

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
UNIVERSITY,

Plaintiff,

vs.

No. C-05-04158-MHP

ROCHE MOLECULAR SYSTEMS, INC.,
et al.,

Defendants.

CERTIFIED
COPY

AND RELATED COUNTERCLAIM.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

(30) (b) (6) DEPOSITION OF THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY

Through MARY ALBERTSON

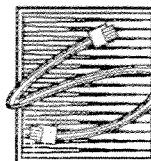
Palo Alto, California

Friday, August 25, 2006

Reported by:
GINA GLANTZ
CSR No. 9795, RPR, RMR

JOB No. 3-52398

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09:08:19 1 THE VIDEOGRAPHER: Would the court reporter
09:08:20 2 please swear the witness.

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EXAMINATION

09:08:31 9

BY MR. BOOZELL:

09:08:31 10

Q Good morning, Ms. Albertson.

09:08:33 11

A Good morning.

09:08:34 12

09:08:36 13

Q Can you please state your full name for the
record.

09:08:36 14

A Mary Katherine Albertson.

09:08:38 15

Q Do you also go by Watanabe?

09:08:40 16

A Yes.

09:08:41 17

Q Is that a married name?

09:08:42 18

A Yes.

09:08:43 19

Q Can you state your home address, please.

09:08:45 20

A 1531 Marcia Avenue, San Jose, California 95125.

09:08:52 21

Q And what's your current business address?

09:08:54 22

A 1705 El Camino Real, Palo Alto, California

09:09:02 23

94306.

09:09:02 24

Q Is that the Office of Technology Licensing --

09:09:04 25

A Yes.

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09:09:05 1 Q -- at Stanford University?

09:09:07 2 A Yes, it is.

09:09:08 3 Q Have you ever been deposed before?

09:09:10 4 A No.

09:09:10 5 Q Okay. So at the risk of repeating some of what
09:09:15 6 Ricardo may have told you in anticipation of the
09:09:18 7 deposition, I'm going to go over a couple of the ground
09:09:20 8 rules.

09:09:20 9 A Okay.

09:09:20 10 Q As you can see, we have a fine court reporter
09:09:23 11 here taking down everything that we say, and what that
09:09:24 12 means for us, you and me and Ricardo also, is that we're
09:09:28 13 going to have to make efforts to make her job easier by
09:09:32 14 not talking over each other. So I'll agree to let you
09:09:35 15 finish your answer before I start my next question if
09:09:37 16 you agree to let me finish my question before you start
09:09:39 17 your answer. Is that all right?

09:09:41 18 A Okay.

09:09:41 19 Q Okay. Also, we need to make sure that we have
09:09:43 20 audible answers. No shaking heads, nodding heads,
09:09:47 21 uh-huhs. We need to say yes, no, or some sort of verbal
09:09:50 22 answer. Do you understand that?

09:09:51 23 A Okay.

09:09:51 24 Q Do you understand that you're under penalty of
09:09:53 25 perjury today?

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11:26:50 21
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11:26:54 23
11:27:04 24
11:27:07 25

grant applications --

A Right. I don't recall --

Q -- but you don't know which one?

A Sorry.

Q You don't know which one covered the work that's set forth --

A No.

Q -- as referenced here?

Did Dr. Merigan have some sort of agreement in 1992 with the university that he would assign rights and inventions to the university?

MR. RODRIGUEZ: Objection. Vague.

THE WITNESS: The univ- -- excuse me, the university policy, and under Bayh-Dole, any -- any inventions created under government-sponsored research fell under Bayh-Dole, and under Bayh-Dole, if there is -- the university gets a first right to the invention.

BY MR. BOOZELL:

Q Do you know whether he had an agreement that related to that in any way with Stanford University?

MR. RODRIGUEZ: Objection. Vague.

THE WITNESS: As part of their employment, faculty have an agreement that they will follow the university's policies.

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11:27:08 1

BY MR. BOOZELL:

11:27:08 2

Q Do you know whether that's been produced in

11:27:10 3

this litigation, for Dr. Merigan?

11:27:12 4

A That what has been produced?

11:27:16 5

Q Some sort of written agreement that says what

11:27:18 6

you just said.

11:27:19 7

MR. RODRIGUEZ: Objection. Vague.

11:27:20 8

THE WITNESS: I don't know -- I don't know that

11:27:31 9

there is something that's been produced for 1992.

