

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

NATERA, INC.,

Plaintiff,

v.

NEOGENOMICS LABORATORIES,
INC.,

Defendant.

C.A. No. 1:23-cv-629

**NATERA INC.'S FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS
TO NEOGENOMICS LABORATORIES, INC.'S INTERROGATORIES 1 AND 5**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“Federal Rules”), as well as the Local Rules of the United States District Court for the Middle District of North Carolina (“Local Rules”), Natera, Inc. (“Natera”) responds to the following Interrogatories (each an “Interrogatory”) submitted by NeoGenomics Laboratories, Inc. (“NeoGenomics”) as follows:

GENERAL STATEMENT

The following responses are based on discovery currently available to Natera. Natera has not completed its investigation relating to this action. Discovery is ongoing and these responses are subject to amendment accordingly. It is anticipated that further discovery, independent investigation, and analysis may lead to the discovery of additional information or documents, supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead

to additions to, changes to, or variations from the responses set forth herein. Natera reserves the right to supplement its responses pursuant to Federal Rule of Civil Procedure 26(e) with different or additional information obtained during the course of discovery.

In addition, the following responses are given without prejudice to Natera's right to produce or rely on subsequently discovered information, facts, or documents. Natera accordingly reserves the right to amend the responses herein and/or produce or rely on subsequently discovered documents as additional facts are ascertained, analysis is made, legal research is completed, and contentions are made. The responses herein are made in a good faith effort to comply with the provisions of the Federal Rules of Civil Procedure, Local Rules, and governing orders and to supply such responsive information as exists and is presently within Natera's possession, custody, or control, but are in no way to be deemed to prejudice Natera in relation to further discovery, research, and analysis.

Natera's responses shall not be deemed a waiver of any applicable General or Specific Objection to the Interrogatory. Natera does not waive any objections that may be applicable to the use, for any purpose, of any information or documents provided in response, or the admissibility, relevance, or materiality of any such information or documents to any issue in this case.

GENERAL OBJECTIONS

Natera asserts the following General Objections to each of Defendant's Interrogatories below. Each of Natera's responses is subject to, and incorporates, the

following General Objections, whether or not specifically referred to in an individual response.

1. Natera is responding to each Interrogatory as it interprets and understands each Interrogatory and reserves the right to supplement or amend its responses or objections based on a different interpretation of any Interrogatory.

2. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent that they seek to impose obligations on Natera more extensive than those required by the U.S. Code, the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Middle District of North Carolina, or any other applicable rule or regulation. Natera will respond in accordance with the applicable law, rules of court, and court orders, and will not be bound by Defendant's instructions and definitions that attempt to limit or change the content or meaning of Natera's responses.

3. To the extent any Interrogatory seeks information or documents that are also sought by or identified pursuant to any other Interrogatory, Natera declines to produce or identify copies of such information or documents, and states that such information or documents produced or identified pursuant to the Interrogatory are also produced pursuant to every other Interrogatory to which it is or may be responsive.

4. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent that they seek information, documents or things subject to attorney-client privilege, attorney work product immunity, common interest privilege, or

other privilege or immunity against disclosure. Such information, documents and things will not be provided in response to the Interrogatories, and any inadvertent disclosure shall not be deemed a waiver of any privilege, work product protection, or other protection.

5. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent they call for the production of a trade secret or other confidential and proprietary information, or the production of documents or information subject to confidentiality agreements involving non-parties, and which is not suitably protected from unwarranted disclosure and use without the consent of such non-parties. Such documents or information should be treated in a manner consistent with the Protective Order in the above captioned action.

6. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent that they are vague, ambiguous, unintelligible, irrelevant, overly broad, duplicative or cumulative of other Interrogatories, or not limited to a relevant time period.

7. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent they seek documents and things available through public sources or in Defendant's possession.

8. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent they call for legal conclusions.

9. Natera objects to the Interrogatories to the extent that they seek information, documents or things not within Natera's possession, custody, or control. An objection on

this ground does not constitute a representation or admission that any information, documents or things exist.

10. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent they are unduly burdensome, oppressive, harassing, and seek information beyond that which is needed for the preliminary injunction. In determining whether the information or documents requested are proportionate to the needs of the case and preliminary injunction hearing, Natera will consider the importance of the issues at stake in the action, the amount in controversy, the accessibility of the requested information, the parties' resources, the importance of the discovery sought with respect to the resolution of this matter, and the fact that the burden or expense of the proposed discovery outweighs any benefit its production might yield.

11. Except for explicit facts admitted in these responses, no incidental or implied admissions are intended, and these responses shall not be construed to be a waiver by Natera of all or any part of any objection to the Interrogatories.

12. Natera objects to each Interrogatory as overly broad, unduly burdensome, cumulative, and duplicative to the extent it seeks "any," "each," or "all" documents of a specified type or nature, when a subset of such documents will provide the requested information.

13. Natera has made or is making a reasonable investigation for responsive information. Natera is still investigating and analyzing facts and law pertaining to this action and has not yet completed its investigation. Natera therefore reserves the right to

supplement, add to, modify or otherwise change or amend its present responses. These responses are also subject to correction for omissions or errors.

14. Natera objects to the Interrogatories to the extent they seek categories of information or documents of which the overwhelming majority are privileged.

15. Natera objects to the instructions as unduly burdensome to the extent they request that Natera conduct anything other than a reasonable and diligent inquiry and/or to the extent that they seek information or documents that are in the public domain or equally available to Defendant.

16. Natera objects to the Interrogatories to the extent they seek information or documents, the disclosure of which would constitute an unwarranted invasion of the affected persons' constitutional, statutory and/or common-law rights of privacy and confidentiality.

17. Natera objects to the Interrogatories to the extent that they seek information in Natera's possession that is the confidential, proprietary, and/or trade secret information of a third party. Natera will provide such information only to the extent it can do so in a manner consistent with its legal or contractual obligations to any third parties.

18. Natera objects to the Interrogatories to the extent that they seek information concerning aspects of Natera's business unrelated to any issue in the present litigation as neither relevant nor necessary for the preliminary injunction hearing.

19. Natera objects to the Interrogatories and the instructions and definitions that accompany them to the extent they render the proposed Interrogatories vague, ambiguous, overly broad, improperly compound, and/or unduly burdensome.

20. Natera objects to the definition of “Natera” as overly broad, unduly burdensome, seeking irrelevant information, and information beyond that which is needed for the preliminary injunction hearing.

21. Natera objects to the definition of “NeoGenomics” as overly broad, unduly burdensome, seeking irrelevant information, and information beyond that which is needed for the preliminary injunction hearing.

22. Natera objects to the definition of “Prior Art” to the extent it attempts to encompass meanings outside the scope of 35 U.S.C. §§ 102-103.

23. Natera objects to the definition of “Natera Competing Products” as overly broad, unduly burdensome, vague and ambiguous, seeking irrelevant information, and information beyond that which is needed for the preliminary injunction hearing.

24. Natera objects to the definition of “NeoGenomics Pharmaceutical Customers” as overly broad, unduly burdensome, seeking irrelevant information, and information beyond that which is needed for the preliminary injunction hearing.

25. Natera objects to the definition of “Document” and “Documents” on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and seeks to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and/or other applicable local rules and state laws to the extent that Defendant’s definition requires

production of documents in more than one format or media type, and to the extent that the definition purports to require the production of documents in a format or media that would be unduly burdensome.

26. Natera objects to the definition of “Communication” on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and seeks to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and/or other applicable local rules and state laws to the extent that Defendant’s definition requires production of communications in more than one format or media type, and to the extent that the definition purports to require the production of communications in a format or media that would be unduly burdensome.

27. Natera objects to the definition of “identify” as overly broad and unduly burdensome to the extent the definitions purport to impose duties on Natera in excess of the Federal Rules of Civil Procedure and/or other applicable local rules and state laws.

