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17 Roche Diagnostics Corporation; and Roche Diagnostics Operations, Inc.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20
21
22 THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
23 UNIVERSITY,

24 Plaintiff,

25 v.

26 ROCHE MOLECULAR SYSTEMS, ET AL.,

27 Defendants.
28

Case No. C 05 04158 MHP

**JOINT SUPPLEMENTAL CASE
MANAGEMENT STATEMENT**

Date: February 12, 2007

Time: 3:00 PM

Place: Courtroom 15, 18th Floor

Hon. Marilyn Hall Patel

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ROCHE MOLECULAR SYSTEMS, ET AL.,

Counterclaimants,

v.

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
UNIVERSITY; THOMAS MERIGAN; AND
MARK HOLODNIY,

Counterclaim Defendants.

1 Plaintiff and Counterdefendant the Board of Trustees of the Leland Stanford Junior
 2 University (“Stanford”), Counterdefendants Thomas Merigan, M.D. (“Dr. Merigan”), and Mark
 3 Holodniy, M.D. (“Dr. Holodniy”), and Defendants and Counterclaimants Roche Molecular
 4 Systems, Roche Diagnostics Corporation, and Roche Diagnostics Operations, Inc. (collectively
 5 “Roche”) jointly submit this Supplemental Case Management Statement.

6 **OVERVIEW AND STATUS**

7 For the basic background, the parties incorporate by reference the prior CMC statements.
 8 As the Court is aware, the case was bifurcated to first address ownership issues. This first phase
 9 of the case culminated in summary judgment motions, which the Court heard on December 7 and
 10 which remain pending. At that hearing, the Court set this CMC.

11 **ALTERNATIVE DISPUTE RESOLUTION**

12 As the Court is aware, prior to the filing of the case, the parties participated in a private,
 13 non-court-sponsored, JAMS mediation with Magistrate Judge Edward Infante on April 6, 2005.
 14 The parties also met in person to discuss settlement on Thursday, February 1, 2007. Further
 15 settlement discussions will be held on February 20, 2007.

16 **DISCOVERY AND CASE SCHEDULE**

17 The parties await the Court’s ruling on the parties’ pending motions for summary
 18 judgment. The parties disagree over whether it is possible to propose a case schedule absent the
 19 ruling. Each party’s proposal is set forth separately, below.

20 Stanford’s Proposed Case Schedule

21 Stanford believes that the case should proceed to the infringement and validity phase
 22 immediately upon resolution of the parties’ pending motions for summary judgment. Stanford
 23 proposes the case schedule below, which would be adjusted if necessary based on the date of the
 24 Court’s order on the parties summary judgment motions. Stanford will supplement this case
 25 schedule after the Court’s ruling on the parties’ pending motions for summary judgment.

Event	Due Date if MSJs Decided on or before 2/12/07*
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Event	Due Date if MSJs Decided on or before 2/12/07*
Supplemental CMC	2/12/07 (per Court Order)
Last day for patentee to serve Disclosure of Asserted Claims and Preliminary Infringement Contentions and produce initial patent disclosures	02/27/07
Last day to amend pleadings without leave of court	03/01/07
Last day for accused infringer to serve Preliminary Invalidity Contentions and produce initial patent disclosures	04/13/07
Exchange Proposed Disputed Terms	04/27/07
Last day for simultaneous exchange Preliminary Claim Construction and identify extrinsic evidence	05/17/07
Last day to file Joint Claim Construction and Prehearing Statement	06/11/07
Claim Construction Prehearing Conference	As per the Court's schedule
Completion of claim construction discovery	07/11/07
Opening claim construction brief	07/26/07
Responsive claim construction brief	8/23/07
Reply claim construction brief	08/30/07
Claim construction hearing	09/14/07
Last day to amend Preliminary Infringement Contention pursuant to Pat LR 3-6 (a)	30 days after Claim Construction Order
Last day to amend Preliminary Invalidity Contentions pursuant to Pat LR 3-6(b)	50 days after Claim Construction Order
Last day for accused infringer to produce opinions of counsel and related privilege log re willfulness	50 days after Claim Construction Order
Proposed End of Fact Discovery	9/28/07
Opening Expert Reports due for Party with burden of proof	10/26/07
Rebuttal Expert Reports due	11/16/07
Proposed End of Expert Discovery	12/14/07
Last Day for filing dispositive motions	1/25/08
Last Day for Opposition Briefs	2/15/08
Last Day for Reply Briefs	2/29/08

Event	Due Date if MSJs Decided on or before 2/12/07*
Hearing on dispositive motions	3/12/08
Pretrial conference	04/28/08
Trial	04/29/08

* If the MSJ order issues after 2/12/07, the deadline will be adjusted by the number of days between the MSJ order and 2/12/07.

Roche's Proposal

Given that the Court has not yet ruled on the parties' pending motions for summary judgment, Roche believes that it is inappropriate to propose a discovery and case schedule at this time. Moreover, consistent with the bifurcation order, Roche further believes that all ownership issues should be resolved before the Court considers a discovery and briefing schedule for the patent infringement, invalidity and unenforceability issues. Roche believes that once the Court issues its ruling on the pending summary judgment motions, the parties should meet and confer to resolve what ownership issues, if any, remain in the case and to propose: 1) a schedule to complete any discovery relating to those issues consistent with the local rules; and 2) a schedule for summary judgment briefing and trial.

Anticipated length of trial:

Should any issues of ownership remain following the Court's rulings on the pending summary judgment motions, Roche requests a trial on those issues. Roche reserves its right to provide the Court with its ownership phase trial estimate once the Court issues its summary judgment rulings.

Stanford, Merigan, and Holodniy oppose bifurcation to create a separate trial phase on ownership. Stanford, Merigan, and Holodniy request 7 trial days for their entire case (affirmative and rebuttal), including issues of infringement and validity, where each trial day is from 8:30 a.m. to 4:30 p.m.

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Dated: February 5, 2007

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Ricardo Rodriguez
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Dated: February 5, 2007

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Filer's Attestation: Pursuant to General Order No.
45, Section X(B) regarding signatures, Ricardo
Rodriguez hereby attests that concurrence in the
filing of the document has been obtained..