

1 COOLEY GODWARD KRONISH LLP  
STEPHEN C. NEAL (No. 170085) (nealsc@cooley.com)  
2 RICARDO RODRIGUEZ (No. 173003) (rr@cooley.com)  
MICHELLE S. RHYU (No. 212922) (mrhyu@cooley.com)  
3 Five Palo Alto Square  
3000 El Camino Real  
4 Palo Alto, CA 94306-2155  
Tel: (650) 843-5000  
5 Fax: (650) 857-0663

6 Attorneys for Plaintiff and Counterclaim Defendant,  
THE BOARD OF TRUSTEES OF THE LELAND STANFORD  
7 JUNIOR UNIVERSITY and Counterclaim Defendants THOMAS  
MERIGAN and MARK HOLODNIY  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12  
13 THE BOARD OF TRUSTEES OF THE  
14 LELAND STANFORD JUNIOR  
UNIVERSITY,  
15  
Plaintiff,  
16  
v.  
17  
18 ROCHE MOLECULAR SYSTEMS, ET AL.,  
19  
Defendants.  
20  
ROCHE MOLECULAR SYSTEMS, ET AL.,  
21  
Counterclaimants,  
22  
v.  
23  
24 THE BOARD OF TRUSTEES OF THE  
LELAND STANFORD JUNIOR  
25 UNIVERSITY; THOMAS MERIGAN AND  
MARK HOLODNIY  
26  
Counterclaim Defendants.  
27

Case No. C 05 04158 MHP  
**DECLARATION OF MICHELLE S. RHYU  
SUPPORTING STANFORD'S OPENING  
CLAIM CONSTRUCTION BRIEF**

1 I, Michelle S. Rhyu, declare as follows:

2 1. I am an attorney with the law firm of Cooley Godward Kronish LLP, counsel of  
3 record for The Board of Trustees of the Leland Stanford Junior University, Thomas Merigan and  
4 Mark Holodniy in the above-captioned matter. I have knowledge of the following, and if called  
5 as a witness, I could and would testify competently to this declaration's contents.

6 2. Attached hereto as Exhibit 1 is a true and correct copy of U.S. Patent  
7 No. 5,968,730, entitled "Polymerase Chain Reaction Assays for Monitoring Antiviral Therapy  
8 and Making Therapeutic Decisions in the Treatment of Acquired Immunodeficiency Syndrome,"  
9 issued on October 19, 1999.

10 3. Attached hereto as Exhibit 2 is a true and correct copy of U.S. Patent  
11 No. 6,503,705 B2, entitled "Polymerase Chain Reaction Assays for Monitoring Antiviral  
12 Therapy and Making Therapeutic Decisions in the Treatment of Acquired Immunodeficiency  
13 Syndrome," issued on January 7, 2003.

14 4. Attached hereto as Exhibit 3 is a true and correct copy of U.S. Patent  
15 No. 7,129,041 B2, entitled "Polymerase Chain Reaction Assays for Monitoring Antiviral  
16 Therapy and Making Therapeutic Decisions in the Treatment of Acquired Immunodeficiency  
17 Syndrome," issued on October 31, 2006.

18 5. Attached hereto as Exhibit 4 is a true and correct copy of Hiroaki Mitsuya et al.,  
19 *Molecular Targets for AIDS Therapy*, 249 *Science* 1533 (September 28, 1990), bearing Bates  
20 numbers STAN 034083 – STAN 034095.

21 6. Attached hereto as Exhibit 5 is a true and correct copy of Warner C. Greene,  
22 *AIDS and the Immune System*, 269(3) *Scientific American* 99 (September 1993), bearing Bates  
23 numbers STAN 034066 – STAN 034075.

24 7. Attached hereto as Exhibit 6 is a true and correct copy of John W. Mellors, *Viral-*  
25 *Load Tests Provide Valuable Answers*, 279(1) *Scientific American* 90 (July 1998), bearing Bates  
26 numbers STAN 034062 – STAN 034065.

27 8. Attached hereto as Exhibit 7 is a true and correct copy of Robert Yarchoan et al.,  
28 *Anti-Retroviral Therapy of Human Immunodeficiency Virus Infection: Current Strategies and*

1 *Challenges for the Future*, 78(4) *Blood* 859 (August 15, 1991), bearing Bates numbers RMS  
2 01412 – RMS 01437.

3 9. Attached hereto as Exhibit 8 are true and correct copies of excerpts from the July  
4 30, 2007 Transcript of Proceedings of the Board of Trustees of the Leland Stanford Junior  
5 University and Roche Molecular Systems, Inc., Docket No. 173, transcript at pages 6-9.