28. Natera objects to Defendant’s Definitions and Instructions to the extent they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and/or other applicable local rules and state laws.

29. Natera incorporates its General Objections by reference into the responses set forth below, and does not waive any objection asserted in its General Objections.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

For each asserted claim, identify the conception date, reduction to practice date, the asserted priority date, and the inventors.

RESPONSE TO INTERROGATORY NO. 1:

Natera hereby incorporates its General Objections set forth above as though fully set forth herein. Natera further objects to this Interrogatory on the grounds that it contains discrete subparts, each of which will be counted as a separate interrogatory under Fed. R. Civ. P. 33(a)(1). Natera objects to this Interrogatory to the extent that it calls for legal conclusions. Natera further objects to this Interrogatory to the extent that it seeks information that is protected from disclosure by applicable privileges, immunities and protections, including without limitation, the attorney-client privilege, attorney work product doctrine, consulting expert privilege and/or any other applicable constitutional, statutory or common law privilege or protection. Natera also objects that this Interrogatory as premature to the extent that it seeks expert testimony. Natera further objects to the extent this Interrogatory calls for information equally available to NeoGenomics.

Subject to, and without waiving, the foregoing objections, Natera responds as follows: Natera will produce responsive, non-privileged documents on this subject from which a response may be derived, in accordance with Federal Rules of Civil Procedure 33(d). The conception date for the '454 Patent is *no later than* April 21, 2014, the filing date of U.S. Provisional App. No. 61/982,245 to which the '454 Patent claims priority. The conception date for the '035 Patent is *no later than* May 18, 2010, the filing date of U.S. Provisional App. No. 61/395,850 to which the '035 Patent claims priority.

Discovery and Natera's investigation is ongoing. Natera reserves the right to supplement and/or amend this response as appropriate in the course of discovery and in

compliance with the Local and Federal Rules, Scheduling Order and/or any other applicable order or agreement in this case.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Subject to, and without waiving, the foregoing objections, Natera responds as follows:

A. '454 Patent:

1. Conception and Reduction to Practice Date

The conception and reduction to practice date of each of the asserted claims is by April 21, 2015.

2. Priority Date

The priority date of each of the asserted claims is by April 21, 2015.

3. Inventors

The inventors of each of the asserted claims of the '454 Patent are listed below.

Asserted Claim	Inventors
1	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
2	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill

	Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
3	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
4	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
5	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
6	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar

	Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
8	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
10	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
11	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
12	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz

	Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann
13	Joshua Babiarz Tudor Pompiliu Constantin Lane A. Eubank George Gemelos Matthew Micah Hill Huseyin Eser Kirkizlar Matthew Rabinowitz Onur Sakarya Styrmir Sigurjonsson Bernhard Zimmermann

B. '035 Patent:

1. Conception and Reduction to Practice Date

The conception and reduction practice date of each of the asserted claims is by May 18, 2011.

2. Priority Date

The priority date of each of the asserted claims is by May 18, 2011.

3. Inventors

The inventors of each of the asserted claims of the '035 Patent are listed below.

Asserted Claim	Inventors
1	Matthew Rabinowitz Matthew Micah Hill Bernhard Zimmermann Johan Baner George Gemelos Milena Banjevic Allison Ryan Styrmir Sigurjonsson Zachary Demko
12	Matthew Rabinowitz

	Matthew Micah Hill Bernhard Zimmermann Johan Baner George Gemelos Milena Banjevic Allison Ryan Styrmir Sigurjonsson Zachary Demko
13	Matthew Rabinowitz Matthew Micah Hill Bernhard Zimmermann Johan Baner George Gemelos Milena Banjevic Allison Ryan Styrmir Sigurjonsson Zachary Demko

Discovery and Natera's investigation is ongoing. Natera reserves the right to supplement and/or amend this response as appropriate in the course of discovery and in compliance with the Local and Federal Rules, Scheduling Order and/or any other applicable order or agreement in this case.

