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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES OF THE )  
LELAND STANFORD JUNIOR )  
UNIVERSITY, )  
 )  
Plaintiff, )  
 )  
vs. ) No. C-05-14158 MHP  
 )  
ROCHE MOLECULAR SYSTEMS, INC.; )  
ROCHE DIAGNOSTICS CORPORATION; )  
ROCHE DIAGNOSTICS OPERATIONS, )  
INC.; ROCHE DIAGNOSTIC SYSTEMS, )  
INC., )  
 )  
Defendants. )

AND RELATED CROSS-ACTIONS. )

VIDEOTAPED DEPOSITION OF  
SUSANNE DEWITT  
SAN FRANCISCO, CALIFORNIA  
July 13, 2006

ATKINSON-BAKER, INC.  
COURT REPORTERS  
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REPORTED BY: RICHARD M. RAKER, CSR NO. 3445  
FILE NO.: A005D3C

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<p><b>Page 2</b></p> <p>1 IN THE UNITED STATES DISTRICT COURT  2 NORTHERN DISTRICT OF CALIFORNIA  3  4 THE BOARD OF TRUSTEES OF THE )  5 LELAND STANFORD JUNIOR )  6 UNIVERSITY, )  7 Plaintiff, )  8 vs. ) No. C-05-14158 MHP  9 )  10 ROCHE MOLECULAR SYSTEMS, INC.; )  11 ROCHE DIAGNOSTICS CORPORATION; )  12 ROCHE DIAGNOSTICS OPERATIONS, )  13 INC.; ROCHE DIAGNOSTIC SYSTEMS, )  14 INC., )  15 Defendants. )  16 )  17 AND RELATED CROSS-ACTIONS. )  18 )  19 )  20 Deposition of SUSANNE DEWITT, taken on  21 behalf of Plaintiff, at 555 Twin Dolphin Drive,  22 Redwood Shores, California, commencing at  23 9:12 a.m., July 13, 2006, before Richard M. Raker,  24 CSR No. 3445.  25</p>	<p><b>Page 4</b></p> <p>1 INDEX  2 WITNESS: SUSANNE DEWITT  3 EXAMINATION PAGE  4 BY MS. RHYU 6  5  6  7 EXHIBITS:  8 PLAINTIFF'S  9 NUMBER DESCRIPTION PAGE  10 500- Subpoena (retained by counsel) 59  11 501- Document dated 6-6-06 70  12 (retained by counsel)  13 502-A- Notebook 113  14 502-B- Notebook 113  15 503-A- Notebook 3221 114  16 503-B- Document Bates stamped CH 271 114  17 504-A- Document Bates stamped CH 212 116  18 504-B- Document Bates stamped RMS 5473 116  19 505-A- Document Bates stamped RMS 5430 117  20 505-B- Document Bates stamped CH 165 117  21 506- Document Bates stamped RMS 5427 118  22 507- Document Bates stamped RMS 5419 118  23  24  25</p>
<p><b>Page 3</b></p> <p>1 APPEARANCES  2  3 FOR THE PLAINTIFF:  4 COOLEY GODWARD LLP  5 BY: MICHELLE S. RHYU, Ph.D., ESQ.  6 Five Palo Alto Square  7 3000 El Camino Real  8 Palo Alto, California 94306  9 (650) 843-5505  10  11 FOR THE DEPONENT:  12 QUINN EMANUEL URQUHART OLIVER &amp; HEDGES  13 BY: JEFFREY N. BOOZELL, ESQ.  14 865 S. Figueroa Street  15 10th Floor  16 Los Angeles, California 90017  17 (213) 624-7707  18 ALSO PRESENT: PETER MATTESON, VIDEOGRAPHER  19  20  21  22  23  24  25</p>	<p><b>Page 5</b></p> <p>1 MORNING SESSION  2  3 THE VIDEO OPERATOR: I'm Peter  4 Matteson, your videographer, and I represent  5 Atkinson-Baker, Inc., in Glendale, California. I'm  6 a notary public. I'm not financially interested in  7 this action, nor am I a relative or employee of any  8 attorney or any of the parties.  9 The date is January [sic] 13, 2006,  10 and the time is 9:13 a.m. This deposition is  11 taking place at 555 Twin Dolphin Drive, Suite 560,  12 Redwood Shores, California.  13 This is Case No. C-05-04158 MHP,  14 entitled "The Board of Trustees of the Leland  15 Stanford Junior University vs. Roche Molecular  16 Systems, Inc., et al."  17 The deponent is Susanne DeWitt. This  18 deposition is being taken on behalf of the  19 plaintiff. Your court reporter is Richard Raker  20 from Atkinson-Baker.  21 Counsel will now please introduce  22 themselves.  23 MS. RHYU: Michelle Rhyu of Cooley  24 Godward on behalf of Stanford University.  25 MR. BOOZELL: Jeff Boozell, from Quinn</p>