11:27:34 10

BY MR. BOOZELL:

11:27:34 11

Q Prior to 1992, something that was executed by

11:27:36 12

Dr. Merigan prior to 1992?

11:27:40 13

MR. RODRIGUEZ: Same objection.

11:27:41 14

THE WITNESS: Unlikely that something written

11:27:45 15

has been produced.

11:27:46 16

BY MR. BOOZELL:

11:27:46 17

Q And why do you say that? Why is it unlikely?

11:27:50 18

A Because I don't think that it was.

11:27:52 19

Q Do you know whether something exists?

11:27:54 20

A I think it exists.

11:27:58 21

Q Where would it exist?

11:28:01 22

A I don't know. If we could have found it, we

11:28:05 23

would have produced it.

11:28:06 24

Q So you think it exists somewhere but you don't

11:28:08 25

know where because, if you had known where, it would

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11:28:11 1 have been produced in this litigation?

11:28:13 2 A Correct.

11:28:13 3 Q But you don't know one way or the other,
11:28:16 4 really, whether it exists?

11:28:19 5 MR. RODRIGUEZ: Objection. Mischaracterizes
11:28:21 6 testimony, lacks foundation.

11:28:23 7 THE WITNESS: Correct.

11:28:24 8 BY MR. BOOZELL:

11:28:29 9 Q And I think you said, under Bayh-Dole, the
11:28:34 10 statute requires that the university get first rights;
11:28:38 11 is that right?

11:28:39 12 A Correct. Gets the first option to take right
11:28:43 13 in any invention created under government-sponsored
11:28:48 14 research.

11:28:49 15 Q To your knowledge, does the Bayh-Dole Act have
11:28:53 16 any provisions that require an inventor to assign his
11:28:56 17 rights to the university?

11:28:58 18 A Yes, that's -- that's what I'm saying.

11:29:01 19 Q You're saying the Bayh-Dole Act requires an
11:29:04 20 inventor who works for a university to assign his rights
11:29:07 21 to the university if there -- if that work is covered by
11:29:11 22 a government contract?

11:29:12 23 A It's not exactly even a question for them to
11:29:17 24 assign their rights. It's that the university has the
11:29:23 25 rights to that invention.

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11:29:25 1 Q But he says here that he's required to assign
11:29:28 2 them; right?
11:29:31 3 MR. RODRIGUEZ: Objection. Vague.
11:29:32 4 BY MR. BOOZELL:
11:29:33 5 Q I'm just asking if that's what the document
11:29:35 6 says. Does it say, "I am required to assign my rights
11:29:38 7 in the above-referenced application to the University"?
11:29:40 8 MR. RODRIGUEZ: Same objection.
11:29:41 9 THE WITNESS: That's what the document says.
11:29:42 10 BY MR. BOOZELL:
11:29:45 11 Q But according to your understanding, the
11:29:47 12 university just has rights?
11:29:49 13 A The university --
11:29:50 14 MR. RODRIGUEZ: Objection. Vague,
11:29:51 15 mischaracterizes testimony.
11:29:53 16 THE WITNESS: Yeah.
11:29:53 17 BY MR. BOOZELL:
11:29:54 18 Q Sorry, you can go ahead and answer.
11:29:56 19 A The university has the rights.
11:30:02 20 Q Without an assignment from the inventor?
11:30:05 21 MR. RODRIGUEZ: Objection. Objection. Calls
11:30:07 22 for a legal conclusion.
11:30:11 23 THE WITNESS: Pardon me, what was your
11:30:12 24 question?
11:30:13 25 BY MR. BOOZELL:

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11:30:13 1 Q Without an assignment from the inventor?

11:30:15 2 MR. RODRIGUEZ: Same objection.

11:30:15 3 THE WITNESS: Well, when you have -- when you
11:30:19 4 have -- you know, file a patent with the PTO, the
11:30:22 5 inventor signs a piece of paper, certainly.

11:30:24 6 BY MR. BOOZELL:

11:30:24 7 Q So an actual assignment is required in order to
11:30:27 8 give the university rights in the invention; correct?

11:30:29 9 MR. RODRIGUEZ: Objection. Calls for a legal
11:30:31 10 conclusion, calls for speculation, lacks foundation.

11:30:34 11 THE WITNESS: Certainly.

