EXHIBIT 10

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF THE TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,

Plaintiff,

vs. No. C-05-04158 MHP

ROCHE MOLECULAR SYSTEMS, INC., ROCHE DIAGNOSTICS CORPORATION, ROCHE DIAGNOSTICS OPERATIONS, INC., ROCHE DIAGNOSTIC SYSTEMS, INC.,

Defendant.

AND RELATED COUNTERCLAIM.

CERTIFIED COPY

CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF DAVID A. KATZENSTEIN, M.D.

Palo Alto, California

Monday, August 28, 2006

Reported by:
SUZANNE F. BOSCHETTI
CSR No. 5111

Job No. 3-52323

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Confidential videotaped deposition of DAVID A. KATZENSTEIN, M.D., taken on behalf of Defendants and Counterclaimants Roche Molecular Systems, Inc., et al., at 5 Palo Alto Square, Palo Alto, California, beginning at 9:05 a.m. and ending at 2:30 p.m. on Monday, August 28, 2006, before SUZANNE F. BOSCHETTI, Certified Shorthand Reporter No. 5111.

APPEARANCES:

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Q. Getting back to the idea and the discussion -- I'll call it a discussion or meeting that you had with Dr. Merigan and Dr. Holodniy. At that initial meeting where you -- you discussed the idea, did -- did you discuss or did you propose using this quantification technique to monitor the effectiveness of therapy?

A. Yes.

Q. And was it your idea at that time in mid-1989 to quantify viral RNA?

A. Yes.

Q. And that's from serum and plasma?

A. Well, whether it was going to be serum or plasma or a particular kind of plasma were the experiments that we needed to carry out, but the idea that you had an analyte that could be measured over time on a regular repeatable basis. The problem with cellular assays, as I saw it, was that a fluctuation in the number of infected cells could easily occur because of inter-occurring infection, progression of disease, you had loss of CD4 cells. What cells harbored cDNA -- HIV cDNA and provirus was at the time hotly debated, so it would not necessarily provide a very constant indication or -- of virus replication or production, but rather integration, and, in fact,

proviral infection.

So the concept that we discussed, which we, I believe, subsequently tried to realize, was could you get a reproducible measure of -- of virus in the plasma or blood that was independent of the cellular infection.

Q. And in your answer previously you used a term analyte. And when you use the term analyte in this context, you're referring to the viral -- the virus, right?

A. No.

Q. What are you referring to?

A. The substance that you take out of people, which you then subsequently perform a test on is known as the analyte. So if you're doing stool cultures, the analyte becomes the stool. If you're doing blood cultures, the analyte becomes blood. And the specific properties of those for different tests subsequently became something that we did some research on.

Q. And then there were a subsequent series of experiments done, and I think you used the term realize, to realize this idea. And did the experiments that were done verify the idea that you had back in 1989?

MR. RODRIGUEZ: Objection. Vague.

10:29:13 THE WITNESS: I think so.
BY MR. CANNON:
Q. They were successful, right?
A. They were.
Q. And you published --
MR. RODRIGUEZ: Objection. Vague.
BY MR. CANNON:
Q. And you published the results of those experiments, right?
MR. RODRIGUEZ: The same objection.
THE WITNESS: That's -- well, the -- I believe the JID article is the fulfillment of that idea through a whole series of technical assay development issues that went on over perhaps two years.
BY MR. CANNON:
Q. Let's jump to that.
Previously marked Exhibit 72.
(Previously marked Exhibit 72 was presented to the witness.)
BY MR. CANNON:
Q. If you could look at that for a moment, please, Dr. Katzenstein, and confirm for me that this is the JID article you just referred to.
A. Yes, it is.

MR. RODRIGUEZ: Objection. Calls for a legal conclusion.

THE WITNESS: I think again, the safest thing to say and the closest to the truth is I don't know. I will offer that in the times between the patent being -- some patent being filed, communications going on, which are well-established, I guess --

MR. RODRIGUEZ: Let me just caution you not to reveal any attorney-client communications in what you're about to say.

THE WITNESS: Oh, okay. No, this is simply in my communications with Dr. Merigan, he explained that these patents, should they go forward, would belong primarily to Stanford University because our work was done at Stanford, and that I -- neither I nor -- I think that these were conversations that involved Mark Holodniy as well -- should expect to use the lay term we would get very much out of it personally, that this was -- this was primarily a Stanford effort.

