

CONFIDENTIAL ATTORNEYS' EYES ONLY

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.

CONFIDENTIAL - ATTORNEYS' EYES ONLY
 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

1 APPEARANCES:
 2
 3 For Plaintiff and Counterclaim Defendants The Board of
 the Trustees of the Leland Stanford Junior University,
 et al.:
 4 COOLEY GODWARD LLP
 5 BY: RICARDO RODRIGUEZ
 6 Attorney at Law
 Five Palo Alto Square, 3000 El Camino Real
 7 Palo Alto, California 94306-2155
 (650) 843-5000
 8
 9 For Defendants and Counterclaimants Roche Molecular
 Systems, Inc., et al.:
 10 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
 BY: ROBERT W. STONE
 11 BY: BRIAN C. CANNON
 Attorneys at Law
 12 555 Twin Dolphin Drive, Suite 560
 Redwood Shores, California 94065
 13 (650) 801-5001
 14 Videographer:
 15 RAY TYLER
 SARNOFF COURT REPORTERS AND LEGAL TECHNOLOGIES
 16 San Francisco, California
 (415) 274-9977

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 THE BOARD OF THE TRUSTEES OF
 THE LELAND STANFORD JUNIOR
 4 UNIVERSITY,
 5 Plaintiff,
 6 vs. No. C-05-04158 MHP
 7 ROCHE MOLECULAR SYSTEMS, INC.;
 ROCHE DIAGNOSTICS CORPORATION;
 8 ROCHE DIAGNOSTICS OPERATIONS,
 INC.; ROCHE DIAGNOSTIC SYSTEMS,
 9 INC.,
 10 Defendants.

AND RELATED COUNTERCLAIM.

Confidential videotaped deposition of THOMAS
 16 C. MERIGAN, M.D., Volume 2, taken on behalf of
 17 Defendants and Counterclaimants Roche Molecular
 18 Systems, Inc., et al., at 3175 Hanover Street, Palo
 19 Alto, California, beginning at 9:21 a.m. and ending at
 20 1:31 p.m. on Wednesday, September 13, 2006, before
 21 SUZANNE F. BOSCHETTI, Certified Shorthand Reporter No.
 22 5111.

1 INDEX
 2 WITNESS: EXAMINATION
 3 THOMAS C. MERIGAN, M.D.
 Volume 2
 4 BY MR. STONE 151
 5
 6 EXHIBITS
 7 DEPOSITION PAGE
 8 357 Letter to Teresa Y. Basham, Ph.D., and 223
 Thomas C. Merigan, M.D., from Jeffrey S.
 9 Price, Ph.D., March 12, 1985, Bates Nos.
 RMS 0064086 - RMS 0064087; 2 pages
 10
 11 358 Confidentiality and Materials Transfer 230
 Agreement, 5/14/1985, Bates Nos. RMS
 0064080 - RMS 0064085; 6 pages
 12
 13 359 Cover letter to Dr. Merigan, from Jeffrey 233
 S. Price, Ph.D., January 12, 1986, with
 enclosure, Bates Nos. RMS 0064078 - RMS
 14 0064079; 2 pages
 15 360 Letter to Dr. Thomas Merigan, from Jeffrey 251
 S. Price, Ph.D., April 27, 1988, Bates Nos.
 16 RMS 0064062 - RMS 0064064; 3 pages
 17 361 Grant Application entitled AIDS Research 253
 Center Core Support Grant, Bates Nos. STAN
 021064 - STAN 021426; 363 pages
 18
 19 362 Stanford University Matched Assets List, 269
 03/02/92, with handwritten cover page, Bates
 Nos. STAN 027062 - STAN 027078; 17 pages
 20
 21 363 Letter to Thomas C. Merigan, M.D., et al., 270
 from Jeffrey C. Price, Ph.D., May 20, 1988,
 22 with Attachment I, Bates Nos. RMS 0064056 -
 RMS 0064059; 4 pages
 23
 24 364 Visitor's Confidentiality Agreement, 275
 stamped received June 3, 1988, Bates No.
 RMS 05915; 1 page
 25