11:30:36 12 BY MR. BOOZELL:

11:30:42 13 Q And I prob- -- I think I asked this before, but
11:30:44 14 you said that you believed that Dr. Merigan's
11:30:47 15 understanding that he was required to assign his rights
11:30:50 16 came from a university policy and the Bayh-Dole Act?

11:30:53 17 MR. RODRIGUEZ: Objection. Lacks foundation,
11:30:54 18 calls for speculation.

11:30:56 19 THE WITNESS: Yes.

11:30:57 20 BY MR. BOOZELL:

11:30:57 21 Q And the fact that the work was covered by an
11:31:01 22 NIH grant; right?

11:31:04 23 A Correct.

11:31:04 24 Q But sitting here right now, you can't tell me
11:31:09 25 which NIH grant covers the work; right?

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

11:31:12 1

A Correct.

11:31:14 2

Q Now, you referred to a policy. What's the

11:31:20 3

policy say --

11:31:21 4

MR. RODRIGUEZ: Objection.

11:31:21 5

BY MR. BOOZELL:

11:31:21 6

Q -- Stanford policy --

11:31:23 7

MR. RODRIGUEZ: Objection. Vague.

11:31:23 8

BY MR. BOOZELL:

11:31:25 9

Q -- About assignment and invention?

11:31:26 10

A At what time?

11:31:27 11

Q In 1989. Between 1989 and 1992, what does it

11:31:31 12

say?

11:31:33 13

A That -- it says that an inventor can have

11:31:43 14

the -- that the rights remain with the inventors unless

11:31:48 15

the work is -- unless the invention is created under a

11:31:52 16

grant requiring that they assign the rights to Stanford,

11:32:01 17

which would mean the government-sponsored grant.

11:32:06 18

Q Okay. You see at the bottom of this paragraph,

11:32:18 19

he also says -- Dr. Merigan also says, "Furthermore, to

11:32:18 20

the best of my knowledge, Dr. Kozal, Dr. Katzenstein and

11:32:20 21

Dr. Holodniy, at the time of making their contributions

11:32:23 22

to the Invention, were also employees of Stanford

11:32:26 23

University"?

11:32:27 24

A Yes, I see that.

11:32:27 25

Q Do you agree that at the time of making his

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11:32:30 1 contribution, Dr. Kozal was an employee of Stanford
11:32:34 2 University?

11:32:34 3 A To the best of my knowledge.

11:32:35 4 Q You believe he was?

11:32:37 5 A Yes, I do.

11:32:38 6 Q Dr. Katzenstein, was he an employee of the
11:32:42 7 university at the time he made his contributions to the
11:32:45 8 invention?

11:32:45 9 A I believe he was.

11:32:46 10 Q And Dr. Holodniy, was he an employee of
11:32:51 11 Stanford University at the time he made his
11:32:52 12 contributions to the invention?

11:32:54 13 A I believe he was.

11:33:29 14 Q Ms. Albertson, I'm going to hand you what will
11:33:33 15 be marked by the court reporter as Exhibit 115. It's a
11:33:38 16 multipage document bearing Bates number STANFORD 06335
11:33:46 17 through 06336.

11:33:46 18 (Deposition Exhibit 115 marked.)

11:34:00 19 BY MR. BOOZELL:

11:34:00 20 Q If you could review this document and let me
11:34:03 21 know if you've seen it before.

11:34:10 22 A I've seen this document before.

11:34:12 23 Q And what is it?

11:34:13 24 A It's a declaration of Barry Elledge.

11:34:17 25 Q Does this document refresh your recollection as

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13:38:55 1 contractually to Stanford's policy related to
13:38:58 2 inventions; is that right?

13:38:59 3 MR. RODRIGUEZ: Objection. Lacks foundation,
13:39:00 4 calls for speculation.

13:39:01 5 THE WITNESS: I wouldn't characterize it that
13:39:09 6 way.

13:39:11 7 BY MR. BOOZELL:

13:39:11 8 Q How would you characterize it?

13:39:12 9 MR. RODRIGUEZ: Objection. Vague.

13:39:14 10 THE WITNESS: I would -- I would say this is a
13:39:22 11 layer of protection, one layer of protection as far as
13:39:32 12 assigning -- assigning rights or educating employees of
13:39:38 13 the university as to their obligations. It's not very
13:39:43 14 well policed, as I've mentioned.

13:39:47 15 BY MR. BOOZELL:

13:39:47 16 Q But without an employee signing this agreement,
13:39:50 17 Stanford has no contractual relationship with an
13:39:53 18 employee with respect to assignment of inventions; isn't
13:39:56 19 that correct?