BY MR. CANNON:

Q. Did you get paid anything for assigning your rights to the patent to Stanford?

MR. RODRIGUEZ: Objection. Calls for a legal conclusion.

THE WITNESS: No, but I know I haven't been paid anything around the assignment of patent rights that I know of.

BY MR. CANNON:

Q. I'm not trying to trick you here, but there is a line in this assignment that says on the very first page that says:

"Now, therefore, in consideration of the sum of One Dollar ($1.00) to us in hand paid, and other good and valuable consideration..."

And then it goes on. Do you see that section?

A. On the first page.

Q. The first page of the assignment, so it's the second to last page of the -- of the document. Do you see that?

A. Mm-hmm.

Q. Were you in fact paid anything, $1 or anything in consideration for signing this?

A. I do not recall being paid anything for -- and this would have been about 20 cents apiece.

MR. CANNON: Let's mark the next.

(Deposition Exhibit 211 marked by the court reporter.)

BY MR. CANNON:

conclusion.

THE WITNESS: I haven't thought about it one way or the other.

MR. CANNON: Let's mark the next exhibit.

(Deposition Exhibit 212 marked by the court reporter.)

BY MR. CANNON:

Q. If you could look at Exhibit 212, please. It's a two-page document marked STAN 003837 to 003838. Appears to be a letter dated August the 6th, 2003, to Mark Holodniy, David Katzenstein and Thomas Merigan.

Do you recall receiving this letter?

A. I actually don't.

Q. You don't recognize the document?

A. No.

Q. Okay. Dr. Katzenstein, you understand that Cetus doesn't exist anymore, right?

A. I do.

Q. That some of its assets were sold to Roche and some of its assets were sold to Chiron, right?

A. Right.

Q. Do you remember Shirley Kwok?

A. Yes, very well.

Q. And she -- she was at Cetus back in the

'89-'90 time frame, right?

A. Yes.

MR. RODRIGUEZ: Objection. Calls for speculation.

BY MR. CANNON:

Q. And then she went to Roche, right?

MR. RODRIGUEZ: Objection. Calls for speculation. Lacks foundation.

THE WITNESS: I recall that she went to Roche and she was in the Alameda research office up there and --

BY MR. CANNON:

Q. Did you have interactions with Shirley Kwok after she went to Roche?

A. Well, I do have -- I do recall one visit that I made to the Alameda facility where I remember both Shirley and John Sninsky being welcoming, and we had a number of discussions.

Q. What did -- when did this meeting take place?

A. I can't recall.

Q. Was it in the mid-'90s?

A. Probably.

Q. Was it in connection with clinical trials relating to Roche's Amplicor product?

A. Yes.

Q. What was the nature of the discussions you had with Shirley Kwok and John Sninsky at that time?

A. I can't remember really.

Q. Why would you have visited them at the Roche facility in Alameda at that time?

MR. RODRIGUEZ: Objection. Calls for speculation.

THE WITNESS: I don't know. I mean, I interacted with both of them professionally at both meetings, over the telephone, we exchanged some reagents, I supplied a number of plasma and virus isolates to Shirley. I was concerned about Africa, and she was interested in working on samples from some type C patients, and we had those.

And I used to meet John Sninsky at a number of scientific meetings, and he was a good friend of a number of people at Stanford. Used to come down there. So we had normal social and scientific exchanges.

BY MR. CANNON:

Q. Did you ever coordinate a clinical trial that involved Roche's Amplicor HIV product?

MR. RODRIGUEZ: Objection. Vague.

THE WITNESS: Yeah, the "involved" is a little hard to answer. I can give you the history of what I recall of the involvement of Roche with ACTG 175.

BY MR. CANNON:

Q. That's the protocol I had in mind.

A. I could perhaps give you that as a narrative as I remember it, and we can discuss it if that's easier rather than the one question at a time thing.

Q. Ah, right. Let me put a document in front of you and that might frame -- might frame some of the discussions.

Could we mark the next exhibit, please?

(Deposition Exhibit 213 marked by the court reporter.)

BY MR. CANNON:

Q. Marked as Exhibit 213, a document appears to be a letter or a draft letter from you to Shirley Kwok, and it has production labels STAN 9462 through 9463.

