

EXHIBIT 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF THE TRUSTEES OF
THE TEEBAND 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.

Defendants

CERTIFIED
COPY

AND RELATED COUNTERCLAIM

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VIDEOTAPED DEPOSITION OF THOMAS C. MERICAN, M.D.

Palo Alto, California

Monday, September 11, 2006

Volume 1

Reported by
SUZANNE C. BOSCHETTI
CSR No. 5111
Job No. 3-52871

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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.,

Defendants.

AND RELATED COUNTERCLAIM.

Videotaped deposition of THOMAS C. MERIGAN,
M.D., Volume 1, taken on behalf of Defendants and
Counterclaimants Roche Molecular Systems, Inc., et
al., at 5 Palo Alto Square, Palo Alto, California,
beginning at 9:08 a.m. and ending at 1:01 p.m. on
Monday, September 11, 2006, before SUZANNE F.
BOSCHETTI, Certified Shorthand Reporter No. 5111.

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1 **APPEARANCES:**

2

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

6

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09:28:33 1 Q. The San Mateo group wasn't at Stanford.

09:28:36 2 A. No, nobody else at Stanford.

09:28:37 3 Q. Okay.

09:28:38 4 A. Well, there's a little bit of a misnomer
09:28:41 5 here. San Mateo had an affiliation with Stanford. So
09:28:44 6 in the greater sense, San Mateo was a part of
09:28:48 7 Stanford.

09:28:50 8 Q. But -- okay. What was the nature of your
09:28:59 9 contribution to the work that's reflected in the
09:29:00 10 abstract?

09:29:01 11 MR. RODRIGUEZ: Objection. Vague.

09:29:06 12 THE WITNESS: I was the intellectual leader,
09:29:10 13 the person that had the original idea, and supported
09:29:14 14 the work on my grants and directed the work on an
09:29:22 15 overall basis.

09:29:27 16 BY MR. STONE:

09:29:27 17 Q. What was the original idea that you're
09:29:30 18 referring to?

09:29:31 19 MR. RODRIGUEZ: Objection. Vague.

09:29:37 20 THE WITNESS: That we could precisely
09:29:38 21 quantitate HIV in the blood of patients.

09:29:38 22 BY MR. STONE:

09:29:54 23 Q. When did you come up with that idea?

09:29:57 24 MR. RODRIGUEZ: Same objection. Objection.
09:30:00 25 Vague.

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09:30:02 1 THE WITNESS: Perhaps as early as 1984.

09:30:02 2 BY MR. STONE:

09:30:17 3 Q. How did you come up with that idea?

09:30:19 4 A. Because I was working with other chronically
09:30:22 5 infecting viruses where we needed chemical methods for
09:30:26 6 detecting the virus.

09:30:36 7 Q. Sitting here today, can you peg for me with
09:30:38 8 any specificity exactly when you came up with this
09:30:41 9 idea?

09:30:45 10 A. I already said 1984. Is that precise enough?

09:30:49 11 Q. Can you provide me any more specificity?

09:30:52 12 A. I wrote an article that was in the Journal
09:30:56 13 of -- New England Journal of Medicine. It was an
09:31:00 14 editorial commenting on Robert Gallo's work at that
09:31:04 15 time. And I suggested that there would be new
09:31:07 16 diagnostic tests that would be important in treatment
09:31:10 17 and management of HIV patients.

09:31:14 18 Q. Did you identify any such new diagnostic tests
09:31:18 19 in connection with that paper?

09:31:19 20 A. No.

09:31:23 21 Q. You just suggested that in the future there
09:31:26 22 may be such tests?

09:31:28 23 A. Had to be.

09:31:39 24 Q. Did your idea evolve over time?

09:31:42 25 MR. RODRIGUEZ: Objection. Vague.

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I, THOMAS C. MERIGAN, 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 ____ day of _____, 20____, at _____,

(City)

(State)


THOMAS C. MERIGAN, M.D.
Volume 1

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Palo Alto, California

Wednesday, September 13, 2006

Volume 2

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VIDEOTAPED DEPOSITION OF THOMAS C. MERIGAN, M.D.

Palo Alto, California

Wednesday, September 13, 2006

Volume 2

Reported by:
SUZANNE F. BOSCHETTI
CSR No. 5111

Job No. 3-52873

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09:53:36 1 A. Holodniy is the general clinical
09:53:40 2 investigation, and -- and Kozal's paper also.

09:53:46 3 Q. And which Kozal paper?

09:53:49 4 A. The one that looked at the mutations
09:53:53 5 correlating with the outcome of therapy.

09:53:57 6 Q. Did you ever provide the Office of Technology
09:54:03 7 Licensing with an invention disclosure document?

09:54:05 8 MR. RODRIGUEZ: You can just answer that yes
09:54:11 9 or no.

09:54:11 10 THE WITNESS: Yes.

09:54:11 11 BY MR. STONE:

09:54:12 12 Q. And what did you tell them in that?

09:54:14 13 MR. RODRIGUEZ: I'm going to object as
09:54:16 14 calling for attorney-client communication and instruct
09:54:18 15 you not to answer that question.

09:54:19 16 MR. STONE: I think the Court's already ruled
09:54:20 17 on that. There's been a waiver.

