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Natera and the Power of the Patent

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At least since the Supreme Court's *eBay* decision in 2006, a vocal contingent has been decrying the erosion of patent rights. The entry of a preliminary injunction in *Natera, Inc. v. NeoGenomics Laboratories, Inc.* that would remove one of only two cancer-detection products of its kind from the market will not end the debate over patent strength. But it does provide a useful reminder of the power of patents.

Both Natera and NeoGenomics sell products that can be used to detect cancer relapses. Their "tumor informed" tests use patients' genetic information to detect cancer cell DNA fragments circulating in the bloodstream. The tests are considered to be more accurate in assessing the likelihood of cancer recurrence than "tumor naïve" tests that are not individualized to the specific patient.

NeoGenomics's product, RaDaR, has been used in clinical research since 2020 and commercially available since March 2023. Natera, the industry leader, sued NeoGenomics in July 2023 and sought a preliminary injunction just three days later. The district court held that Natera made a strong showing of infringement and that NeoGenomics failed to raise a substantial question of invalidity. The court also found (1) irreparable harm based on direct competition between the parties, and (2) that the equities favored Natera based on the importance of its tumor-informed test to the company's economic success.

On the public interest factor, numerous courts have denied injunctions, even after jury verdicts in the patentee's favor, after pointing to the public's interest in preserving access to a choice of medical treatment options. One district court even went so far as to conclude that "the strength of [the public interest] factor *alone* precludes it from imposing a permanent injunction." *Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., Inc.*, 2009 WL 920300, at *4 (D. Ariz. Mar. 31, 2009) (emphasis added). But the caselaw is far from uniform, and the district court in *Natera* emphasized the public's interest in enforcing patent rights (a consideration in every patent case) in finding that the public interest "tips in favor of granting a preliminary injunction." The court did make an allowance for the impact of its decision on the public's health, however, by narrowing the injunction to exempt "ongoing treatment, research, and clinical studies."

NeoGenomics has appealed and moved to stay the district court's decision, so the Federal Circuit will be addressing the injunction in the near term. But absent an immediate stay and subsequent reversal, the *Natera* decision speaks to how patents can shape competition in all kinds of markets.

> **The public interest in enforcing patent rights tips in favor of granting a preliminary injunction. Anyone in need of a tumor informed MRD test will be able to get one from Natera; Signatera is clinically validated for use with the same cancers as RaDaR.**
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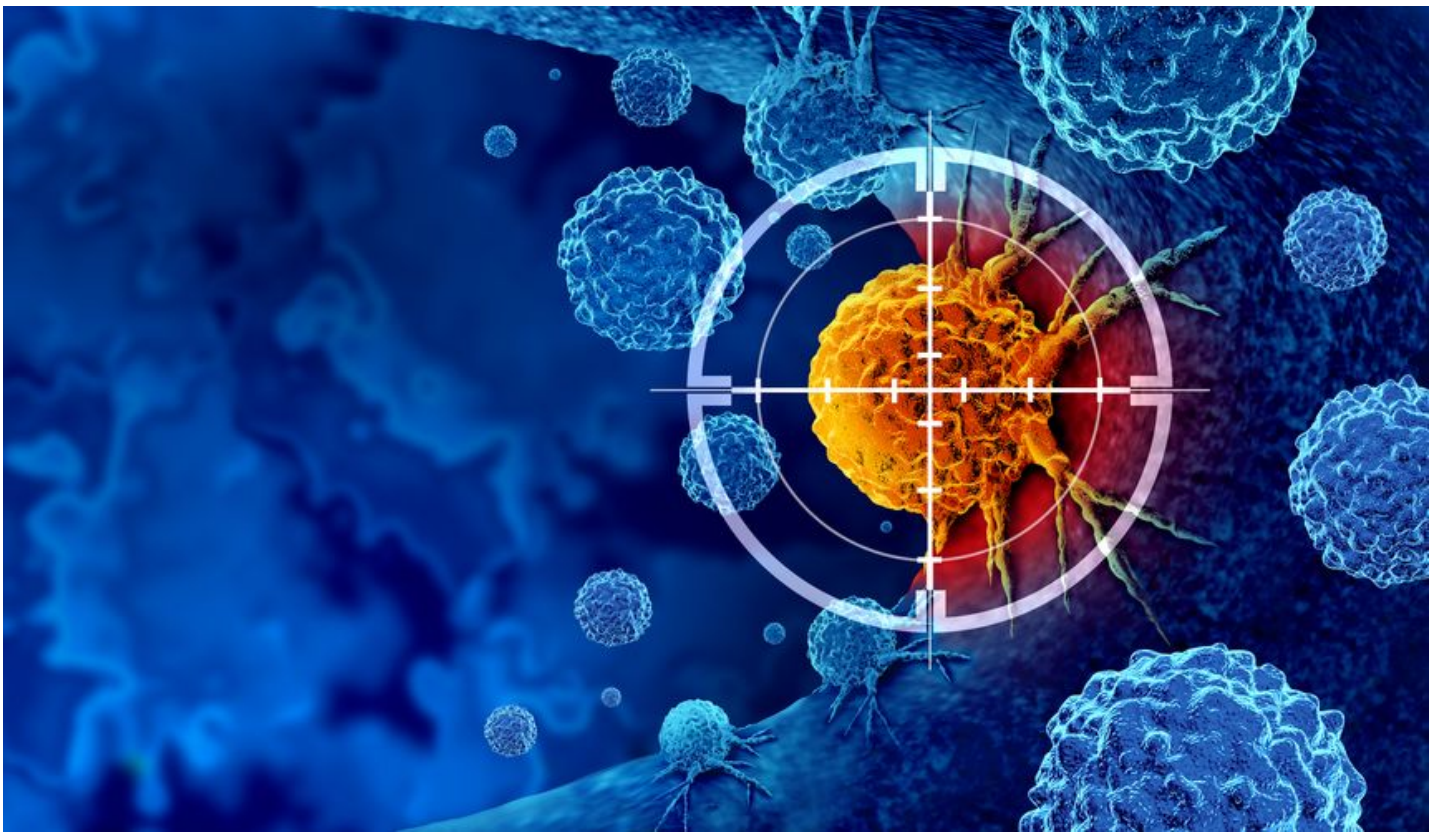

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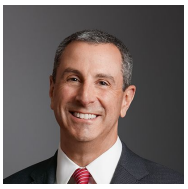

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