13:39:56 20 MR. RODRIGUEZ: Objection. Lacks foundation,
13:39:58 21 calls for a legal conclusion, calls for speculation.

13:40:01 22 THE WITNESS: I don't agree with that either.

13:40:03 23 BY MR. BOOZELL:

13:40:04 24 Q Why not?

13:40:04 25 MR. RODRIGUEZ: Same objections.

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13:40:05 1 THE WITNESS: Because there are -- there are
13:40:11 2 several different places where people do sign things in
13:40:17 3 several different areas, and they're assigning their
13:40:22 4 rights in those areas, and it just depends on what stage
13:40:25 5 they are. Sometimes they've -- they do have contractual
13:40:28 6 obligations with the universities, whether it's through
13:40:30 7 signing a grant application, or if they have already
13:40:33 8 disclosed an invention, they sign things that -- that
13:40:37 9 they're making a contractual obligation with the
13:40:40 10 university through those -- those -- excuse me -- those
13:40:42 11 documents.

13:40:43 12 BY MR. BOOZELL:

13:40:43 13 Q So prior to disclosing the invention, this is
13:40:47 14 Stanford's attempt to contractually bind employees to
13:40:50 15 the Stanford policy related to inventions; isn't that
13:40:55 16 correct?

13:40:55 17 MR. RODRIGUEZ: Objection. Mischaracterizes
13:40:58 18 the testimony, calls for speculation.

13:41:02 19 THE WITNESS: This is one mechanism. There's
13:41:02 20 also a general -- a general understanding, and I think
13:41:07 21 by agreeing to -- I'm not an attorney, but agreeing to
13:41:11 22 employment, they have other obligations. I don't know
13:41:15 23 what else they agree to when they're employed. But
13:41:17 24 there's a general understanding, when you're employed by
13:41:19 25 Stanford, there is a policy, an overreaching policy at

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13:41:23 1 the university, that you will not make personal gain
13:41:26 2 from the use of university resources, period. And
13:41:30 3 everything -- everything that occurs at the university
13:41:34 4 falls under that policy, so --

13:41:36 5 BY MR. BOOZELL:

13:41:36 6 Q How does that policy relate to this?

13:41:39 7 MR. RODRIGUEZ: Objection. Vague.

13:41:40 8 THE WITNESS: That you can't file patents on
13:41:44 9 your own if there's a potential for making personal gain
13:41:49 10 from the use of university resources. If you invent
13:41:52 11 something at the university and go off and do something
13:41:55 12 with it, you'd be making personal gain from university
13:41:57 13 resources. I mean, there's a -- there's a lot of
13:41:59 14 things. You could go on and on about this, but --

13:42:02 15 BY MR. BOOZELL:

13:42:02 16 Q Other than documents that they sign after an
13:42:06 17 invention is disclosed, are you aware of any other
13:42:09 18 documents that employees are asked to sign which would
13:42:14 19 bind them to the Stanford policy related to assignment
13:42:18 20 of inventions?

13:42:18 21 MR. RODRIGUEZ: Objection. Mischaracterizes
13:42:20 22 testimony.

13:42:20 23 THE WITNESS: Grants, grant applications.

13:42:24 24 BY MR. BOOZELL:

13:42:24 25 Q Signing a grant application would bind them to

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13:42:27 1 the Stanford policy?

13:42:29 2 A Yes.

13:42:29 3 Q In what way?

13:42:30 4 A When they sign a grant application, they're
13:42:32 5 agreeing to follow rules and policies, and under
13:42:38 6 Bayh-Dole, that gives the university the rights to the
13:42:42 7 invention.

13:42:42 8 Q So other than this document and grant
13:42:46 9 applications, are you aware of any other documents?

13:42:49 10 MR. RODRIGUEZ: Objection. Vague.

13:42:50 11 THE WITNESS: I don't know, so I guess I'm not
13:42:58 12 aware of anything else.

13:43:00 13 BY MR. BOOZELL:

13:43:03 14 Q If you look at paragraph 2, the first
13:43:05 15 sentence -- why don't you just read paragraph 2 for me.

13:43:27 16 A Okay.

13:43:27 17 Q Do you agree that this document is basically an
13:43:32 18 agreement to assign?

13:43:34 19 MR. RODRIGUEZ: Objection. Calls for a legal
13:43:37 20 conclusion, lacks foundation, calls for speculation.

