

# EXHIBIT 13

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF THE TRUSTEES OF  
THE LELAND STANFORD JUNIOR  
UNIVERSITY

Plaintiff

VS

No. 05-04158 MHP

ROCHE MOLECULAR SYSTEMS, INC.  
Roche Diagnostics CORPORATION  
Roche Diagnostics OPERATIONS  
INC. ROCHE DIAGNOSTIC SYSTEMS  
INC.

Defendant

CERTIFIED  
COPY

AND RELATED COUNTERCLAIM

HEIGHT CONFIDENTIAL - ATTORNEYS EYES ONLY

VIDEOTAPED DEPOSITION OF WILLIAM GRANT BERBER, M.D.

San Francisco, California

Tuesday, August 15, 2006

Reported by:  
SUZANNE E. BOSCHETTI  
CSR No. 51111

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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.

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AND RELATED COUNTERCLAIM.

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Confidential videotaped deposition of WILLIAM  
GRANT GERBER, M.D., taken on behalf of Plaintiff and  
Counterclaim Defendants The Board of the Trustees of  
the Leland Stanford Junior University, at 50  
California, 22nd Floor, San Francisco, California,  
beginning at 9:03 a.m. and ending at 12:15 p.m. on  
Thursday, August 10, 2006, before SUZANNE F.  
BOSCHETTI, Certified Shorthand Reporter No. 5111.

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3 For Plaintiff and Counterclaim Defendants The Board of  
4 the Trustees of the Leland Stanford Junior University,  
et al.:

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11:02:56 1 that was negotiated heavily?

11:02:57 2 MR. BOOZELL: Objection. Vague and  
11:03:03 3 ambiguous.

11:03:03 4 THE WITNESS: I don't recall that that was  
11:03:04 5 negotiated heavily in the sense that we agreed upfront  
11:03:07 6 that what Roche wanted to do was acquire all of our  
11:03:10 7 assets related to the PCR technology and business.  
11:03:15 8 And once you agree to that in principle, I believe the  
11:03:19 9 only -- the only issue I recall that came up is we  
11:03:22 10 went back and asked them for a royalty-free license to  
11:03:26 11 practice the PCR technology for research purposes at  
11:03:30 12 Cetus.

11:03:30 13 BY MR. DAMSTEDT:

11:03:33 14 Q. What is your understanding of the  
11:03:35 15 structure of the deal that was struck? Did Roche  
11:03:41 16 get a transfer of PCR assets in general or did  
11:03:46 17 Roche get a transfer of specific PCR assets?

11:03:48 18 MR. BOOZELL: Vague and ambiguous. Compound.  
11:03:50 19 Calls for a legal conclusion.

11:03:53 20 THE WITNESS: Yeah, so I can't -- I don't  
11:03:56 21 think my opinion there would be of much value from a  
11:04:00 22 legal standpoint. I know what the intent was. The  
11:04:03 23 intent was they were buying all of the assets that we  
11:04:06 24 owned.

11:04:07 25 BY MR. DAMSTEDT:

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11:28:19 1 assets that Roche was purchasing were limited to  
11:28:21 2 that -- what's described in section 2.1?

11:28:25 3 MR. BOOZELL: Calls for a legal conclusion.  
11:28:27 4 Vague and ambiguous.

11:28:29 5 THE WITNESS: I haven't reviewed this  
11:28:32 6 document lately. The only reason that I'm being  
11:28:39 7 undefinitive about this is it wouldn't surprise me if  
11:28:43 8 there are sections in here which say oh, by the way,  
11:28:46 9 if there's anything out there that we haven't thought  
11:28:49 10 of or specified here that relates to PCR or its  
11:28:53 11 commercialization, we get that too. So --

11:28:53 12 BY MR. DAMSTEDT:

11:28:57 13 Q. And so sitting here right now, you don't  
11:28:59 14 have an understanding as to whether there was a  
11:29:01 15 catchall, if you can use that term, in the  
11:29:05 16 agreement?

11:29:05 17 MR. BOOZELL: Vague and ambiguous and calls  
11:29:07 18 for a legal conclusion.

11:29:10 19 THE WITNESS: As I said, I haven't read the  
11:29:12 20 agreement, so I can't say that it is here. But it  
11:29:14 21 wouldn't surprise me if there weren't some language to  
11:29:17 22 that effect.

11:29:17 23 BY MR. DAMSTEDT:

11:29:18 24 Q. Was your understanding at the time the  
11:29:20 25 agreement was negotiated that there would be a

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11:29:25 1 provision that catches all the related PCR assets  
11:29:29 2 that weren't specifically listed?

11:29:32 3 MR. BOOZELL: Vague and ambiguous. Calls for  
11:29:33 4 a legal conclusion.

11:29:35 5 THE WITNESS: And again, I have no specific  
11:29:37 6 recollection of that negotiation or discussion. I'm  
11:29:42 7 simply referring back to what Roche made clear was its  
11:29:45 8 intent from day one, that they acquire all of the  
11:29:49 9 assets and all of the rights.

11:29:49 10 BY MR. DAMSTEDT:

11:29:53 11 Q. But your testimony is that you don't --

11:29:56 12 MR. BOOZELL: Were you finished with your  
11:29:57 13 answer, Dr. Gerber?

11:29:59 14 THE WITNESS: No.

11:30:00 15 MR. BOOZELL: Can you let him finish, please.

11:30:03 16 THE WITNESS: And as such, it wouldn't  
11:30:05 17 surprise me if there was language in here to the  
11:30:07 18 effect that, look, we're acquiring all of these  
11:30:09 19 specified assets. And if there's anything else that  
11:30:11 20 we haven't specified, we own it too.

11:30:11 21 BY MR. DAMSTEDT:

11:30:13 22 Q. But you don't have any --

11:30:15 23 A. I don't have any specific indication of that  
11:30:17 24 because I haven't read the document. And I have no  
11:30:19 25 specific recollection of the document, so --

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Q. And do you have any specific recollection of the intent of the parties during the negotiations?

A. Yes.

Q. And what is that?

A. From day one Roche made it very clear that they were buying all of the assets, rights, licenses that Cetus owned to PCR.

Q. But you have no recollection whether that intention actually was memorialized in the final contract?

MR. BOOZELL: Calls for a legal conclusion.

BY MR. DAMSTEDT:

Q. Is that your understanding?

MR. BOOZELL: Calls for a legal conclusion, asked and answered. Vague and ambiguous.

THE WITNESS: As I've said, I haven't reviewed this document, so I don't know whether that provision is in here or not. I'm simply saying that while the section states what you've said it states, that we are buying what's listed here, I can't say that -- with any confidence that that's all that Roche was buying.

BY MR. DAMSTEDT:

Q. And you can't state with any confidence



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I, WILLIAM GRANT GERBER, M.D., do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 19<sup>th</sup> day of SEPTEMBER, 2006, at ORLANDO, CA  
(City) (State)

W Grant Gerber  
WILLIAM GRANT GERBER, M.D.