09:54:22 18 MR. RODRIGUEZ: I'm standing by my objection.
09:54:23 19 We've discussed this before. We've provided you with
09:54:26 20 the -- the portion of the invention disclosure that is
09:54:30 21 covered by the ruling. And you're not entitled to the
09:54:33 22 substance of the actual remaining portion of it, which
09:54:36 23 you're asking for here.

09:54:38 24 MR. STONE: I'm actually asking for his
09:54:40 25 discussions with the Office of Technology and

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09:54:42 1 Licensing about his invention, and so I think that
09:54:44 2 that has been waived.

09:54:45 3 MR. RODRIGUEZ: Oh, definitely not.

09:54:46 4 MR. STONE: Okay.

09:54:47 5 MR. RODRIGUEZ: Especially as you've
09:54:49 6 described them.

09:54:49 7 MR. STONE: Okay.

09:54:49 8 BY MR. STONE:

09:54:50 9 Q. Did you have discussions with the Office of
09:54:52 10 Technology Licensing about your contribution to the
09:54:54 11 subject matter of your perceived invention?

09:54:57 12 MR. RODRIGUEZ: You can answer that "yes" or
09:54:59 13 "no."

09:54:59 14 THE WITNESS: Yes.

09:54:59 15 BY MR. STONE:

09:55:00 16 Q. What did you discuss?

09:55:00 17 MR. RODRIGUEZ: And actually, I'm going to
09:55:03 18 ask you to hold on there for a second.

09:55:18 19 Okay. Go ahead.

09:55:20 20 THE WITNESS: Could you repeat the question.

09:55:21 21 MR. STONE: Could you read it back, please.

09:55:40 22 (Record read as follows:

09:54:50 23 "QUESTION: Did you have discussions
09:54:51 24 with the Office of Technology Licensing about
09:54:53 25 your contribution to the subject matter of

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10:00:46 1 Q. And before I get there, was there anyone
10:00:48 2 else present at the dinner that you had with Mr.
10:00:50 3 Misrock.

10:00:50 4 A. My wife. So it was quite a social evening,
10:00:54 5 not -- not a scientific or legal one.

10:00:58 6 Q. And you hadn't retained Mr. Misrock at the
10:01:02 7 time of your dinner, had you?

10:01:03 8 MR. RODRIGUEZ: Objection. Calls for a legal
10:01:04 9 conclusion.

10:01:07 10 THE WITNESS: I never retained Mr. Misrock.
10:01:10 11 As I said, he functioned entirely as a friend, but on
10:01:17 12 the other hand, I can see that his action fits under
10:01:19 13 attorney-client privilege, too.

10:01:21 14 BY MR. STONE:

10:01:21 15 Q. Was he acting as your lawyer at that dinner?

10:01:23 16 MR. RODRIGUEZ: Same objection. Calls for
10:01:25 17 legal conclusion.

10:01:29 18 THE WITNESS: I guess he became that
10:01:31 19 afterwards and it might have been during that time. I
10:01:34 20 just don't know enough about law to know what are the
10:01:38 21 words that solve the issue and whether you have to
10:01:42 22 transfer a dollar or whether you kiss or whatever you
10:01:46 23 do to form your relationship.

10:01:53 24 BY MR. STONE:

10:01:53 25 Q. When you assigned your patent application to

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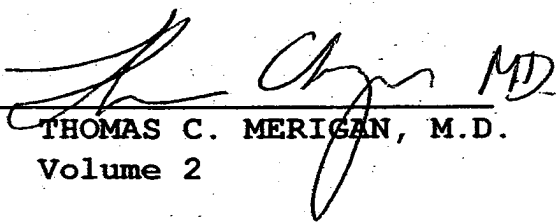
10:01:56 1 Stanford, did Stanford give you anything in exchange?
10:01:59 2 MR. RODRIGUEZ: Objection. Vague.
10:02:01 3 THE WITNESS: What do you mean by anything?
10:02:05 4 BY MR. STONE:
10:02:06 5 Q. Well, did they give you anything in exchange?
10:02:08 6 MR. RODRIGUEZ: Same objection. Vague.
10:02:10 7 THE WITNESS: I don't know what you mean by
10:02:12 8 anything.
10:02:12 9 BY MR. STONE:
10:02:13 10 Q. Well, you just mentioned. Did they give you a
10:02:15 11 dollar, for instance?
10:02:17 12 A. I don't think so. They gave me the same
10:02:20 13 dollars before as after. After as before.
10:02:23 14 Q. Just meaning your salary?
10:02:25 15 A. Yeah, the same as before, and I did not get
10:02:29 16 any new privileges or anything of that sort. It was
10:02:35 17 just a work-a-day effort to potentially help make my
10:02:43 18 finding more likely to be commercially developable.
10:02:50 19 Q. Exhibit 81 that you have before you, do you
10:02:52 20 recognize that?
10:02:53 21 A. No. I see my signature there, but again,
10:02:58 22 it's a document of -- I can't even see a year on this.
10:03:03 23 Where is the year?
10:03:04 24 Q. Your signature --
10:03:05 25 A. Oh, my signature. With my signature. Yeah.

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I, THOMAS C. MERIGAN, 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 ____ day of _____, 20____, at _____, _____.
(City) (State)


THOMAS C. MERIGAN, M.D.
Volume 2
843.5006

Errata Sheet

Pg/Ln

Correction

16313

Change from: Next - at the C of FDA's desk Control
Change to: at the FDA

13115

Change from: non cultured
Change to: non culture

1761

Change from: agent
Change to: journal of

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