CONFIDENTIAL ATTORNEYS' EYES ONLY

11:59:07 1 completely?
 11:59:08 2 BY MR. STONE:
 11:59:08 3 Q. Well, if you recognize what Exhibit 361 is --
 11:59:11 4 and for the record, Exhibit 361 is a multipage document
 11:59:15 5 bearing production numbers STAN 21064 through STAN
 11:59:21 6 21426.
 11:59:22 7 If you recognize what it is by looking at the
 11:59:24 8 first few pages, then -- I'm only going to have
 11:59:27 9 questions for you about a handful of pages.
 11:59:30 10 Do you recognize it looking at just the first
 12:00:12 11 few pages, Dr. Merigan?
 12:00:13 12 A. I think so, yes.
 12:00:14 13 Q. What do you recognize Exhibit 361 to be?
 12:00:16 14 A. It was the first grant to the Center for AIDS
 12:00:19 15 Research that included the renovation expense as well
 12:00:25 16 as the ongoing -- supporting ongoing research work.
 12:00:29 17 Q. So this was the grant related to the facility
 12:00:33 18 improvements that we discussed during your deposition
 12:00:36 19 on Monday?
 12:00:36 20 A. It was one of the two.
 12:00:38 21 Q. Your signature is found on the first page of
 12:00:41 22 Exhibit 361; is that correct?
 12:00:43 23 A. Yes.
 12:00:43 24 Q. And you signed this grant application on or
 12:00:45 25 about May 5, 1988; is that correct?

12:02:22 1 seeking, correct?
 12:02:27 2 A. Yeah.
 12:02:27 3 Q. And then next to that the amount that you
 12:02:30 4 would apply during year one of the grant to acquire
 12:02:34 5 that material; is that correct?
 12:02:36 6 A. Yes.
 12:02:36 7 Q. And you'll notice that there's a reference to
 12:02:41 8 a Perk & Elmer PCR machine. Do you see that?
 12:02:46 9 A. Yes.
 12:02:46 10 Q. And there's an amount listed of \$8500 next to
 12:02:49 11 it?
 12:02:50 12 A. Yeah.
 12:02:50 13 Q. And then there's no amount listed in year 1;
 12:02:54 14 is that right?
 12:02:54 15 A. Yeah, but it's important to know that grants
 12:02:59 16 are different from contracts. With grants you can
 12:03:06 17 redirect the money at any point. And if you in a
 12:03:12 18 grant want to get some material, you can take material
 12:03:17 19 you might have programmed for one purpose and use it
 12:03:19 20 for another. A grant -- this is an estimate you
 12:03:27 21 prepare -- let's see. Can you -- in early '88 where
 12:03:43 22 you'd try and project what you're going to need for
 12:03:46 23 five years. And I think you can rebudget without
 12:03:50 24 permission on these things.
 12:03:53 25 Q. So -- but this was prepared in May of '88; is

12:00:48 1 A. Yes.
 12:00:49 2 Q. I take it in preparing any grant application,
 12:00:53 3 you would endeavor to be as accurate as possible with
 12:00:56 4 respect to the status of your -- your group?
 12:00:59 5 A. Yes.
 12:01:00 6 Q. If you could please direct your attention to
 12:01:04 7 the page bearing production number STAN 21081.
 12:01:40 8 A. Yes.
 12:01:40 9 Q. Dr. Merigan, do you recognize that page?
 12:01:43 10 A. Yes.
 12:01:43 11 Q. What is that?
 12:01:44 12 A. That's a list of equipment that we asked to
 12:01:52 13 buy.
 12:01:53 14 Q. And was this something that you prepared?
 12:01:58 15 A. Yes.
 12:01:58 16 Q. It has your name in the upper right-hand
 12:02:03 17 corner; is that correct?
 12:02:04 18 A. Yes.
 12:02:04 19 Q. And this table lists a number of items in the
 12:02:10 20 left-hand column; is that correct?
 12:02:12 21 A. Yeah.
 12:02:13 22 Q. And then next to that are model numbers for
 12:02:17 23 some of the items; is that correct?
 12:02:19 24 A. Yes.
 12:02:19 25 Q. And then the amount per unit that you're

12:03:58 1 that correct?
 12:03:58 2 MR. RODRIGUEZ: Objection. Calls for
 12:03:59 3 speculation.
 12:04:00 4 THE WITNESS: No, it might have been prepared
 12:04:02 5 earlier and submitted in May of '88. So that's all I
 12:04:09 6 know. I can't tell you that this tells me when we
 12:04:15 7 would get machines like this, for example.
 12:04:15 8 BY MR. STONE:
 12:04:18 9 Q. But at least in terms of the initial grant,
 12:04:21 10 you weren't allocating for a PCR machine in year one in
 12:04:25 11 this submission; is that correct?
 12:04:28 12 A. Yes.
 12:04:28 13 Q. And you were allocating for a PCR machine in
 12:04:31 14 year two; is that right?
 12:04:31 15 A. Yeah.
 12:04:32 16 Q. Is that correct?
 12:04:36 17 A. Yeah, but I --
 12:04:41 18 Q. And year two is reflected on the following
 12:04:44 19 page, the page bearing production number STAN 21082,
 12:04:49 20 correct?
 12:04:49 21 A. Yeah.
 12:04:51 22 Q. Does this document refresh your recollection
 12:04:55 23 as to the timing of the first PCR machine in your lab?
 12:04:59 24 A. No, because I know that there was a purchase
 12:05:06 25 order earlier than '89 for a PCR machine, and actually

