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## Litigators Represent Boston's Children's Hospital in Kringle 5 Case

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### Kringle 5 Crossfire

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What started out as a small subletting arrangement at Hale and Dorr ended up earning it more than just spending money. In fact, the deal landed the Boston-based firm a high-profile and potentially very lucrative patent case.

Since 1995 the firm has been subletting an office to solo practitioner George Abrams, personal lawyer to Boston's Children's Hospital's famous cancer researcher Dr. Judah Folkman. Abrams, whose relationship with Hale and Dorr is strictly a real estate arrangement, is friends with a number of the firm's partners. When the hospital and Folkman, along with two of his colleagues, were sued by Abbott Park, Ill.-based Abbott Laboratories for patent fraud in May, Abrams recommended to Children's general counsel, Stuart Novik, that Hale and Dorr handle the litigation. The firm's managing partner and nationally known patent litigator, William Lee, is leading the hospital's defense; Abrams is representing Folkman.

The dispute is over who was the first to discover the tumor-starving properties known as Kringle 5, which inhibits tumor growth by stopping the formation of new blood vessels.

It is undisputed that in 1971 Folkman had the novel insight that cancerous tumors thrive as a result of a process called angiogenesis, through which they grow new blood vessels. He and his colleagues later discovered that a protein called angiostatin containing four regions -- Kringles 1 through 4 -- stops angiogenesis.

What is disputed is who found the cancer-fighting properties of Kringle 5. In 1997 both sides were awarded patents on the discovery. Abbott, represented by Chicago's Winston & Strawn, claims that its scientist, Donald Davidson, is the inventor, while Children's says that Folkman and his colleagues Yihai Cao and Michael O'Reilly made the breakthrough.

EntreMed, Inc., a Rockville, Maryland-based biotech company, is also named as a defendant in the suit, which was filed in U.S. district court in Boston. The hospital has received funding for cancer research from Entremed for the past seven years, and Entremed claims that it has exclusive rights to Children's Kringle 5 patent.

Kimball Anderson, Abbott's lead attorney at Winston & Strawn, says that his client filed the suit after three years of intermittent settlement talks that broke down when it became clear that Children's would not voluntarily advise the U.S. Patent and Trademark Office on Davidson's alleged involvement in the Kringle 5 discovery. Abbott, which wants Davidson's name substituted for the hospital's scientists' names on Children's Kringle 5 patent, relied on in-house lawyers throughout those confidential talks, while Children's was advised by Hamilton, Brook, Smith & Reynolds of Lexington, Mass.

In July the hospital and Entremed countersued to have Abbott's Kringle 5 patent rescinded, but the countersuit injected a new element, and one not often found in IP litigation: defamation. Children's says that Abbott's claims unfairly threaten Folkman's and his colleagues' reputations by accusing them of theft.

Those accusations by Abbott were motivated by one thing, says Hale and Dorr's Lee. The technology of Kringle 5 is of "sufficient value to Abbott that they would launch a full-scale attack on the reputation of Dr. Folkman," he claims.

The stakes are big. "The technology has the potential to be a cure for one of the great mysteries of all time. There is a huge interest in it," says Lee. In other words, the patent holder could be entitled to hundreds of millions of dollars in royalties down the road.

Abbott, which filed its answer to the counterclaims on August 14, denies that it has defamed anyone. Anderson says, "The law allows you to say that the other side did something wrong without being sued for defamation."

The fact that defamation is involved here at all is unusual. But, says David Pritikin, a patent expert at Chicago's Sidley & Austin, there might be more to come in today's high-stakes world of patent litigation.

"You can increasingly expect atmospherics to drown out the merits of the case," he says, calling atmospherics "all other issues injected into what would otherwise be a straightforward patent dispute."

Pritikin says that it's becoming more common for conventional litigation tactics to be used in patent cases: "There are more conventional trial lawyers working on these cases today. Patent litigation is beginning to resemble general litigation."

There may be another round of name-calling in the Kringle 5 dispute, this time confined to the

defense team. According to the pleadings, EntreMed and the hospital disagree over whether Children's ever licensed Kringle 5 to EntreMed. It seems that Kringle 5 litigation will continue to spread.

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