

Gilead-Backed Stem Cell Startup Beats Patent Suit

By **Andrew Karpan**

Law360 (September 1, 2023, 6:11 PM EDT) -- A stem cell research startup funded by Gilead Sciences has beaten a suit from an MIT-backed rival alleging the startup infringed patents covering a stem cell process developed by a top professor at the school.

The Wednesday ruling from U.S. District Judge Marilyn Huff put an end to a suit filed last year by a San Diego business called Fate Therapeutics, founded over a decade ago to market research stemming from the work of a Massachusetts Institute of Technology professor named Rudolf Jaenisch.

Both Fate and the Whitehead Institute for Biomedical Research, a nonprofit run by a consortium of MIT professors including Jaenisch, sued newcomer Shoreline Biosciences, co-founded by Dan Kaufman, a professor at the University of California, San Diego, who used to work as a scientific adviser at Fate.

According to the allegations, "while under exclusivity obligations to Fate Therapeutics as its scientific advisor, Dr. Kaufman secretly founded, participated in, advised and served as a director for his own rival company. ... Instead of terminating his relationship with Shoreline, Dr. Kaufman helped Shoreline raise over \$43 million in investor funds, including from Kite Pharma," the drug brand that Gilead bought in 2017.

The lawsuit had also named Kaufman, but Fate agreed to drop its allegations against him in June.

"Kaufman had been a consultant for Fate since 2016 and then that relationship fell apart at the end of 2019," Shoreline lawyer Eric Acker of Morrison Foerster LLP told Law360 on Friday.

Acker talked down Kaufman's involvement at Fate, noting that Fate never actually accused Shoreline or Kaufman of using anything that would have been protected by trade secret laws.

"They had a theory that Dan Kaufman, on his own, in his lab at UCSD, was using [the stem cells process], but they asked the court to dismiss that," he said, adding that "his contract required that he work a maximum of eight days a year, for about [\$24,000-\$25,000] a year. That was the totality of his relationship with Fate."

What was left was Fate's patent case against Shoreline.

But that began falling apart after a claim construction ruling from Judge Huff in February maintained that the patents cited in the suit that had been issued to Jaenisch did not actually cover the use of

induced pluripotent stem cells, called iPSCs. Instead, the judge had ruled that Jaenisch's patents covered a different process, called somatic cell nuclear transfer, or SCNT.

"Plaintiffs cannot demonstrate that the iPSC reprogramming processes at issue satisfy the court's claim construction for the relevant claim term," wrote Judge Huff on Wednesday.

Fate had tried to fight this in the months since the February ruling, with requests for reconsideration as well as various arguments that infringement could still be proven under that ruling.

Judge Huff didn't buy it.

"In sum, the accused direct reprogramming processes at issue do not satisfy the court's claim construction," the judge wrote.

Acker, from Morrison Foerster, added that nobody is using somatic cell nuclear transfer.

"It's a very difficult and very cumbersome process that very few people carry out," Acker said.

Lawyers for Fate Therapeutics and the Whitehead Institute did not return a request for comment.

The patents-at-issue are U.S. Patent Nos. 8,071,369, 8,932,856, 8,951,797, 8,940,536, 9,169,490,10,457,917 and 10,017,744.

Fate Therapeutics and the Whitehead Institute are represented by Rose Cordero Prey, Jonathan D. Ball, Jeffrey R. Colin, Giancarlo L. Scaccia, Aimee Housinger and Danielle M. Zapata of Greenberg Traurig LLP.

Shoreline Biosciences is represented by Eric Acker, Michael Jacobs, Drew Hillier and Regan Rundio of Morrison Foerster LLP.

The case is Fate Therapeutics, Inc. et al. v. Shoreline Biosciences, Inc. et al., case number 3:22-cv-00676, in the U.S. District Court for the Southern District of California.

--Editing by Emily Kokoll.