CONFIDENTIAL ATTORNEYS' EYES ONLY

01:13:40 1 patent.
 01:13:40 2 BY MR. STONE:
 01:13:44 3 Q. Well, the original patent was filed on May 14,
 01:13:49 4 1992.
 01:13:54 5 MR. RODRIGUEZ: Same objections.
 01:13:58 6 THE WITNESS: So let's try the question
 01:14:00 7 again.
 01:14:01 8 MR. STONE: Could you read it back, please.
 01:14:18 9 (Record read as follows:
 01:14:18 10 "QUESTION: The idea that's reflected
 01:14:18 11 in the subject matter of your '730 and '705
 01:14:18 12 patents, had you completely -- had you
 01:14:18 13 completed that idea by April of 1991 in your
 01:14:19 14 mind?")
 01:14:19 15 MR. RODRIGUEZ: Objection. Vague and calling
 01:14:20 16 for a legal conclusion.
 01:14:21 17 THE WITNESS: No, I hadn't.
 01:14:21 18 BY MR. STONE:
 01:14:31 19 Q. You had come up with the initial idea, but it
 01:14:34 20 wasn't complete in your mind until after April of 1991?
 01:14:38 21 MR. RODRIGUEZ: The same objections.
 01:14:40 22 THE WITNESS: I think when we talked about
 01:14:43 23 this before, the same issue -- right? -- I thought it
 01:14:48 24 came up about the time of the filing of the patent.
 01:14:52 25 Well, actually, wait a minute. It -- it was -- I need

Page 302

01:17:16 1 2068 through STAN 2069.
 01:17:20 2 Q. Dr. Merigan, do you recognize Exhibit 370?
 01:17:23 3 A. Yes, it was a report from Larry Corey that I
 01:17:30 4 received but haven't looked at till now, again, in the
 01:17:35 5 recent times.
 01:17:36 6 Q. But you received it on or about August 27,
 01:17:38 7 1991?
 01:17:39 8 A. Yes.
 01:17:39 9 Q. He mentions that certain data that you had
 01:17:44 10 comparing plasma viremia with RNA PCR was impressive.
 01:17:49 11 That's in the third paragraph down.
 01:17:51 12 A. Yeah.
 01:17:51 13 Q. Did you have any discussions with him about
 01:17:52 14 that that you can recall sitting here today?
 01:18:01 15 A. Yeah, without a doubt I did.
 01:18:02 16 Q. Can you recall what the nature of those
 01:18:04 17 discussions was?
 01:18:07 18 A. We must have had preliminary evidence that
 01:18:14 19 this was potentially clinically useful.
 01:18:19 20 Q. Did you have any confidentiality agreement in
 01:18:21 21 place with the University of Washington and/or
 01:18:25 22 Dr. Corey?
 01:18:27 23 A. Or the NIH, because this is -- this was a
 01:18:31 24 site visit done by the NIH to look at work being done
 01:18:38 25 by the CFAR. And I need to see -- I have to look at

Page 304

01:15:05 1 the document that was redacted.
 01:15:05 2 BY MR. STONE:
 01:15:10 3 Q. That one right there, sir. Exhibit --
 01:15:12 4 A. That's it. Thank you. Thank you.
 01:15:14 5 Q. Is that Exhibit 81?
 01:15:16 6 A. Yes. And what we said was first -- yes,
 01:15:26 7 the -- I shouldn't say that. The description -- let's
 01:15:34 8 see. The initial idea we had, I had --
 01:15:38 9 Q. That's the box 6A, correct?
 01:15:40 10 A. A, yes. And it's possible that I had the
 01:16:04 11 complete invention in grant applications, for example,
 01:16:13 12 before that time. Now I --
 01:16:14 13 Q. That's box 6B of Exhibit 81, correct?
 01:16:17 14 A. Yeah. But not C.
 01:16:19 15 Q. And you're referring to box 6C on Exhibit 81?
 01:16:23 16 A. That's right.
 01:16:23 17 Q. And when you say you may have had 6B before
 01:16:26 18 that time, you mean before April of 1991, correct?
 01:16:28 19 A. Yes, it's possible.
 01:16:30 20 Q. Can I show you what we're going to mark as
 01:16:32 21 next in order, please.
 01:16:32 22 (Deposition Exhibit 370 marked by the
 01:17:11 23 court reporter.)
 01:17:11 24 MR. STONE: And for the record, Exhibit 370
 01:17:14 25 is a two-page document bearing production numbers STAN