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<p>1 using peroxidases of which I obtained from marine 2 organisms, hail peroxidases. 3 <b>Q. And after that?</b> 4 A. I joined the diagnostics group, cancer 5 diagnostics. 6 <b>Q. And what's approximately the time 7 frame that you joined the cancer diagnostics group?</b> 8 MR. BOOZELL: Objection; vague and 9 ambiguous. 10 THE WITNESS: I think it was around 11 1981, but I cannot be precise. I don't recall. 12 BY MS. RHYU: 13 <b>Q. How long were you a part of the cancer 14 diagnostics group?</b> 15 A. At least three years, possibly four. 16 <b>Q. Can you recall projects that you 17 worked on while you were a part of the cancer 18 diagnostics group?</b> 19 A. I was working on a project which 20 simultaneously detected PSA -- that's 21 prostate-specific antibody -- I mean antigen -- 22 excuse me -- prostate-specific antigen and 23 prostatic acid phosphatase. 24 <b>Q. And what methods were you using to 25 detect these two compounds?</b></p>	<p>1 <b>Q. And after the cancer diagnostics 2 group, did you change groups again?</b> 3 A. Yes, I did. 4 <b>Q. And where did you go?</b> 5 A. I went to the clinical biology 6 division at Cetus. 7 <b>Q. And can you give me a general estimate 8 of the time frame that you did that?</b> 9 A. It was in the second half of the '80s. 10 <b>Q. And who did you work with in the 11 clinical biology division?</b> 12 MR. BOOZELL: Objection; vague. 13 BY MS. RHYU: 14 <b>Q. Who was your supervisor?</b> 15 A. Dr. Michael Konrad. 16 <b>Q. Did you have any other supervisors?</b> 17 MR. BOOZELL: Objection; vague. In 18 that department during this time? 19 MS. RHYU: Yes. 20 THE WITNESS: Not directly. 21 Indirectly Dr. Edward Bradley and Dr. Eric Groves 22 and Dr. Carolyn Paradise. 23 BY MS. RHYU: 24 <b>Q. And what's your distinction between 25 directly and indirectly?</b></p>
<b>Page 23</b>	<b>Page 25</b>
<p>1 A. We were using ELISA methods. 2 <b>Q. And that was in the 1981 to 1985 time 3 frame?</b> 4 A. I can't be precise about the dates. 5 <b>Q. But it was at least before 1985?</b> 6 A. Yes, I believe so. 7 <b>Q. Would you say that by 1985 ELISA 8 methods were well known to people practicing in 9 molecular biology?</b> 10 MR. BOOZELL: Objection; vague, 11 ambiguous, may call for speculation, lacks 12 foundation, and you've established no personal 13 knowledge. 14 You can answer the question about 15 whether or not it's generally known in the 16 community. You can answer, but otherwise -- 17 MS. RHYU: Can you just read back the 18 question after that long objection. 19 (The record was read back as follows: 20 "Q. Would you say that by 1985 ELISA 21 methods were well known to people 22 practicing in molecular biology?") 23 THE WITNESS: I don't know about well 24 known. They were in the literature. 25 BY MS. RHYU:</p>	<p>1 A. Well, Mike Konrad reported to Ed 2 Bradley, but because of the high level of my 3 independent work there, I could also report 4 directly to -- that is, I could report to 5 Dr. Konrad who would report to Dr. Bradley, or 6 directly to Dr. Bradley and Dr. Groves. 7 <b>Q. So Dr. Groves was a supervisor of 8 Dr. Konrad also?</b> 9 A. I don't know what their relationship 10 was. 11 <b>Q. Did you understand --</b> 12 A. They were colleagues. 13 <b>Q. Did you understand them to have 14 equivalent positions?</b> 15 MR. BOOZELL: Objection. May call for 16 speculation. 17 THE WITNESS: Yes. I think that 18 Dr. Bradley was a -- was the director of the 19 clinical biology group. 20 BY MS. RHYU: 21 <b>Q. And how about Eric Groves? What was 22 Eric Groves' --</b> 23 A. He wasn't the director, but I don't 24 remember exactly what his title was. 25 <b>Q. So you said that you started working</b></p>

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1 outside company to make a biotinylated probe from  
2 that known sequence?  