INTERROGATORY NO. 5:

Explain the justification for the timing and substance of Natera's correction of inventorship submission for the Patents-In-Suit.

RESPONSE TO INTERROGATORY NO. 5:

Natera hereby incorporates its General Objections set forth above as though fully set forth herein.

Natera further objects to this Interrogatory as overly broad, unduly burdensome and seeking information that is not relevant to a party's claims or defenses or necessary for the

preliminary injunction hearing. Natera further objects to this Interrogatory as vague and ambiguous, including the terms “justification,” “timing,” and “substance.” Natera objects to this Interrogatory to the extent that it calls for legal conclusions. Natera also objects that this Interrogatory as premature to the extent that it seeks expert testimony. Natera further objects to this Interrogatory to the extent that it seeks information that is protected from disclosure by applicable privileges, immunities and protections, including without limitation, the attorney-client privilege, attorney work product doctrine, consulting expert privilege and/or any other applicable constitutional, statutory or common law privilege or protection.

Subject to, and without waiving, the foregoing objections, Natera responds as follows:

With respect to the '454 Patent, Natera did not submit a correction of inventorship to the Patent Office.

With respect to the '035 Patent, during prosecution of Patent App. No. 16/934,407 that ultimately issued as the '035 Patent, Natera submitted a Request for Correction in a Patent Application Relating to Inventorship pursuant to C.F.R. § 1.48 on May 7, 2021. The Request for Correction added Johan Baner, Milena Banjevic, Allison Ryan and Zachary Demko and removed Joshua Babiarz, Tudor Pompilin Constantin, Lane A. Eubank, Eser Kirkizlar and Onur Sakarya as named inventors. On May 7, 2021, the added inventors submitted a signed statement under 37 C.F.R. § 1.63 agreeing to the change of inventorship. Similarly, on May 7, 2021, assignee Natera submitted an Application Data Sheet under 37

C.F.R. § 1.76 agreeing to the change of inventorship. Natera's justification for the timing and substance of its request to correct inventorship during prosecution of the underlying application leading to the '035 Patent is that the request complied with the Patent Office regulations set forth in 37 C.F.R. § 1.48, and was accepted on May 11, 2021.

Discovery and Natera's investigation is ongoing. Natera reserves the right to supplement and/or amend this response as appropriate in the course of discovery and in compliance with the Local and Federal Rules, Scheduling Order and/or any other applicable order or agreement in this case.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:

Subject to, and without waiving, the foregoing objections, Natera responds as follows:

During the final stages of prosecution of the underlying patent application (No. 16/934,407) that ultimately issued as the '035 Patent, Natera conducted a privileged assessment of inventorship. Following the issuance of a Notice of Allowance on April 9, 2021, Natera evaluated inventorship based on the allowed claims and determined correction was necessary prior to issuance. Accordingly, Natera submitted a Request for Correction in a Patent Application Relating to Inventorship pursuant to C.F.R. § 1.48 on May 7, 2021, adding Johan Baner, Milena Banjevic, Allison Ryan and Zachary Demko and removing Joshua Babiarz, Tudor Pompilin Constantin, Lane A. Eubank, Eser Kirkizlar and Onur Sakarya as inventors. The Patent Office granted Natera's Request to correct inventorship on May 11, 2021. *See also* NAT-NEO-00728564-NAT-NEO-00728571

(testimony of Matthew Rabinowitz in *Natera v. ArcherDx*). As the jury in the *ArcherDx* litigation confirmed, Natera's correction of inventorship of the related patents in the same family was justified and proper.

Discovery and Natera's investigation is ongoing. Natera reserves the right to supplement and/or amend this response as appropriate in the course of discovery and in compliance with the Local and Federal Rules, Scheduling Order and/or any other applicable order or agreement in this case.

Respectfully submitted this 25th day of September, 2023.

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Counsel for Plaintiff Natera, Inc.
**Special Appearance under Local Civil Rule*
83.1(d)

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served via electronic mail on all counsel of record for Defendant.

Dated: September 25, 2023

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