FEDERAL CIRCUIT DECLINES REQUEST FOR REHEARING EN BANC IN HIGH PROFILE, NON-INVASIVE PRENATAL GENETIC TESTING PATENT CASE

Publications

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The U.S. Court of Appeals for the Federal Circuit has denied the appellants' request for rehearing *en banc* of the consolidated appeal of *Ariosa v. Sequenom, Inc*. and *Natera v. Sequenom, Inc.* BartkoZankel clients Natera and DNA Diagnostics Centers, providers of non-invasive prenatal genetic tests, filed a declaratory judgment action in 2012 seeking a determination that defendant Sequenom's patent is invalid. After consolidating the case with a similar suit brought by Ariosa, Judge Susan Illston of the Northern District of California ruled that the patent-in-suit is invalid because its claims are not directed to patentable subject matter under 35 U.S.C. § 101. In June 2015, a three-judge Federal Circuit panel unanimously affirmed Judge Illston's decision. The widely read *Patently-O* blog described the decision as the "leading case" in patentability jurisprudence.

Sequenom sought rehearing *en banc* and its request was supported by a dozen *amicus curia* briefs supporting review of the decision. Despite extensive media attention and *amici* support, the Court refused to reexamine the case. In concurring opinions, several judges found the decision consistent with and required by controlling Supreme Court precedent. View a PDF of the Opinion.)

Natera and its laboratory partner DNA Diagnostics offer the Panorama® prenatal genetic test. Unlike earlier prenatal genetic tests that require amniocentesis, Natera's test uses a simple blood sample taken from the mother. Natera, with its advanced bioinformatics, detects cell-free fetal DNA and provides a report with less risk to both the mother and the fetus. Sequenom, Inc. had alleged that Natera's test infringed the patent-in-suitBartkoZankel intellectual property litigators

Paul Schuck and Sony Barari have represented Natera and DNA Diagnostics throughout this litigation.

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