3 MR. BOOZELL: Objection; vague and  
4 ambiguous, calls for speculation, and asked and  
5 answered.  
6 THE WITNESS: It's possible that the  
7 probe was sent out and it was biotinylated outside.  
8 BY MS. RHYU:  
9 Q. Are you --  
10 A. But the probe itself was made  
11 in-house.  
12 Q. And what makes you say that?  
13 A. Because it has an SK38 number.  
14 Q. But if you knew the sequence of that  
15 probe --  
16 A. Yes.  
17 Q. -- would it be possible for you to ask  
18 an outside company to synthesize that probe and  
19 link it to biotin?  
20 MR. BOOZELL: Vague and ambiguous and  
21 asked and answered.  
22 THE WITNESS: They would give it their  
23 own catalog number. If we had a known sequence and  
24 had the probe, why would we even bother to ask an  
25 outside company to make that same probe for us?

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1 BY MS. RHYU:  
2 Q. Oh, okay. I understand.  
3 A. But if we did for some reason, which  
4 is unlikely, they wouldn't call it SK, whatever it  
5 is, 38. They would call it -- if it's Abbott Labs,  
6 they would call it Abbott something or another.  
7 Q. If I didn't work at Cetus and I wanted  
8 to make SK38 that was biotinylated and I knew the  
9 sequence of SK38 that was biotinylated, in August  
10 of 1989 I could go to an outside company and ask  
11 them to make an oligonucleotide having the sequence  
12 of SK38 with a biotin label on it.  
13 MR. BOOZELL: Objection.  
14 BY MS. RHYU:  
15 Q. Do you agree with that statement?  
16 MR. BOOZELL: Objection; vague and  
17 ambiguous and calls for speculation, lacks  
18 foundation. No personal knowledge.  
19 THE WITNESS: Unless the probe  
20 sequence was published, no one else would have it.  
21 BY MS. RHYU:  
22 Q. But if it was published.  
23 MR. BOOZELL: Same objections.  
24 BY MS. RHYU:  
25 Q. If it was published, then I could have

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1 gone to a commercial source to obtain a  
2 biotin-labeled SK38 oligonucleotide.  
3 A. I don't know.  
4 MR. BOOZELL: Same objections.  
5 BY MS. RHYU:  
6 Q. And why don't you know? What is the  
7 missing information there?  
8 A. I simply don't know if any company  
9 made biotinylated probes using Cetus sequence --  
10 sequencing. I don't know. I mean it's possible,  
11 but extraordinarily.  
12 Q. But if you had the probe in-house,  
13 you're saying you could send that probe out and  
14 have it biotinylated.  
15 A. Well, that's what I'm suggesting. But  
16 this was only a speculation there. I didn't say  
17 that it came from outside. I just asked myself a  
18 question, was this in-house or not, this  
19 biotinylated probe. I didn't say that it was from  
20 outside. I just didn't know at the time.  
21 Q. I'm just asking if your understanding  
22 was that it was possible to have obtained the  
23 biotin-labeled primer from a commercial prep --  
24 A. I don't know the answer.  
25 Q. -- since you raised the question here.

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1 A. I simply don't know.  
2 Q. Do you know what -- I'm sorry. Please  
3 finish.  
4 A. It says up there -- I don't know why  
5 the asterisk, but it says, "Prepared in-house by  
6 Corey Levinson?"  
7 Q. But you agree that's a question mark  
8 outside --  
9 A. I wrote a question mark. Yes.  
10 Q. -- of that?  
11 Do you see sort of on the -- on the  
12 left side written sideways where it says, ^ "Three  
13 AIDS-specific probes with five-prime HRP conjugated  
14 were prepared." Do you see that?  
15 A. Yes.  
16 Q. What's your understanding of what a  
17 five-prime HRP conjugated is?  
18 A. Well, the probes have two ends, you  
19 know, the three-prime end and the five-prime end.  