6 10. Attached hereto as Exhibit 9 is a true and correct copy of European Patent  
7 Publication No. 0402 646 A1, filed May 17, 1990, published December 19, 1990 (Abbott  
8 Laboratories), bearing Bates numbers STAN 034165 – STAN 034357.

9 11. Attached hereto as Exhibit 10 is a true and correct copy of European Patent  
10 Publication No. 0432 695 A2, filed December 10, 1990, published June 19, 1991 (F. Hoffman-  
11 La Roche AG), bearing *Bates* numbers STAN 034141 – STAN 034157.

12 12. Attached hereto as Exhibit 11 is a true and correct copy of J. Mulder et al., *Rapid*  
13 *and Simple PCR Assay for Quantitation of Human Immunodeficiency Virus Type 1 RNA in*  
14 *Plasma: Application to Acute Retroviral Infection*, 32(2) *Journal of Clinical Microbiology* 292,  
15 292 (February 1994), bearing Bates numbers RMS 01629 – RMS 01637.

16 13. Attached hereto as Exhibit 12 is a true and correct copy of Harold M. Schmeck  
17 Jr., *New Test That Finds Hidden AIDS Virus Is a Sleuth With Value in Many Fields*, *N.Y. Times*,  
18 June 21, 1988, at B7, bearing Bates numbers RMS 05269 – RMS 05270.

19 14. Attached hereto as Exhibit 13 is a true and correct copy of John C. Guatelli et al.,  
20 *Nucleic Acid Amplification In Vitro: Detection of Sequences with Low Copy Numbers and*  
21 *Application to Diagnosis of Human Immunodeficiency Virus Type 1 Infection*, 2(2) *Clinical*  
22 *Microbiology Reviews* 217 (April 1989), bearing Bates numbers RMS 01019 – RMS 01028.

23 15. Attached hereto as Exhibit 14 is a true and correct copy of Mark Holodniy et al.,  
24 *Detection and Quantification of Human Immunodeficiency Virus RNA in Patient Serum by Use*  
25 *of the Polymerase Chain Reaction*, 163 *Journal of Infectious Diseases* 862 (1991), bearing Bates  
26 numbers STAN 006882 – STAN 006886.

27 16. Attached hereto as Exhibit 15 is a true and correct copy of Michèle Ottmann et  
28 al., *The Polymerase Chain Reaction for the Detection of HIV-1 Genomic RNA in Plasma from*

1 *Infected Individuals*, 31 Journal of Virological Methods 273 (1991), bearing Bates numbers  
2 STAN 006909 – STAN 006920.

3 17. Attached hereto as Exhibit 16 is a true and correct copy of an excerpt from the  
4 DHHS Panel on *Antiretroviral* Guidelines for Adults and Adolescents, *Guidelines for the Use of*  
5 *Antiretroviral Agents in HIV-1-Infected Adults and Adolescents*, Department of Health & Human  
6 Services 1, 5 (Oct. 10, 2006), <http://aidsinfo.nih.gov/contentfiles/AdultandAdolescentGL.pdf>,  
7 bearing Bates numbers STAN 034358, STAN 034367.

8 18. Attached hereto as Exhibit 17 are true and correct copies of excerpts from  
9 Webster's Medical Desk Dictionary (1986), bearing Bates numbers STAN 031810, STAN  
10 031811, STAN 031814, and STAN 031815.

11 19. Attached hereto as Exhibit 18 are true and correct copies of excerpts from  
12 Dorland's Illustrated Medical Dictionary (27<sup>th</sup> Ed) (1988), bearing Bates numbers STAN  
13 031818, STAN 031821, STAN 031825 and STAN 031827.

14 20. Attached hereto as Exhibit 19 are true and correct copies of excerpts from  
15 Webster's Third New International Dictionary (1986), bearing Bates numbers STAN 031863,  
16 STAN 0381864 and STAN 031872.

17 21. Attached hereto as Exhibit 20 are true and correct copies of excerpts from Taber's  
18 Cyclopedic Medical Dictionary (17<sup>th</sup> Ed) (1993).

19 22. Attached hereto as Exhibit 21 is a true and correct copy of *The Board of Trustees*  
20 *of the Leland Stanford Junior University v. Visible Genetics, Inc.*, No. 01-3671, slip. op. (N.D.  
21 Cal. August 28, 1992) (Breyer, J.).

22 23. Attached hereto as Exhibit 22 are true and correct copies of excerpts from the  
23 patent file history for U.S. Application Serial No. 07/883,327, bearing Bates numbers STAN  
24 006370 – STAN 006381.

25 24. Attached hereto as Exhibit 23 are true and correct copies of excerpts from  
26 Merriam Webster, Medline Plus Medical Dictionary, bearing Bates numbers STAN 034158 –  
27 STAN 034164.

28