A. Okay.

Q. What was your involvement with ACTG 175 protocol?

A. Okay. Well, it was a -- a clinical protocol developed by initially Tom Merigan and Marty Hirsch,

who were at the time the leadership of the what was called the primary infection committee of the ACTG. And with a number of other leaders of that at various academic medical institutions, the question was what was the next large clinical trial and what were the principles to be evolved.

They essentially arranged for Scott Hammer and I to be the co-chairs of that protocol, and that went -- that took about a year's worth of development from, I would say from mid-'91 to '92 or mid-'90 to '91. The protocol -- actually I began enrolling people, I believe, in '92. It was a three-year follow-up of the longest time and we finished in '95, so --

Q. What was the -- sorry. What was the purpose of --

A. The primary objective was to compare two drugs to one drug. That hadn't been done before in a large efficacy trial in which the primary end point of the study was maintaining CD4 cells at, you know, or preventing a fall in CD4 cells to 50 percent of baseline. And we spent a lot of time working with statisticians, enrolled 2,000 patients at 50 sites across the U.S., so it was a very large investment in public funds in what was the first large -- it's still

the largest ever AIDS therapy trial done in the United States.

There was a very specific subset that was called the virology subset. I was the protocol virologist, and I was in charge of organizing real time virology as well as the storage and maintenance of samples. So we did a large number of things with those 400 patients who are part of the virology subset. And there are like 20 journal articles that detail each one of those.

From your point of view, probably the most important question was the use of RNA PCR to monitor therapy in patients on this large trial. We, in fact, at Stanford and the ACTG planned to do that using the Stanford assay as the protocol that was initially conceived in -- in the early '90s. And the first patients enrolled in fact had samples stored in solution D. As a result of discussions with people from Roche that occurred as the protocol was -- was well underway, we decided that, in fact, they were willing to provide their prototype assay.

This particular letter represents, you know, my first discussions, I guess, with Shirley Kwok about this, and I keep blocking out the name of the guy from Roche Diagnostics, who, in fact, ended up joining me

in the 175 team calls. We had a series of discussions and decided that the three laboratories named, ours, Scott Hammer's and Brooks Jackson's, would run all of these prototype RNA assays. The statistical analysis was going to be done by the AIDS clinical trials group, ESTEC, Harvard, Michael Hughes. And in fact, that's the data that's contained in the New England Journal paper eventually published in '96 that established HIV RNA quantitation as in fact a surrogate marker for the activity of any antiretroviral drug, which I think was important for the patients, important for regulatory purposes, and subsequently proved to be a part of the package insert for the Amplicor test.

Q. Amplicor being the Roche test?

A. Right.

Q. When did Roche propose to use their prototype assay as part of this trial?

A. I think sometime in late '94 or '95.

Q. You mentioned something called the Stanford assay.

A. Yes.

Q. What's that?

A. That's the one that's described in the JID article essentially.

Q. So you had a series of conversations with Roche. They said they had the prototype assay and then there was an agreement that the Roche assay would be used as part of this trial?

A. Well, yes. But the trial had already started, so there was an agreement that they would provide the assay kits and training for the three laboratories that were running. We, in turn, would provide to them data which I believe would be useful to them for the purpose of licensing their assay. In other words, by -- by being a participant in the 175 virology study in which -- because we also had an analysis using culture, using P24, using many real time things that one has to do. And much of the validation of the Roche assay was the correlation of, in fact, the stored plasma with, in fact, the results of P24 assays, virus culture assays, SI assays, a number of other assays that could have only been produced in real time at these 11 laboratories.

Q. So Roche got access to that data?

A. Roche was able to access the clinical data, which is what they were primarily interested in in terms of the analysis produced in the New England Journal paper. And you will find the 175 trial results in the package insert for Roche Amplicor to

this very day.

MR. CANNON: Let's take a short break.

THE WITNESS: Okay.

VIDEO OPERATOR: The time is 2:26. We are going off the record.

(Recess.)

VIDEO OPERATOR: The time is 2:29. We are back on the record.

MR. CANNON: I have no further questions at this time. Thanks very much for your cooperation.

MR. RODRIGUEZ: The witness would like the opportunity to review and correct the transcript.

I have no questions. Sure, we'll mark it attorneys' eyes only.

MR. CANNON: Thank you.

VIDEO OPERATOR: This concludes today's deposition of Dr. David Katzenstein. The number of media used was three. We're off the record at 2:30 p.m.

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