by three times — an additional \$545 million — for a total of \$817,492,200, saying Labcorp's conduct was egregious enough to warrant an enhanced judgment.

"When a company knows it infringes, and continues to do so, it must pay more than the reasonable royalty it would have had to pay if it had taken a license in the first place," Ravgen said at the time. "Enhancement is deserved."

Labcorp fired back, contending that "Ravgen fails to show any egregious behavior, litigation misconduct or other conduct warranting enhancement."

"This was a hard-fought case where [Labcorp] had developed its own technology with the good faith belief that it was not infringing," Labcorp said in its October 2022 response. "Ravgen strays far from the facts and improperly conflates knowledge of the patent with the more demanding inquiry to justify enhancement — egregious behavior characteristic of a pirate."

But Judge Albright said in the Friday order that the MaterniT21 PLUS test maker "fails to persuade the court that it had a good-faith belief of noninfringement or invalidity at the time of ... misconduct."

Labcorp and its counsel did not immediately respond to requests for comment on Monday.

The patent-in-suit is U.S. Patent No. 7,332,277.

Ravgen is represented by Brian D. Matty, Deborah J. Mariottini, Frederick J. Ding, Gabrielle E. Higgins, Jamie L. Kringstein, John M. Desmarais, Joze Welsh, Julianne M. Thomsen, Jun Tong, Kerri-Ann Limbeek, Kyle G. Petrie, Maria A. Tartakovsky, Peter Zhu, Vi T. Tran and Benjamin N. Luehrs of Desmarais LLP and Deron R. Dacus and Savannah Carnes of The Dacus Firm PC.

Labcorp is represented by Aarti Shah, Matias Ferrario and Nicole Regna of Kilpatrick Townsend & Stockton LLP and Edward G. Poplawski and Naoya Son of Wilson Sonsini Goodrich & Rosati PC.

The suit is Ravgen Inc. v. Laboratory Corp. of America Holdings, case number 6:20-cv-00969, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Lauren Berg and Andrew Karpan. Editing by Caitlin Wolper.