

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ILLUMINA, INC.,

Plaintiff,

v.

GUARDANT HEALTH, INC.; HELMY
ELTOUKHY; and AMIRALI TALASAZ,

Defendants.

C.A. No. _____

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Illumina, Inc. (“Illumina”) files this Complaint for correction of inventorship, trade secret misappropriation, and breach of contract against Guardant Health, Inc. (“Guardant”), Helmy Eltoukhy (“Eltoukhy”), and AmirAli Talasaz (“Talasaz”) (collectively, “Defendants”). All allegations herein are made on information and belief except where otherwise indicated.

OVERVIEW

1. This is a civil action for correction of inventorship under the patent laws of the United States, 35 U.S.C. § 256; for Defendants’ misappropriation of Illumina’s trade secrets in violation of California’s Uniform Trade Secrets Act, Cal. Civ. Code § 3426 et. seq. (“CUTSA”); and for breaches of contract by Eltoukhy and Talasaz.

2. Eltoukhy and Talasaz were Illumina employees. Through their employment at Illumina, they had access to Illumina’s confidential information. Eltoukhy and Talasaz had contractual and other obligations to Illumina, including to protect Illumina’s confidential information and to assign to Illumina rights in any inventions related to Illumina’s business that they made while employed by Illumina.

3. While employed by Illumina, Eltoukhy and Talasaz founded Guardant. Eltoukhy and Talasaz misappropriated Illumina’s confidential information to Guardant and filed patent applications for Guardant based on Illumina’s intellectual property. Eltoukhy even helped to prepare patent claims while an Illumina employee, using Illumina information and equipment to do so. Yet the applications reflecting those claims and the resulting patents were improperly assigned to Guardant rather than Illumina.

PARTIES

4. Plaintiff Illumina is a corporation organized and existing under Delaware law with its principal place of business at 5200 Illumina Way, San Diego, California 92122. Illumina employs over 8,500 people worldwide.

5. Illumina was founded in 1998 by scientists at the forefront of the genetic revolution leading up to the mapping of the human genome.¹ Since its founding, Illumina’s ground-breaking innovations have fueled advances in this field. For example, in the 1990s through early 2000s, the “Human Genome Project” produced the first single complete human genome sequence, which took 13 years and \$3 billion. Illumina’s cutting-edge DNA sequencing devices and methods now permit the sequencing of a genome in a matter of hours for approximately \$600.

6. Illumina researches, develops, and manufactures life science tools and integrated systems for genetic analysis.² Illumina’s mission is to improve human health by unlocking the

¹ Alice Park, *Time 100 Most Influential Companies: Illumina*, TIME (Apr. 26, 2021), available at <https://time.com/collection/time100-companies/5953584/illumina/> (“Park”).

² *Illumina Fact Sheet*, ILLUMINA, available at <https://www.illumina.com/company/about-us/fact-sheet.html> (last visited on Mar. 16, 2022) (“*Illumina Fact Sheet*”); *Who We Are*, ILLUMINA, available at <https://www.illumina.com/content/dam/illumina-marketing/documents/company/illumina-at-a-glance.pdf> (last visited on Mar. 16, 2022).

power of the genome. Illumina sequencers are used in academic, commercial, and pharmaceutical labs focused on genomics work.³ Its sequencing and microarray technologies are fueling groundbreaking innovations in life science research, genomics, and molecular diagnostics.⁴ For its work, Illumina was recently named one of the “10 most innovative health companies of 2022.”⁵

7. Scientists and physicians use Illumina technology in patient care and research applications ranging from cancer research and prenatal screening to food safety and vaccine development.⁶ For example, an Illumina sequencer was used to sequence for the first time the entire genome of the virus behind COVID-19, which was posted on a public database so researchers could use it to develop new drugs and vaccines.⁷ This enabled Moderna scientists to develop and test a vaccine to fight the virus in record time.⁸

8. Illumina spearheads cutting-edge genetic sequencing and applied genomics efforts.⁹ In 2020, for example, Illumina donated machines to ten African countries so health departments could begin sequencing, some for the first time, microbes collected from patient samples to detect and identify dangerous pathogens in circulation.¹⁰

³ Park, *supra* note 1.

