

PTAB Upholds DNA Testing Patents Key To \$272M Ravgen Win

By **Jasmin Jackson**

Law360 (April 19, 2023, 6:45 PM EDT) -- The Patent Trial and Appeal Board has rejected biotechnology company Streck's contention that nearly 30 claims in a Ravgen genetic testing patent are obvious or anticipated, siding with the patent owner in yet another challenge to the testing system it had used to score \$272 million in infringement damages in underlying litigation.

A three-judge panel said in a 95-page final written decision issued Tuesday that Streck Inc. failed to convince them that 27 claims in U.S. Patent No. 7,332,277 B2, a genetic testing patent held by Ravgen Inc., are invalid. The patent owner had defended both the '277 patent and another genetic testing patent against a host of biotechnology companies — including Illumina Inc., Natera Inc., Quest Diagnostics and Laboratory Corp. of America Holdings — in a flurry of suits filed in various district courts, one of which resulted in Ravgen scoring a nine-figure damages award in 2022.

The PTAB has shot down many attempts to wipe out Ravgen's genetic testing patents in 2022 and 2023. This was the last pending challenge related to the systems at issue.

Ravgen initially filed a blitz of infringement litigation over its genetic testing system throughout 2020. It said in some of its complaints that competing products like Illumina's Verifi test and LabCorp's MaterniT21 PLUS test violated the '277 patent along with U.S. Patent No. 7,727,720.

Those patents were issued by the U.S. Patent and Trademark Office in February 2008 and June 2010, respectively, covering a method of noninvasive prenatal genetic testing. According to Ravgen's website, the company offers various prenatal gene tests that can detect disorders such as Down syndrome, cystic fibrosis and sickle cell anemia.

Streck petitioned the PTAB to launch an inter partes review, or IPR, into various claims in the '277 patent in September 2021, arguing in an 83-page filing that they were invalid as obvious or anticipated based on an assortment of previous publications. The PTAB agreed to institute the review in April 2022.

The IPR was one of many bids to wipe out claims in the '277 and '720 patents at the PTAB, which were also launched by companies like LabCorp and Illumina.

In December 2022, a PTAB panel rebuffed LabCorp's bid to get rid of 19 claims in the '720 patent after determining they were not obvious in light of a 1994 medical article about DNA and other pieces of prior art. In January, a panel snuffed out Illumina's calls to invalidate claims in both the '720 and '277 patents, finding Illumina had failed to show how prior art rendered the challenged claims obvious or anticipated.

An attorney for Ravgen, Brian D. Matty of Desmarais LLP, told Law360 on Wednesday that "we are pleased with the PTAB's decision" in the Tuesday filing.

"All 10 IPR challenges to Ravgen's genetic testing patents are now complete, and our client's patents have been upheld in each PTAB decision," Matty said. "We look forward to continuing to help Ravgen protect their foundational innovations."

Streck and its counsel did not immediately respond to requests for comment Wednesday.

The patent-in-suit is U.S. Patent No. 7,332,277 B2.

Administrative Patent Judges Zhenyu Yang, Timothy G. Majors and David Cotta sat on the panel for the Patent Trial and Appeal Board.

Streck is represented by Sandip H. Patel, Thomas L. Duston and Thomas R. Burns of Marshall Gerstein & Borun LLP.

Ravgen is represented by Brian Matty, Gabrielle Higgins and Theodoros Konstantakopoulos of Desmarais LLP.

The case is Streck Inc. v. Ravgen Inc., case number IPR2021-01577, before the U.S. Patent Trial and Appeal Board.

--Additional reporting by Andrew Karpan and Adam Lidgett. Editing by Scott Russell.