20 So this one was labeled on the five-prime end.  
21 Q. And it was labeled with HRP?  
22 A. Yes.  
23 Q. And do you know what HRP is?  
24 A. Horseradish peroxidase.  
25 Q. In August of 1989, was it possible to

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<p><b>Page 138</b></p> <p>1 go to an outside company to obtain an HPR 2 conjugated to a probe? 3 MR. BOOZELL: Objection; calls for 4 speculation, lacks foundation. 5 THE WITNESS: If we sent them a probe, 6 I suppose they could label it. But I have no 7 reason to think that -- I mean, it is speculation. 8 I have no reason to think that they would send out 9 a probe to be conjugated to HRP when we could do it 10 in-house. It's not that hard to do. 11 BY MS. RHYU: 12 Q. It's not hard to conjugate HRP with a 13 probe? 14 MR. BOOZELL: Objection; misstates her 15 testimony. 16 BY MS. RHYU: 17 Q. I'm just asking. 18 A. I really no longer recall how hard it 19 was, but I think there are protocols to that. 20 Q. And when you say "it's not that hard 21 to do," what were you referring to? 22 A. I have conjugated enzymes to probes. 23 Q. And that was in the late 1980s time 24 frame? 25 A. Yes.</p>	<p><b>Page 140</b></p> <p>1 Q. Is it likely based on your 2 interactions with scientists at that time? 3 MR. BOOZELL: Same objections. 4 THE WITNESS: I have no opinion on 5 that. It depends on the motivation. 6 BY MS. RHYU: 7 Q. What do you mean it depends on their 8 motivation? 9 A. If somebody wanted to do it, I suppose 10 they could have, but -- 11 Q. Had you ever heard of a company called 12 Operon Technologies in San Pablo? 13 MR. BOOZELL: Objection; vague as to 14 time. 15 THE WITNESS: No. 16 BY MS. RHYU: 17 Q. You've never been aware of a company 18 called Operon Technologies in San Pablo? 19 MR. BOOZELL: Asked and answered. 20 THE WITNESS: All these companies 21 sound alike. 22 BY MS. RHYU: 23 Q. On the very next page, can you 24 describe to me what's on that page, CH 337? 25 A. Are you talking about page 172?</p>
<p><b>Page 139</b></p> <p>1 Q. Was it before 1988? 2 A. This particular probe? 3 Q. No, your conjugation of enzymes to 4 probes. 5 A. Oh, this is a method that was used 6 commonly. 7 Q. Commonly? 8 A. Commonly. 9 Q. And publicly known. 10 MR. BOOZELL: Objection; calls for 11 speculation. 12 THE WITNESS: In-house it was known. 13 We were the first biotech company. 14 BY MS. RHYU: 15 Q. I understand that. 16 Did you interact with scientists 17 outside of Cetus? 18 A. Occasionally. 19 Q. Is it your understanding that 20 scientists outside of Cetus also understood how to 21 conjugate HRP to probes by the late 1980s? 22 MR. BOOZELL: Objection; calls for 23 speculation, lacks foundation. 24 THE WITNESS: It's possible. 25 BY MS. RHYU:</p>	<p><b>Page 141</b></p> <p>1 Q. Yes. Corresponding to CH 337. 2 Thanks. 3 A. All right. Yes. 4 Q. What is on this page? 5 MR. BOOZELL: Objection; document 6 speaks for itself. Vague and ambiguous. 7 THE WITNESS: This is a commercial 8 plate -- 96-well plate -- which evidently has a 9 coating, and it has a membrane at the bottom of the 10 well. So most probably -- in other words, it's a 11 filter. So beads would not go through it. So you 12 can wash a plate and it would retain the beads. 13 BY MS. RHYU: 14 Q. And those would be avidin biotin -- or 15 avidin-coated beads. So one could use this plate 16 if one were using an assay involving avidin-coated 17 beads? 18 A. You could presumably use it depending 19 on the diameter of the bead, because it gives a 20 pore diameter, I believe. 21 Q. Is this the kind of plate that was 22 used for nonisotopic detection of PCR products in 23 the late 1980s at Cetus? 24 A. It was one of the many that we tested. 25 Q. This plate was available commercially?</p>

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1 ahead. So is that everything that was in this	1 access to deionized and distilled water as of
2 solution, the master mix?	2 January of 1989?
