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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.

AND RELATED COUNTERCLAIM.

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VIDEOTAPED DEPOSITION OF MICHAEL W. KONRAD, Ph.D.
Redwood Shores, California
Friday, July 28, 2006

Reported by:
GINA GLANTZ
CSR No. 9795, RPR, RMR
JOB No. 3-50475

1 APPEARANCES:
2
3 For Plaintiff The Board of Trustees of The Leland
Stanford Junior University and Counterclaim Defendants
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10 For Defendants and Counterclaimants Roche Molecular
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
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4 THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
5 UNIVERSITY,
6 Plaintiff,
7 vs. No. C-05-04158-MHP
8 ROCHE MOLECULAR SYSTEMS, INC.,
ROCHE DIAGNOSTICS CORPORATION;
9 ROCHE DIAGNOSTICS OPERATIONS, INC.;
ROCHE DIAGNOSTICS SYSTEMS, INC.,
10
11 Defendants.
12 AND RELATED COUNTERCLAIM.

13 Videotaped Deposition of MICHAEL W. KONRAD, Ph.D.,
14 taken on behalf of Plaintiff and Counterclaim
15 Defendants, at 555 Twin Dolphin Drive, Suite 560,
16 Redwood Shores, California, beginning at 10:15 a.m. and
17 ending at 2:07 p.m., on Friday, July 28, 2006, before
18 GINA GLANTZ, Certified Shorthand Reporter No. 9795.
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1 INDEX
2 WITNESS EXAMINATION
3 MICHAEL W. KONRAD, Ph.D.
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6 BY MR. RODRIGUEZ 9
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8 EXHIBITS
9
10 DEPOSITION PAGE
11
12 559 Four-page document, the first page is 8
titled "Invention Disclosure" (RMS 00194
- 197)
13
14 560 Four-page document titled "A Method and 8
Apparatus for Detecting and Quantitating
Specific DNA Sequences Generated Using
15 the Polymerase Chain Reaction" by Michael
Konrad, dated February 14, 1989 (RMS
16 00198 - 201)
17 561 Six-page document titled "A Method and 8
Apparatus for Detecting and Quantitating
DNA Sequences Generated Using the
18 Polymerase Chain Reaction," by Michael
Konrad, dated February 20, 1989 (RMS
19 00208 - 213)
20
21 562 Eight-page curriculum vitae of Michael W. 8
Konrad, Ph.D. (RMS 0063534 - 3541)
22 563 Three-page document titled "Publication 40
Clearance Request"; IP 89-225 (RMS 00096
- 08)
23
24
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1 A I don't know if this one did or did not.
2 Q Could you describe the technology of the --
3 that's disclosed in that invention disclosure?
4 MR. CANNON: Object as to form.
5 THE WITNESS: Yes, I think you'd need an expert
6 witness for that.
7 BY MR. RODRIGUEZ:
8 Q That's okay. Just do your best.
9 A Well, this is a brilliant idea, which was later
10 developed by others, and I'm sure has many patents, and
11 there are many instruments that you can buy that do
12 something very similar to this.
13 Q Can you generally describe the invention?
14 A It's a proposal for a device to follow the
15 polymerase chain reaction as it occurs, as opposed to
16 analyzing the end product.
17 Q And I believe you said you don't recall, one
18 way or the other, whether Exhibit 560 actually matured
19 into a patent application?
20 A That's correct.
21 Q If I could direct your attention to Exhibit
22 561.
23 A Yes.
24 Q This is a document having Bates number RMS
25 00208 through 00213. Would you please take a look at

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1 that and tell me if you recognize it.
2 A This is Exhibit 561; right?
3 Q Yes.
4 A Yes.
5 Q Would you please take a look at that and tell
6 me if you recognize it.
7 MR. CANNON: Do you have it in front of you?
8 THE WITNESS: Yes. Let's see. This looks like
9 almost a word-for-word copy of -- it's the same -- it's
10 exactly the same document, I believe. Let's see. The
11 words are certainly the same.
12 BY MR. RODRIGUEZ:
13 Q Maybe perhaps just --
14 A But the diagrams are a little fancier and
15 neater, but it's the same idea, and in many cases, it's
16 word for word, so I don't know why I said -- let's see,
17 the date on it is just one -- just one week later. Yes,
18 so I don't -- I don't understand why there are two
19 disclosures one week apart that disclose the same
20 proposed machine.
21 Q And so is it the case, also, that for Exhibit
22 561, you don't know, one way or the other, whether that
23 matured into a patent application?
24 A That's correct, I don't know anything about it.
25 MR. RODRIGUEZ: Can you mark this, please.

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1 Q The reporter has handed you what has been
2 marked as Exhibit -- oh, actually you know what? This
3 looks like it's already been marked, can we skip --
4 we'll come back to 563. So we'll fix it at the break,
5 but let me just reidentify it for the record. The
6 reporter has handed you what has been previously marked
7 as Exhibit 34. It's a document having Bates number RMS
8 00542 through 00544. Would you please take a look at
9 Exhibit 34 and tell me if you recognize it.
10 A I don't happen to recognize it, no.
11 Q Would you go ahead --
12 A I can barely read the body, but anyway, I
13 don't -- I don't recognize it.
14 Q Would you go ahead and do your best to actually
15 read through the body of it, and see if that rings a
16 bell at all, see if that refreshes your recollection at
17 all about it.
18 MR. CANNON: Take your time and read the whole
19 document.
20 THE WITNESS: Well, I can certainly read the
21 last page, which contains the abstract, because it's
22 typed, and I read -- I can read that and understand it.
23 I really can't verify that that's exactly the same as is
24 what is in the handwriting on the first page of brief
25 summary. But I do understand the last page.

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1 BY MR. RODRIGUEZ:
2 Q Given what you are able to read, does that
3 refresh your recollection at all as to the nature of
4 this document?
5 A I don't remember the document.
6 Q Do you see, at the top of the first page, RMS
7 00542, the "To" is redacted but it says "From: M.
8 Konrad (for Mark Holodniy)"?
9 A Yes, and that's my handwriting.
10 Q That is your handwriting?
11 A Yes, that's correct.
12 Q Do you recall at all submitting an invention
13 disclosure for Mark Holodniy?
14 A I don't remember it, no.
15 Q Do you have any impression of why it would be
16 necessary for you to do that on his behalf?
17 MR. CANNON: Object as to form.
18 THE WITNESS: No.
19 BY MR. RODRIGUEZ:
20 Q Was there anything in your interactions with
21 him that would have made you the point person for
22 submitting an invention disclosure on his behalf?
23 A Not that I'm aware of.
24 Q Because it does seem that he worked a lot more
25 with what you've referred to as the PCR group --

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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: _____

GINA GLANTZ
CSR No. 9795