Page 303

01:18:52 1 the particular area you're talking about. "Plasma
 01:18:54 2 viremia with PCR was impressive" is the statement
 01:18:59 3 you're looking at?
 01:19:00 4 Q. Yes.
 01:19:00 5 A. And I am, too. And it kind of resets the
 01:19:07 6 timeline. And related to the patent application --
 01:19:21 7 okay. It was before the patent application. And as
 01:19:36 8 far as the confidentiality agreement of -- what year
 01:19:38 9 was that? '88? This one that I think was Schwartz's
 01:19:50 10 work, okay, it was way before that. Okay.
 01:19:53 11 Yeah. Well, we showed -- the work that Mark
 01:19:58 12 was doing at Stanford and the work he was doing at
 01:20:02 13 Cetus -- see, his -- his -- his salary was paid for by
 01:20:08 14 Stanford University. He never was paid for by Cetus.
 01:20:13 15 He was a Stanford employee who worked at Cetus in the
 01:20:19 16 collaborative effort. So work he was doing up there
 01:20:26 17 and the work at Stanford were certainly Stanford --
 01:20:32 18 certainly Stanford and the CFAR had an interest in it,
 01:20:36 19 and part of our showing progress was to show that
 01:20:40 20 work.
 01:20:42 21 Q. Let me show you what we have marked next in
 01:20:44 22 order. It's Exhibit 371.
 01:20:44 23 (Deposition Exhibit 371 marked by the
 01:20:50 24 court reporter.)
 01:20:50 25 MR. STONE: For the record, Exhibit 371 is a

Page 305

CONFIDENTIAL ATTORNEYS' EYES ONLY

01:30:37 1 BY MR. STONE:
01:30:39 2 Q. So, when you're saying that you had completed
01:30:43 3 the work, are you referring to box C in -- box 6C in
01:30:51 4 Exhibit 81 that we were discussing earlier?
01:30:54 5 MR. RODRIGUEZ: Objection. Calls for a legal
01:30:56 6 conclusion.
01:30:58 7 THE WITNESS: Yes, that's what I meant.
01:30:58 8 BY MR. STONE:
01:31:00 9 Q. And so your testimony is that you had
01:31:01 10 satisfied that in your mind before April of 1991?
01:31:05 11 A. That's right.
01:31:05 12 MR. RODRIGUEZ: Objection. Calls for a legal
01:31:07 13 conclusion.
01:31:12 14 MR. STONE: Okay. I reserve my right to
01:31:16 15 continue this deposition, and I guess we can go off
01:31:19 16 the record.
01:31:19 17 MR. RODRIGUEZ: We believe the deposition is
01:31:21 18 concluded, so there's just a disagreement on that.
01:31:24 19 MR. STONE: Very well.
01:31:26 20 VIDEO OPERATOR: This concludes today's
01:31:28 21 deposition of Dr. Thomas Merigan. The number of media
01:31:32 22 used was two, volume 2. We're off the record at 1:31
01:31:37 23 p.m.
01:31:40 24 (Discussion off the record.)
01:31:40 25 MR. RODRIGUEZ: Yes, we'll designate it

Page 310

01:31:42 1 attorneys' eyes only, and we would like the witness to
01:31:49 2 have an opportunity to review the transcript.
3 //
4 //
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 311

1
2
3
4
5
6
7
8 I, THOMAS C. MERIGAN, M.D., do hereby
9 declare under penalty of perjury that I have read the
10 foregoing transcript of my deposition; that I have
11 made such corrections as noted herein, in ink,
12 initialed by me, or attached hereto; that my testimony
13 as contained herein, as corrected, is true and
14 correct.
15 EXECUTED this ____ day of
16 _____, 20____, at
17 _____,
18 (City) (State)
19
20
21 THOMAS C. MERIGAN, M.D.
22 Volume 2
23
24
25

Page 312

1
2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of California, do hereby
4 certify:
5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath; that a verbatim
9 record of the proceedings was made by me using machine
10 shorthand which was thereafter transcribed under my
11 direction; further, that the foregoing is an accurate
12 transcription thereof.
13 I further certify that I am neither
14 financially interested in the action nor a relative or
15 employee of any attorney of any of the parties.
16 IN WITNESS WHEREOF, I have this date
17 subscribed my name.
18
19 Dated: _____
20
21
22
23
24 SUZANNE F. BOSCHETTI
25 CSR No. 5111

Page 313