IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NATERA, INC.,

Plaintiff,

v.

ARCHERDX, INC., ARCHERDX, LLC, and INVITAE CORPORATION,

Defendants.

C.A. No. 20-cv-125-GBW
(Consolidated)

REPLY IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AND ALTERNATIVE REQUEST FOR A NEW TRIAL

Dated: December 4, 2023

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

ARGUMENT

I. Natera Cannot Recover Royalties For Non-PCM Kits

The need for a JMOL grant is unusually compelling given the jury's flat rejection of Natera's indirect infringement theory, an adverse verdict Natera has not challenged.

In short, the jury improperly awarded Natera royalties on sales of non-PCM kits for customer use, even though such sales (1) legally cannot infringe a method patent directly and (2) were found not to infringe indirectly. Natera does not dispute that its liability theory at trial for kits sold for customer use was that Archer ***indirectly*** infringed the patents by providing customers with the kits and information about how to use them. *See, e.g.*, Trial Tr. 504:22–509:24, 1238:7–11. Natera cannot, and does not, dispute that the jury rejected that theory and found no infringement for those kit sales. Opp. 4. And Natera does not dispute that the jury included those non-infringing sales in the royalty base it used to calculate royalties. *Id.* at 4–5.

In response, Natera speculates the jury "may have" awarded a lower royalty rate than what Natera requested to account for the non-infringing customer use. Opp. 2–4. But Natera improperly conflates the ***royalty rate*** with the ***royalty base***. The jury's 10% royalty rate was lower than Natera's proposed 19.7% rate. Opp. 3–4. But the jury then applied that royalty rate to a royalty base that erroneously included sales that did not infringe Natera's patents. Mot. 4. Such sales were not "properly included in a patent damages award" because Natera failed to prove indirect infringement with respect to them. *See Standard Havens Prod., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1374 (Fed. Cir. 1991). If the jury intended to reduce the royalties to account for non-infringing sales, the jury should have reduced the royalty base, not the royalty rate. But the jury had no way of doing so because Natera "presented no evidence of damages caused by [Archer's alleged] direct infringement, which was the only form of infringement that the jury found [Archer] to have committed." *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1291 (Fed. Cir. 2020).

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