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19 Attorneys for Defendants and Counterclaimants Roche Molecular Systems, Inc.;  
20 Roche Diagnostics Corporation; and Roche Diagnostics Operations, Inc.

21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

23  
24 THE BOARD OF TRUSTEES OF THE  
LELAND STANFORD JUNIOR  
25 UNIVERSITY,

26 Plaintiff,

27 v.

Case No. C 05 04158 MHP

**JOINT SUPPLEMENTAL CASE  
MANAGEMENT STATEMENT**

Date: March 19, 2007

Time: 3:00 PM

Place: Courtroom 15, 18<sup>th</sup> Floor

1 ROCHE MOLECULAR SYSTEMS, ET AL.,  
2 Defendants.

Hon. Marilyn Hall Patel

3  
4 ROCHE MOLECULAR SYSTEMS, ET AL.,  
5 Counterclaimants,

6 v.

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

10 Counterclaim Defendants.  
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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 This Court bifurcated the case upon Roche’s request to first address ownership issues. This first  
9 phase of the case culminated in summary judgment motions, which the Court has decided.

10 Based on the Court’s Order, plaintiffs have requested that Roche dismiss its counterclaims  
11 against Drs. Merigan and Holodniy, and dismiss its claims relating to the Kozal patents. If Roche  
12 will not to dismiss these claims voluntarily, Plaintiffs intend to bring a summary judgment motion  
13 to effect the dismissal.

14 In light of the Court’s order, Roche will be filing, concurrently with this CMC statement,  
15 a request pursuant to Civil L.R. 7-11 and Fed. R. App. P. 5(a) seeking an order from this Court  
16 amending its February 23, 2007 Memorandum & Order: Cross Motions for Summary Judgment  
17 (“SJ Order”) to certify the SJ Order for immediate appeal pursuant to 28 U.S.C. § 1292(b) and to  
18 stay proceedings pending appeal because the SJ Order (1) “involves a controlling question of law  
19 as to which there is a substantial ground for difference of opinion” and (2) “immediate appeal  
20 from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. §  
21 1292(b). Should the Court deny Roche’s request, Roche is prepared to proceed with the second  
22 phase of this matter as set forth below.

#### 23 **ALTERNATIVE DISPUTE RESOLUTION**

24 As the Court is aware, prior to the filing of the case, the parties participated in a private,  
25 non-court-sponsored, JAMS mediation with Magistrate Judge Edward Infante on April 6, 2005.  
26 The parties also met in person to discuss settlement on Thursday, February 1, 2007.

#### 27 **DISCOVERY**

28 The parties agree to 25 interrogatories, 100 requests for admission, and 70 hours of

deposition per side (not per party) excluding time expended in deposing expert witnesses. Stanford has proposed that no previously deposed witnesses, without exclusion, can be deposed for more than one additional half day of 3.5 hours. Roche is amenable to such a proposal provided that any previously deposed named inventors are excepted from such agreement.

#### CASE SCHEDULE

##### Stanford's Proposed Case Schedule

Stanford believes that the case should proceed on its patent infringement claims and all other remaining issues as well. Stanford proposes the case schedule below. With regard to the deadline for amending pleadings, Stanford is unaware of what new claims or defenses Roche intends to assert and thus reserves the right to request a different schedule or course of action depending on the nature of any amended pleading filed by Roche.

Event	Due Date
CMC	3/19/07
Last day for patentee to serve Disclosure of Asserted Claims and Preliminary Infringement Contentions and produce initial patent disclosures	04/02/07
Last day to amend pleadings without leave of court	04/06/07
Last day for accused infringer to serve Preliminary Invalidity Contentions and produce initial patent disclosures	05/17/07
Exchange Proposed Disputed Terms	06/01/07
Last day for simultaneous exchange Preliminary Claim Construction and identify extrinsic evidence	06/15/07
Last day to file Joint Claim Construction and Prehearing Statement	06/29/07
Claim Construction Prehearing Conference	As per the Court's schedule
Completion of claim construction discovery	07/20/07
Opening claim construction brief	08/3/07
Responsive claim construction brief	08/22/07
Reply claim construction brief	08/31/07
Claim construction hearing	9/17/07
Last day to amend Preliminary Infringement Contention pursuant to Pat LR 3-6 (a)	30 days after Claim Construction Order

Event	Due Date
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	10/24/07
Opening Expert Reports due for Party with burden of proof	11/30/07
Rebuttal Expert Reports due	12/21/07
Proposed End of Expert Discovery	1/31/07
Last Day for filing dispositive motions	02/29/08
Last Day for Opposition Briefs	03/21/08
Last Day for Reply Briefs	04/2/08
Hearing on dispositive motions	04/21/08
Pretrial conference	05/12/08
Trial	05/13/08

#### Roche's Proposed Case Schedule

Roche proposes initiating the patent local rule schedule immediately following the close of pleadings. Roche proposes tracking the patent local rules for all dates and closing fact discovery approximately eleven weeks after the claim construction hearing.

Event	Due Date
CMC	3/19/07
Last day to amend pleadings without leave of court	04/06/07
Last day for patentee to serve Disclosure of Asserted Claims and Preliminary Infringement Contentions and produce initial patent disclosures	4/20/2007
Last day for accused infringer to serve Preliminary Invalidity Contentions and produce initial patent disclosures	06/04/2007
Exchange Proposed Disputed Terms	06/18/2007
Last day for simultaneous exchange Preliminary Claim Construction and identify extrinsic evidence	07/09/2007

Event	Due Date
Last day to file Joint Claim Construction and Prehearing Statement	08/03/2007
Claim Construction Prehearing Conference	As per the Court's schedule
Completion of claim construction discovery	09/04/2007
Opening claim construction brief	09/17/2007
Responsive claim construction brief	10/1/2007
Reply claim construction brief	10/11/2007
Claim construction hearing	10/25/2007
Commence Damages Discovery	10/26/2007
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	1/11/08
Opening Expert Reports due for Party with burden of proof	2/8/08
Rebuttal Expert Reports due	2/29/08
Proposed End of Expert Discovery	3/28/08
Last Day for filing dispositive motions	4/18/08
Last Day for Opposition Briefs	5/2/08
Last Day for Reply Briefs	5/16/08
Hearing on dispositive motions	6/13/08
Pretrial conference	10/27/08
Trial	10/28/08

#### Anticipated length of trial:

Stanford, Merigan, and Holodniy oppose any further bifurcation. Stanford, Merigan, and Holodniy request 7 trial days for their entire case (affirmative and rebuttal), including issues of

1 infringement and validity, where each trial day is from 8:30 a.m. to 4:30 p.m. Roche requests 7  
2 trial days for the presentation of its case.

3 Dated: March 12, 2007

COOLEY GODWARD KRONISH LLP  
STEPHEN C. NEAL  
RICARDO RODRIGUEZ  
MICHELLE S. RHYU

6  
7 /s/

8 Ricardo Rodriguez  
9 Attorneys for Counter Defendants The Board of  
Trustees of the Leland Stanford Junior University,  
Thomas Merigan and Mark Holodniy

10 Dated: March 12, 2007

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16  
17 /s/

18 Brian C. Cannon  
19 Attorneys for Defendants and Counterclaim  
20 Plaintiff Roche Molecular Systems, Inc.; Roche  
Diagnostics Corporation; and Roche Diagnostics  
Operations, Inc.

21 /s/

22 Filer's Attestation: Pursuant to General Order No.  
23 45, Section X(B) regarding signatures, Ricardo  
24 Rodriguez hereby attests that concurrence in the  
25 filing of the document has been obtained.  
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