3 MR. BOOZELL: I'm going to object;	3 A. I don't know.
4 vague and ambiguous.	4 MR. BOOZELL: Objection; calls for
5 BY MS. RHYU:	5 speculation.
6 Q. I see that just under protocols for	6 BY MS. RHYU:
7 nonisotopic PCR there is a -- in caps it says	7 Q. On the next page, there is a reference
8 "master mix," underlined?	8 to 20X SSPE buffer.
9 A. Yes.	9 A. Um-hmm.
10 Q. Does that mean that the solution	10 Q. Do you know what that is used for?
11 listed under that is the master mix?	11 MR. BOOZELL: It's at the top of the
12 A. Yes, I believe so.	12 page.
13 Q. And then placental DNA --	13 THE WITNESS: Yeah, I know, but I'm
14 A. Yes.	14 trying to remember what it was used for. I think
15 Q. -- was that publicly available in	15 it was used for the ELISA plates.
16 January of '89?	16 BY MS. RHYU:
17 A. Yes.	17 Q. And were the ingredients for that
18 Q. And we'll skip the thermocycler	18 buffer also publicly available as of January 1989?
19 program for now, but below that it says	19 A. The dry ingredients would have been.
20 "bead-blocking solution," and it lists 50X	20 Q. You say everything except for the
21 Denhardt's. Do you know if that was publicly	21 water would have been available?
22 available in January --	22 A. What I mean is you have to make them
23 A. Yes.	23 up. You buy them as dry ingredients, and then you
24 Q. -- of '89?	24 have to dissolve them, weigh them, dissolve them,
25 A. Yes.	25 and use them. Yes, the dry ingredients.
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1 Q. It was?	1 Q. And would one of skill in the art
2 A. Yes.	2 typically know how to make that buffer given the
3 Q. And 5 percent gelatin. Was that	3 dry ingredients?
4 publicly available?	4 MR. BOOZELL: Objection; calls for
5 A. Yes. Well, gelatin was. You can make	5 speculation, lacks foundation, calls for expert
6 it up to any percent you want.	6 testimony.
7 Q. How about sheared herring sperm DNA?	7 THE WITNESS: Any technician would
8 Was that publicly available --	8 have been able to make them up.
9 A. Yes.	9 MR. BOOZELL: Michelle, whenever it's
10 Q. -- as of January 1, 1989?	10 convenient to you, I personally need a two-minute
11 A. Yes.	11 break --
12 Q. And what's that DI H2O?	12 MS. RHYU: Okay.
13 (Interruption)	13 MR. BOOZELL: -- after lunch.
14 THE WITNESS: Oh, maybe it's	14 MS. RHYU: Sure. Let's have a break
15 deionized. Excuse me. Deionized water.	15 now.
16 BY MS. RHYU:	16 THE VIDEO OPERATOR: Going off the
17 Q. And would you agree that deionized and	17 record at 1:52 p.m.
18 distilled water were publicly available as of	18 (Break taken.)
19 January 1989?	19 THE VIDEO OPERATOR: We're back on the
20 A. They're made in-house.	20 record at 1:59 p.m.
21 Q. And were they also publicly available?	21 BY MS. RHYU:
22 A. I'm sure they are, but not to extent	22 Q. You worked at Cetus for about eight
23 of purity. That would be used in a laboratory of	23 years?
24 this type.	24 A. No.
