

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 THE BOARD OF THE TRUSTEES OF
 THE LELAND STANFORD JUNIOR
 UNIVERSITY,
 Plaintiff,
 vs. No. C-05-04158 MHP
 ROCHE MOLECULAR SYSTEMS, INC.;
 ROCHE DIAGNOSTICS CORPORATION;
 ROCHE DIAGNOSTICS OPERATIONS,
 INC.; ROCHE DIAGNOSTIC SYSTEMS,
 INC.,
 Defendant.

AND RELATED COUNTERCLAIM.

CONFIDENTIAL - ATTORNEYS' EYES ONLY
 VIDEOTAPED DEPOSITION OF JEFFREY PRICE, Ph.D.
 Berkeley, California
 Friday, September 29, 2006

Reported by:
 SUZANNE F. BOSCHETTI
 CSR No. 5111
 Job No. 3-53825

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1 APPEARANCES:
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 8 ROCHE DIAGNOSTICS OPERATIONS,
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 9 INC.,
 10 Defendant.
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 12 AND RELATED COUNTERCLAIM.
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 14
 15 Confidential videotaped deposition of JEFFREY
 16 PRICE, Ph.D., taken on behalf of Plaintiff and
 17 Counterclaim Defendants The Board of the Trustees of the
 18 Leland Stanford Junior University, at Doubletree Hotel,
 19 200 Marina Boulevard, Berkeley, California, beginning at
 20 1:00 p.m. and ending at 5:54 p.m. on Friday, September
 21 29, 2006, before SUZANNE F. BOSCHETTI, Certified
 22 Shorthand Reporter No. 5111.
 23
 24
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1 INDEX
 2 WITNESS: EXAMINATION
 3 JEFFREY PRICE, Ph.D.
 4
 5 BY MS. WILKINSON 6
 6
 7 EXHIBITS
 8 (None produced)
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04:36:59 1 A. Yes.
 04:37:00 2 Q. -- Cetus is limited to a license, if anything?
 04:37:08 3 MR. BOOZELL: Same objections.
 04:37:09 4 THE WITNESS: Well, that -- that's your
 04:37:10 5 opinion. I'm not -- I mean, don't ask me. I'm not --
 04:37:13 6 I'm not a lawyer. I don't know.
 04:37:13 7 BY MS. WILKINSON:
 04:37:15 8 Q. Is this --
 04:37:16 9 A. It says that Cetus may be granted a license.
 04:37:20 10 I -- I don't know what it says about limitations. I --
 04:37:23 11 I -- you know.
 04:37:24 12 Q. I'm trying to understand your understanding of
 04:37:31 13 this clause --
 04:37:35 14 A. Yes.
 04:37:35 15 Q. -- as -- as you signed the agreement.
 04:37:42 16 So this agreement does not provide for outright
 04:37:47 17 ownership of inventions by Cetus?
 04:37:52 18 MR. BOOZELL: Vague and ambiguous. Calls for
 04:37:53 19 speculation. Lacks foundation. Calls for a legal
 04:37:55 20 conclusion. And if you need to read the entire
 04:37:58 21 agreement, she's only pointed out particular
 04:38:00 22 provisions --
 04:38:00 23 THE WITNESS: Yeah.
 04:38:01 24 MR. BOOZELL: -- go ahead.
 04:38:01 25 BY MS. WILKINSON:

04:39:06 1 THE WITNESS: That -- that was sometimes in
 04:39:09 2 agreements that we had, yes.
 04:39:09 3 BY MS. WILKINSON:
 04:39:10 4 Q. It wasn't common to negotiate the specific
 04:39:13 5 terms of those licenses at this time?
 04:39:17 6 MR. BOOZELL: Calls for speculation. Lacks
 04:39:18 7 foundation. Vague and ambiguous.
 04:39:21 8 THE WITNESS: I don't think the terms -- I
 04:39:24 9 don't think there were license terms for every materials
 04:39:27 10 transfer agreement, no.
 04:39:28 11 BY MS. WILKINSON:
 04:39:28 12 Q. And why do you think that is?
 04:39:30 13 A. At this point, I don't know. Probably too
 04:39:34 14 difficult to determine. I don't know.
 04:39:39 15 Q. And if Cetus elected an exclusive or
 04:39:48 16 nonexclusive license under this agreement, is it your
 04:39:53 17 understanding that terms such as the royalty rate would
 04:39:56 18 be negotiated in good faith by the parties at -- at a
 04:40:03 19 later point in time?
 04:40:05 20 MR. BOOZELL: Vague and ambiguous. It's
 04:40:06 21 compound. It's misleading. Misstates the document.
 04:40:10 22 Calls for a legal conclusion. Calls for speculation.
 04:40:13 23 Lacks foundation.
 04:40:24 24 THE WITNESS: It looks like here they're
 04:40:27 25 talking about negotiating a -- a -- a license at some

04:38:02 1 Q. I'm speaking with respect to this provision.
 04:38:08 2 A. But -- but you're speaking with respect to this
 04:38:11 3 provision, and what you're saying is, it -- it sounds
 04:38:15 4 like what you're trying to say is this provision limits
 04:38:21 5 Cetus from having an ownership position, and I'm not
 04:38:25 6 sure it does that.
 04:38:26 7 Q. I'm saying if Cetus has an ownership interest
 04:38:30 8 under this agreement --
 04:38:30 9 A. Yeah.
 04:38:30 10 Q. -- that ownership interest is in the form of a
 04:38:33 11 license?
 04:38:33 12 MR. BOOZELL: Calls for a legal conclusion.
 04:38:34 13 Calls for speculation. Lacks foundation.
 04:38:36 14 THE WITNESS: I would say --
 04:38:36 15 BY MS. WILKINSON:
 04:38:37 16 Q. Is that your understanding?
 04:38:38 17 A. I would say that one form of its ownership
 04:38:40 18 could be in the -- in the form of a license.
 04:38:46 19 Q. And the license that would be -- that would
 04:38:53 20 follow under this agreement --
 04:38:55 21 A. Mm-hmm.
 04:38:56 22 Q. -- was it your practice to say that the terms
 04:38:58 23 of that license would be negotiated in good faith at
 04:39:03 24 some later date?
 04:39:04 25 MR. BOOZELL: Vague and ambiguous.

04:40:30 1 point.
 04:40:31 2 BY MS. WILKINSON:
 04:40:31 3 Q. And would royalty rate be one of the terms that
 04:40:34 4 you typically --
 04:40:38 5 A. Well, it doesn't say anything about -- I mean,
 04:40:40 6 there could be many different forms of a license. They
 04:40:42 7 wouldn't necessarily have to have royalties. It could
 04:40:45 8 be anything.
 04:40:45 9 Q. Do you have any recollection about whether at
 04:40:54 10 the time this agreement was -- was written, whether the
 04:41:04 11 licenses would be royalty-bearing?
 04:41:07 12 MR. BOOZELL: Calls for speculation. Lacks
 04:41:09 13 foundation. Calls for a legal conclusion.
 04:41:09 14 BY MS. WILKINSON:
 04:41:12 15 Q. I'm asking about your recollection about --
 04:41:12 16 A. I --
 04:41:14 17 Q. -- whether the royalty -- whether a royalty
 04:41:18 18 would have attached to the license.
 04:41:20 19 MR. BOOZELL: Same objections. Vague and
 04:41:21 20 ambiguous also.
 04:41:22 21 THE WITNESS: I think most -- most licenses
 04:41:26 22 that we would grant would either be royalty-bearing or
 04:41:32 23 they would be -- and -- and royalty-bearing is a little
 04:41:35 24 bit confusing because a lot of people think of royalty
 04:41:39 25 as just something that's -- that's paid out over time

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I, JEFFREY PRICE, Ph.D., do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, 20____, at _____ (City) (State)

JEFFREY PRICE, Ph.D.

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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: _____

SUZANNE F. BOSCHETTI
CSR No. 5111

05:54:19 24