⁴ *Illumina Fact Sheet*, *supra* note 2.

⁵ Ruth Reader, “The 10 most innovative health companies of 2022,” FAST COMPANY (Mar. 8, 2022), *available at* <https://www.fastcompany.com/90724416/most-innovative-companies-health-2022>.

⁶ *Driven from the start to transform human health*, ILLUMINA, *available at* <https://www.illumina.com/company.html> (last visited on Mar. 16, 2022).

⁷ Park, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

9. Illumina technology is also at the forefront of the development of cancer diagnostics. Illumina's genomics product offerings support multiple cancer research applications, including studies of DNA, RNA, epigenetics, immunotherapy, and more.¹¹ For example, Illumina's next-generation sequencing methods enable cancer researchers to perform whole-genome studies, targeted gene profiling, and tumor-normal comparisons, while offering the sensitivity to detect rare somatic variants, tumor subclones, and circulating DNA fragments.¹²

10. Defendant Guardant is a corporation organized and existing under Delaware law with its principal place of business at 505 Penobscot Drive, Redwood City, California 94063. Guardant operates in the field of cancer diagnostics.

11. Guardant was founded by Defendants Eltoukhy and Talasaz.

12. Defendant Eltoukhy is an individual residing in Atherton, California, and is the Chief Executive Officer of Guardant.

13. Defendant Talasaz is an individual residing in Atherton, California, and is the Chief Operating Officer of Guardant.

JURISDICTION AND VENUE

14. This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331 and 28 U.S.C. § 1338, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

15. This Court has personal jurisdiction over Defendants. Guardant is a Delaware corporation. Eltoukhy and Talasaz incorporated Guardant in Delaware, and did so while employed by Illumina. Eltoukhy and Talasaz founded Guardant based on misappropriated confidential information from Illumina and assigned the patents at issue in this action to

¹¹ *This Partnership Is Personal*, ILLUMINA, available at <https://www.illumina.com/areas-of-interest/cancer/research.html> (last visited on Mar. 16, 2022).

¹² *Id.*

Guardant, a Delaware corporation. Defendants have filed and participated in patent litigation in Delaware, including *Guardant Health, Inc. v. Foundation Medicine, Inc.*, No. 1:20-cv-01580-LPS (D. Del.), and *Guardant Health, Inc. v. Foundation Medicine, Inc.*, No. 1:17-cv-01616-LPS-CJB (D. Del.). Those cases involved patents at issue in this action. Defendants Eltoukhy and Talasaz are directors and officers of Guardant who are additionally subject to jurisdiction for the causes of action herein pursuant to 10 Del. C. § 3104(c) and 10 Del. C. § 3114.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b). A substantial portion of the events giving rise to this lawsuit occurred in Delaware. Eltoukhy and Talasaz founded and incorporated Guardant in Delaware based on confidential information misappropriated from Illumina and as a vehicle for holding and using the intellectual property at issue. The patents at issue in this action are assigned to Guardant, a Delaware corporation.

STATEMENT OF FACTS

17. Illumina hired Eltoukhy in 2008 and hired Talasaz in 2009.

18. As part of their employment with Illumina, Eltoukhy and Talasaz entered into and agreed to employment contracts and company policies, including a Proprietary Information and Invention Agreement (“PIIA”), Confidentiality – Disclosure on Need-To-Know Basis Only Acknowledgement (“Confidentiality Acknowledgement”), Code of Ethics, and, at the end of their employment, a Termination Certificate.

19. The employment agreements and company policies to which Eltoukhy and Talasaz agreed required them to devote their efforts to Illumina’s business, to not compete with Illumina, to avoid conflicts of interest that could compromise their loyalty to Illumina, to assign to Illumina their inventions made while employed by Illumina that are related to Illumina’s business, to protect Illumina’s confidential and proprietary information, to not take or use

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