25 Q. Do you know if other laboratories had	25 Q. I'm sorry. Eighteen years? That's my

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<p><b>Page 154</b></p> <p>1 math.</p> <p>2 A. More like eighteen. Yes.</p> <p>3 Q. And then you went to Zoma?</p> <p>4 A. Yes.</p> <p>5 Q. Did you use PCR techniques at Zoma?</p> <p>6 A. No.</p> <p>7 Q. Did you use ELISA techniques at Zoma?</p> <p>8 A. Yes.</p> <p>9 Q. Was it your understanding that</p> <p>10 anything you invented based on techniques you</p> <p>11 learned at Cetus was the intellectual property of</p> <p>12 Cetus?</p> <p>13 MR. BOOZELL: Objection; calls for a</p> <p>14 legal conclusion and it's vague and ambiguous.</p> <p>15 BY MS. RHYU:</p> <p>16 Q. Just asking for your understanding.</p> <p>17 MR. BOOZELL: Same objections.</p> <p>18 THE WITNESS: Did I understand that</p> <p>19 what?</p> <p>20 MS. RHYU: Would you read it back?</p> <p>21 (The record was read back as follows:</p> <p>22 "Q. Was it your understanding that</p> <p>23 anything you invented based on</p> <p>24 techniques you learned at Cetus was</p> <p>25 the intellectual property of</p>	<p><b>Page 156</b></p> <p>1 conclusion, assumes facts not in evidence, and it's</p> <p>2 argumentative.</p> <p>3 BY MS. RHYU:</p> <p>4 Q. Just asking for your understanding.</p> <p>5 A. Certainly not. I mean, I don't know</p> <p>6 if you're asking it in the negative or the</p> <p>7 positive. If I learned something at Cetus, that I</p> <p>8 could apply it elsewhere?</p> <p>9 Q. Yes.</p> <p>10 A. Well, of course.</p> <p>11 Q. But the question was, if you learn a</p> <p>12 technique at Cetus and you applied it elsewhere,</p> <p>13 was it your understanding that the inventions that</p> <p>14 came out of applying those techniques while you</p> <p>15 were not at Cetus -- were those inventions the</p> <p>16 property of Cetus?</p> <p>17 MR. BOOZELL: It's vague and</p> <p>18 ambiguous, assumes facts not in evidence. It's an</p> <p>19 incomplete hypothetical, and it calls for a legal</p> <p>20 conclusion.</p> <p>21 THE WITNESS: I simply don't follow</p> <p>22 you.</p> <p>23 BY MS. RHYU:</p> <p>24 Q. Which part do you not follow? It's a</p> <p>25 pretty simple question. I'm just asking, what was</p>
<p><b>Page 155</b></p> <p>1 Cetus?")</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MS. RHYU:</p> <p>4 Q. Even after you left Cetus?</p> <p>5 A. Yes.</p> <p>6 MR. BOOZELL: Same objections. Sorry.</p> <p>7 Go ahead.</p> <p>8 BY MS. RHYU:</p> <p>9 Q. So anything you did at Zoma using</p> <p>10 ELISA techniques, if that led to an invention, you</p> <p>11 understood that to be the intellectual property of</p> <p>12 Cetus?</p> <p>13 MR. BOOZELL: Same objections.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MS. RHYU:</p> <p>16 Q. Why not?</p> <p>17 A. ELISAs are a general technique.</p> <p>18 Q. When you say it's "a general</p> <p>19 technique," what do you mean by that?</p> <p>20 A. Everybody uses ELISAs. So if I used</p> <p>21 ELISAs at Zoma, that certainly wasn't the</p> <p>22 intellectual property of Cetus.</p> <p>23 Q. Even if you learned that while you</p> <p>24 were an employee at Cetus using Cetus's facilities?</p> <p>25 MR. BOOZELL: Calls for a legal</p>	<p><b>Page 157</b></p> <p>1 your understanding as to your obligations to Cetus</p> <p>2 or Roche after you left Cetus?</p> <p>3 A. I had no obligation to them.</p> <p>4 Q. So even though you learned techniques</p> <p>5 at Cetus, even proprietary techniques at Cetus --</p> <p>6 A. Oh, proprietary. That's different.</p> <p>7 Q. Well, PCR is a proprietary technique</p> <p>8 to Cetus.</p> <p>9 A. But I didn't use PCR at Zoma.</p> <p>10 Q. If you had used PCR at Zoma to come up</p> <p>11 with an invention, do you think that would belong</p> <p>12 to Cetus?</p> <p>13 MR. BOOZELL: Vague and ambiguous,</p> <p>14 calls for a legal conclusion, incomplete</p> <p>15 hypothetical.</p> <p>16 THE WITNESS: I can't -- I really -- I</p> <p>17 don't know.</p> <p>18 BY MS. RHYU:</p> <p>19 Q. Did you have any understanding -- did</p> <p>20 you have any understanding that if you used PCR</p> <p>21 after you left Cetus anything that you created</p> <p>22 belonged to Cetus?</p> <p>23 MR. BOOZELL: Same objections.</p> <p>24 BY MS. RHYU:</p> <p>25 Q. Was that your understanding is my</p>