13:43:51 21 THE WITNESS: No, I don't necessarily agree.

13:43:53 22 BY MR. BOOZELL:

13:43:54 23 Q Why not?

13:43:54 24 A Because it is -- it says to -- "I agree to
13:43:57 25 assign or confirm in writing."

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(Record read.)

MR. RODRIGUEZ: Same objections.

THE WITNESS: Cetus was entitled to negotiate a license, it didn't automatically get a license.

BY MR. BOOZELL:

Q And what do you base that on?

MR. RODRIGUEZ: Same objections.

THE WITNESS: The fact that the language says first option to an exclusive license at a reasonable royalty to be negotiated in good faith, et cetera.

BY MR. BOOZELL:

Q It con- -- the agreement continues on "or Cetus's option or non-exclusive license"; correct?

A Correct.

Q It's your understanding that Cetus would have to negotiate a license --

A Correct.

Q -- if it arose under this agreement?

MR. RODRIGUEZ: Same objections.

THE WITNESS: Correct.

BY MR. BOOZELL:

Q And that's based on just your reading of this language today; correct?

MR. RODRIGUEZ: Same objections.

THE WITNESS: No, it's based on my

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15:26:20 1 understanding of how a material transfer agreement is
15:26:23 2 drafted and what the rights are that we grant in a
15:26:26 3 material transfer agreement.

15:26:27 4 BY MR. BOOZELL:

15:26:28 5 Q And what is that understanding?

15:26:29 6 MR. RODRIGUEZ: Same objections.

15:26:29 7 THE WITNESS: In exchange for using materials
15:26:34 8 from a company, there are certain rights that we grant
15:26:38 9 in exchange, and those -- except in the -- those are
15:26:47 10 typically that we will negotiate with that company a
15:26:53 11 license.

15:26:57 12 BY MR. BOOZELL:

15:26:57 13 Q What if Cetus wanted a nonexclusive license,
15:27:01 14 would that require negotiation?

15:27:02 15 A We would negotiate a license.

15:27:03 16 Q Even if it was nonexclusive?

15:27:05 17 A Correct.

15:27:06 18 Q If it was a nonexclusive license, what would
15:27:10 19 you be negotiating?

15:27:11 20 A The royalties for a nonexclusive license.

15:27:14 21 Q So it's your position under this agreement that
15:27:16 22 a nonexclusive license would be for a fee?

15:27:19 23 MR. RODRIGUEZ: Objection. Calls for
15:27:20 24 speculation, calls for a legal conclusion and outside
15:27:22 25 the scope.

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15:27:25 1 You can answer to the extent you have your own
15:27:28 2 knowledge.

15:27:28 3 THE WITNESS: Yes.

15:27:29 4 BY MR. BOOZELL:

15:27:29 5 Q Based on what?

15:27:30 6 MR. RODRIGUEZ: Same objections.

15:27:31 7 THE WITNESS: Based on the fact that it would
15:27:34 8 be a license for a reasonable royalty, whether it's
15:27:38 9 exclusive or nonexclusive.

15:27:39 10 BY MR. BOOZELL:

15:27:51 11 Q Do you know whether that was the subject of any
15:27:53 12 negotiation with Stanford and Cetus at the time that
15:27:56 13 this was signed in '89?

15:27:58 14 A I don't know.

15:28:00 15 Q You don't know if they discussed it one way or
15:28:06 16 the other?

15:28:06 17 A I don't know.

15:28:06 18 Q And you said earlier that you're not sure
15:28:08 19 whether this is a standard Cetus form or a standard
15:28:12 20 Stanford form; is that correct?

15:28:13 21 A That's correct.

15:28:13 22 Q So you don't know whether that was negotiated,
15:28:16 23 that provision was negotiated with respect to the
15:28:22 24 standard form back whenever that was created?

15:28:25 25 MR. RODRIGUEZ: Objection. Vague.

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I, MARY ALBERTSON, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 3rd day of October,
2006, at Palo Alto, CA
(City) (State)

Mary Albertson
MARY ALBERTSON

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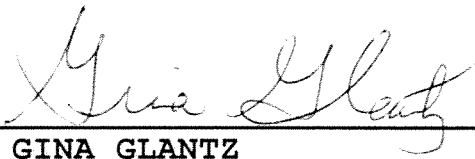
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: SEP 08 2006



GINA GLANTZ
CSR NO. 9795