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Judge Cuts Some Of Atum's Claims In Gene Therapy IP Row

By **Jasmin Jackson**

Law360 (September 23, 2022, 7:35 PM EDT) -- A Massachusetts federal judge has trimmed biotechnology company Atum's fraud and mismanagement counterclaims in rival SalioGen's trade secrets suit against it over genomics technology, but allowed Atum's arguments over the ownership of those trade secrets to proceed since a substantial controversy exists.

U.S. District Judge Jennifer Boal **agreed in an order** issued Thursday to partially dismiss counterclaims lodged by DNA TwoPointO Inc. — doing business as Atum — in SalioGen Therapeutics Inc.'s suit accusing it of swiping trade secrets for cell developing technology. According to Judge Boal, Atum didn't sufficiently plead its counterclaims regarding fraud, gross mismanagement and waste of corporate assets.

However, Judge Boal denied SalioGen's bid to toss Atum's counterclaim that seeks a declaration regarding the ownership of the trade secrets at issue. According to the order, SalioGen failed to back its argument that the counterclaim lacks a cognizable cause of action.

"Here, there is a controversy between the parties regarding the ownership of certain trade secrets," Judge Boal said.

Walter M. Foster of Eckert Seamans Cherin & Mellott LLC, counsel for SalioGen, told Law360 on Friday that the firm is "pleased that the court issued this decision promptly after the hearing," which was held on Monday.

"We decline to comment on any substance as this is an ongoing litigation," Foster added.

SalioGen filed the suit in March 2021, arguing that Atum poached proprietary information on gene and cell therapies during a joint research venture. According to the filing, Atum falsely promised an exclusive license to its frog- and insect-based transposase technology — which enables biomedical research — in order to gain access to SalioGen's trade secrets.

"Although SalioGen has repeatedly asked Atum to provide SalioGen's know-how and confidential and proprietary information, and to provide assurances that Atum will not use the information in any way, Atum has refused to do so," SalioGen argued.

But Atum then lodged counterclaims in March, arguing that SalioGen was asserting "a frivolous cause of action" and that the disputed trade secrets actually belonged to Atum.

"Trade secrets and know-how provided to SalioGen by Atum are owned by Atum," the company said in its filing. "Any use of Atum trade secrets by SalioGen is impermissible and would constitute trade secret misappropriation."

SalioGen urged Judge Boal to partially dismiss the counterclaims in June and contended that "Atum merely alleges the boilerplate factors in conclusory fashion."

Judge Boal agreed Thursday that Atum had failed to plead some of the challenged counterclaims, noting that the axed fraud counterclaim lacked the "required particularity."

Counsel for Atum declined to comment on Friday.

SalioGen and Atum did not immediately respond to requests for comment Friday.

SalioGen is represented by Edward C. Flynn, Walter M. Foster, Carson M. Shea and Trevin C. Schmidt of Eckert Seamans Cherin & Mellott LLC.

Atum is represented by Craig L. Sanders, Cristina Q. Almendarez, Justin A. Barker, Ruby H. Kazi and Kalpesh K. Shah of Benesch Friedlander Coplan & Aronoff LLP and Kevin R. Mosier and Lisa M. Tittermore of Sunstein LLP.

The suit is SalioGen Therapeutics Inc. v. DNA TwoPointO Inc. et al., case number 1:21-cv-10525, in the U.S. District Court for the District of Massachusetts.

--Editing by Rich Mills.

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