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<p>1 question.</p> <p>2 A. No.</p> <p>3 Q. Was it your understanding that you</p> <p>4 could use techniques that you learned at Cetus and</p> <p>5 apply them to other projects once you left Cetus?</p> <p>6 MR. BOOZELL: Vague and ambiguous,</p> <p>7 incomplete hypothetical, calls for a legal</p> <p>8 conclusion.</p> <p>9 THE WITNESS: I can't answer that</p> <p>10 question.</p> <p>11 BY MS. RHYU:</p> <p>12 Q. Why can't you answer it?</p> <p>13 A. For the reasons that Jeff just</p> <p>14 articulated.</p> <p>15 Q. I'm just asking for your</p> <p>16 understanding. What was your understanding of your</p> <p>17 obligation to Cetus?</p> <p>18 MR. BOOZELL: Same objections.</p> <p>19 BY MS. RHYU:</p> <p>20 Q. Did you understand that if you used</p> <p>21 PCR anything you created following from that use</p> <p>22 would belong to Cetus?</p> <p>23 MR. BOOZELL: Vague and ambiguous,</p> <p>24 misstates her testimony and is an incomplete</p> <p>25 hypothetical, and it calls for a legal conclusion.</p>	<p>1 technique.</p> <p>2 Q. So you should be free to use that</p> <p>3 technique once you leave the company?</p> <p>4 MR. BOOZELL: Objection; misstates her</p> <p>5 testimony. Again, calls for a legal conclusion.</p> <p>6 It's vague and ambiguous, incomplete hypothetical.</p> <p>7 THE WITNESS: I simply can't answer</p> <p>8 that question.</p> <p>9 BY MS. RHYU:</p> <p>10 Q. I don't mean to be confusing you or</p> <p>11 tricking you or anything like that, but this case</p> <p>12 is about obligations that individuals have to Cetus</p> <p>13 once they leave. And I'm asking you because you</p> <p>14 worked at Cetus for such a long time and then you</p> <p>15 left.</p> <p>16 A. I didn't leave. I was laid off.</p> <p>17 Q. Right. Right. But then you stopped</p> <p>18 working at Cetus, and you learned how to use the</p> <p>19 PCR technique while at Cetus.</p> <p>20 A. Yes. And I never used it since.</p> <p>21 Q. And irrespective of that fact, did you</p> <p>22 have an understanding as to whether -- if you used</p> <p>23 the PCR technique after you left Cetus, whether</p> <p>24 anything that flowed from that -- any invention</p> <p>25 that flowed from that would belong to Cetus?</p>
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<p>1 BY MS. RHYU:</p> <p>2 Q. Was that your understanding?</p> <p>3 A. I fail to understand the distinction</p> <p>4 between proprietary techniques and just general</p> <p>5 increase in knowledge.</p> <p>6 Q. Okay. I don't want to use broad terms</p> <p>7 like that. I'm just asking --</p> <p>8 A. You were the ones who used them.</p> <p>9 Q. Okay. So let's just use a term that</p> <p>10 you understand. PCR. And I'm asking you, was it</p> <p>11 your understanding when you left Cetus that</p> <p>12 anything you created using PCR if you were to</p> <p>13 create something would belong to Cetus?</p> <p>14 MR. BOOZELL: Vague and ambiguous,</p> <p>15 calls for a legal conclusion, incomplete</p> <p>16 hypothetical.</p> <p>17 THE WITNESS: I don't know.</p> <p>18 BY MS. RHYU:</p> <p>19 Q. You don't know one way or the other?</p> <p>20 A. That's true. I don't know one way or</p> <p>21 another. It would have to be a specific</p> <p>22 application, I suppose.</p> <p>23 Q. What do you mean by that, "it would</p> <p>24 have to be a specific application"?</p> <p>25 A. In science a technique is simply a</p>	<p>1 MR. BOOZELL: Vague and ambiguous,</p> <p>2 compound.</p> <p>3 BY MS. RHYU:</p> <p>4 Q. I'm just asking for your understanding</p> <p>5 of that.</p> <p>6 MR. BOOZELL: Calls for legal</p> <p>7 conclusions and incomplete hypothetical, and it's</p> <p>8 asked and answered.</p> <p>9 THE WITNESS: I'm going to have to ask</p> <p>10 in a -- answer in a way that -- Cetus commercially</p> <p>11 produced in conjunction with another company</p> <p>12 thermocyclers. Most obviously people use them to</p> <p>13 do PCR. That was the purpose of manufacturing this</p> <p>14 instrument.</p> <p>15 MS. RHYU: Right.</p> <p>16 THE WITNESS: So naturally people</p> <p>17 would use PCR technology at other companies.</p> <p>18 MS. RHYU: Right.</p> <p>19 THE WITNESS: They laid people off.</p> <p>20 Surely they didn't expect that these people are</p> <p>21 going to forget everything they ever knew and erase</p> <p>22 their minds.</p> <p>23 BY MS. RHYU:</p> <p>24 Q. So it wouldn't be reasonable for Cetus</p> <p>25 to expect that its former employees would stop</p>

