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## Astellas Wins Sole Ownership of Stem-Cell Production Patents

By: Blake Brittan

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- Collaborating researchers' contributions were previously known
  - Attempted to get 'attack patent' as 'bargaining chip'
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Scientists at the Astellas Institute for Regenerative Medicine should be considered the sole Inventors of three patents covering the production of human stem cells for medical use, a Boston federal court ruled Friday.

The U.S. District Court for the District of Massachusetts found Astellas was solely entitled to all of the patents even though one was originally obtained by co-researchers who formed a competing company.

Astellas scientists Erin Klmbrel and Robert Lanza worked with University of Connecticut researchers Xiaofang Wang and Ren-He Xu to research the development of mesenchymal stem cells, which can be grown into organs, blood, tissue, bone, and muscle. The cells have several potential benefits for "regenerative medicine," which the court said "seeks to harness the body's own ability to heal itself using stem cells."

Wang and Xu later formed a competing company, ImStem BioTechnology Inc., without telling Astellas. ImStem applied for what Wang called an "attack patent" covering the technology, which he said was a "bargaining chip for any future litigation" and meant to "prevent [Astellas] from using their technology to go to clinic and develop their product." ImStem was eventually awarded U.S. Patent No. 9,745,551.

Astellas sued ImStem to correct the patent and list its researchers as inventors. ImStem countersued to list Wang and Xu as Inventors of two Astellas patents covering the technology, U.S. Patent Nos. 8,951,956 and 8,962,321.

The court previously ruled that Klmbrel and Lanza should be listed as co-inventors on the '551 patent. On Tuesday, it held that they were the sole Inventors of the technology in all three patents.

Wang and Xu argued they made several significant contributions to the patents, including ideas to compare the cells to the "gold standard" of mesenchymal stem cells, use them to treat multiple sclerosis, and stop them from dividing so they can be injected into the body without creating tumors with "undesirable differentiations" like teeth or intestines.

But the court said all of Wang and Xu's alleged contributions were already known in the field and by the Astellas researchers before the collaboration, and they weren't entitled to be credited as Inventors.

The court also rejected Astellas' unfair trade practices claims against ImStem, finding that while Wang and Xu's actions were "wrong," they weren't "egregiously wrong," as required to succeed on the claims under Massachusetts law. Judge Allison D. Burroughs wrote the opinion.

Latham & Watkins LLP represented Astellas. Verrill Dana LLP represented ImStem.

The case is *Astellas Inst. for Regenerative Med. v. ImStem Biotech. Inc.*, D. Mass., No. 1:17-cv-12239, 2/5/21.

To contact the reporter on this story: Blake Brittan in Washington at [bbrittan@bloomberglaw.com](mailto:bbrittan@bloomberglaw.com)