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<p><b>Page 170</b></p> <p>1 Patent 6,503,705. Have you ever seen this patent                  2 before?                  3 MR. BOOZELL: Do I get one, Counsel?                  4 MS. RHYU: Sorry.                  5 MR. BOOZELL: Thank you.                  6 THE WITNESS: I've not seen this                  7 patent before.                  8 MS. RHYU: Thank you very much. Thank                  9 you for your time today. I really appreciate it.                  10 I do ask you and your counsel that we be able to                  11 see the documents that you have that are responsive                  12 to the subpoenas that I showed you before.                  13 MR. BOOZELL: Like I say, we will look                  14 to see if she has any documents that are responsive                  15 to those subpoenas, and if there are, then we will                  16 produce them.                  17 MS. RHYU: Then I have no further                  18 questions at this time.                  19 MR. BOOZELL: And for the record,                  20 given that we've gone through a number of lab                  21 notebooks of Ms. DeWitt's/Roche entities, we will                  22 designate the transcript of this deposition, and in                  23 particular the portions of the transcript which                  24 discuss Ms. DeWitt's work at Cetus and the lab                  25 notebooks and the lab notebooks themselves, as</p>	<p><b>Page 172</b></p> <p>1 STATE OF CALIFORNIA )                  2 ) ss.                  3 COUNTY OF SAN FRANCISCO )                  4                  5                  6                  7 I, the undersigned, declare under penalty of                  8 perjury that I have read the foregoing transcript,                  9 and I have made any corrections, additions, or                  10 deletions that I was desirous of making; that the                  11 foregoing is a true and correct transcript of my                  12 testimony contained therein.                  13 EXECUTED this ____ day of _____,                  14 2006, at _____,                  15 (City) (State)                  16                  17                  18                  19                  20                  21 _____                  22 SUSANNE DEWITT                  23                  24                  25</p>
<p><b>Page 171</b></p> <p>1 highly confidential, attorneys' eyes only, under                  2 paragraphs 4 and 9 of the protective order.                  3 And Ms. DeWitt would like time to                  4 review her transcript before it's finalized and                  5 signed.                  6 MS. RHYU: So do you want to                  7 provisionally make the entire transcript highly                  8 confidential and then identify specific portions                  9 later if you want to retain that designation?                  10 MR. BOOZELL: Yes.                  11 MS. RHYU: Sounds good. Thank you                  12 very much.                  13 THE VIDEO OPERATOR: This is the end                  14 of Tape No. 2 and the end of this deposition of                  15 Susanne DeWitt on July 13, 2006. We are off the                  16 record at 2:31 p.m. Thank you.                  17 THE REPORTER: Counsel, do you want a                  18 copy and a rough disk?                  19 MR. BOOZELL: Yes.                  20 MS. RHYU: Yes.                  21 (Deposition concluded at 2:32 p.m.)                  22                  23                  24                  25</p>	<p><b>Page 173</b></p> <p>1 REPORTER'S CERTIFICATE                  2                  3 I, RICHARD M. RAKER, CSR #3445, Certified                  4 Shorthand Reporter, certify:                  5 That the foregoing proceedings were taken                  6 before me at the time and place therein set forth,                  7 at which time the witness was put under oath by me;                  8 That the testimony of the witness and all                  9 objections made at the time of the examination were                  10 recorded stenographically by me and were thereafter                  11 transcribed;                  12 That the foregoing is a true and correct                  13 transcript of my shorthand notes so taken.                  14 I further certify that I am not a relative                  15 or employee of any attorney or of any of the                  16 parties, nor financially interested in the action.                  17 I declare under penalty of perjury under the                  18 laws of the State of California that the foregoing                  19 is true and correct.                  20 Dated this 20th day of July, 2006.                  21                  22                  23 _____                  24 RICHARD M. RAKER, C.S.R. No. 3445                  25</p>