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Page 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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.

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VIDEOTAPED DEPOSITION OF THOMAS J. WHITE, Ph.D.

Redwood Shores, California

October 9, 2006

Reported by:
SUZANNE F. BOSCHETTI
CSR No. 5111

Job No. 3-53999

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Page 50

10:36:05 1 developed a diagnostic test for anything. He didn't
 10:36:08 2 have that expertise. But people in his department could
 10:36:10 3 easily have used tests developed by Kwok, Sninsky or
 10:36:14 4 others for whatever purpose they had in mind. And the
 10:36:17 5 same would apply to Konrad and people -- people in this
 10:36:20 6 department. Or they could have tried to develop one
 10:36:22 7 independently since some people in that department did
 10:36:26 8 have the requisite expertise.
 10:36:31 9 BY MS. RHYU:
 10:36:32 10 Q. But are you aware specifically of anyone
 10:36:34 11 outside of the labs of John Sninsky and Shirley Kwok who
 10:36:40 12 had developed any tests for detection of HIV
 10:36:45 13 sequences --
 10:36:48 14 MR. BOOZELL: Vague and ambiguous.
 10:36:48 15 BY MS. RHYU:
 10:36:49 16 Q. -- using PCR?
 10:36:50 17 MR. BOOZELL: Calls for speculation. Lacks
 10:36:52 18 foundation.
 10:36:52 19 THE WITNESS: I'm aware that the reason I'm
 10:36:54 20 here deposing -- being deposed today has something to do
 10:36:58 21 with that question, but beyond that, I have no specific
 10:37:00 22 recollection of it.
 10:37:02 23 MS. RHYU: Okay. Let's take a break.
 10:37:03 24 VIDEO OPERATOR: The time is 10:37. We are
 10:37:07 25 going off the record.

Page 51

10:52:12 1 (Recess.)
 10:52:21 2 VIDEO OPERATOR: The time is 10:52. We are
 10:52:36 3 back on the record.
 10:52:36 4 BY MS. RHYU:
 10:52:39 5 Q. As vice president of research at Cetus, did you
 10:52:45 6 endeavor to keep informed of the research projects that
 10:52:48 7 were going on at Cetus?
 10:52:49 8 MR. BOOZELL: Vague and ambiguous.
 10:52:51 9 THE WITNESS: Yes, to the extent that was
 10:52:53 10 possible, I took some -- more interest in some and less
 10:52:56 11 interest in others, but in general I kept apprised of
 10:52:59 12 the status.
 10:52:59 13 BY MS. RHYU:
 10:53:00 14 Q. And through what mechanisms? How did you keep
 10:53:04 15 informed of the various research projects that were
 10:53:07 16 going on at Cetus?
 10:53:08 17 A. Through informal conversations with the
 10:53:12 18 individual scientists, through occasional meetings with
 10:53:15 19 scientists, through occasionally attending their
 10:53:18 20 laboratory meetings, scientific retreats and occasional
 10:53:23 21 reports from some of the scientists.
 10:53:27 22 Q. Were there structures or systems in place for
 10:53:30 23 you to have regular reports from the scientists?
 10:53:36 24 MR. BOOZELL: Vague and ambiguous.
 10:53:37 25 THE WITNESS: As I mentioned earlier, some

Page 52

10:53:40 1 scientists wrote regular reports and some never wrote
 10:53:43 2 reports. So there wasn't a formal system of report
 10:53:48 3 writing in the research group. In the development group
 10:53:52 4 people were usually more responsible about writing
 10:53:56 5 reports. So --
 10:53:58 6 BY MS. RHYU:
 10:54:00 7 Q. So your distinction between -- I just want to
 10:54:04 8 understand your distinction between the research group
 10:54:06 9 and the development group. What group would John
 10:54:08 10 Sninsky and Shirley Kwok fall into?
 10:54:11 11 A. John Sninsky and Shirley Kwok were members of
 10:54:14 12 the research group.
 10:54:16 13 Q. And Eric Groves, what group was he in?
 10:54:20 14 A. As I mentioned earlier, Eric Groves was in the
 10:54:24 15 clinical group, which was either clinical or
 10:54:27 16 pharmacology or toxicology. I can't remember
 10:54:30 17 specifically about him. But that was a third segment of
 10:54:35 18 the research and development group, and I believe they
 10:54:39 19 reported to someone else who reported to Price, but --
 10:54:42 20 and indirectly to me as my associate director of
 10:54:45 21 activities. But they were not under -- Groves was not
 10:54:49 22 in the research group.
 10:54:50 23 Q. As to Groves' work, how did you keep updated on
 10:54:55 24 his work?
 10:54:56 25 MR. BOOZELL: Vague and ambiguous. Assumes

Page 53

10:54:57 1 facts not in evidence. Calls for speculation.
 10:55:07 2 THE WITNESS: As part of my responsibility as
 10:55:10 3 associate director of research and development, I tried
 10:55:12 4 to keep track of the things that were not under my
 10:55:14 5 direct responsibility. I could do that through
 10:55:16 6 attending occasional meetings where they were presenting
 10:55:20 7 the activities going on in their areas. Since they were
 10:55:23 8 usually running the clinical trials of potential drugs
 10:55:27 9 that had been developed in research or discovered and
 10:55:31 10 made in research, I had a personal interest in finding
 10:55:34 11 out what was happening with the drugs, and so sometimes
 10:55:37 12 I paid attention to the clinical trials.
 10:55:40 13 Some of the people who worked for me
 10:55:42 14 occasionally did experimental work as part of the
 10:55:46 15 activities of the pharmacology, toxicology or clinical
 10:55:51 16 group, but I can't recall specifically whether Groves
 10:55:56 17 wrote reports or not or even what area of that whole
 10:56:00 18 division wrote reports. My guess is they probably wrote
 10:56:04 19 reports from time to time but not necessarily on a
 10:56:06 20 formal basis.
 10:56:15 21 BY MS. RHYU:
 10:56:15 22 Q. Did you have any knowledge of a collaboration
 10:56:18 23 between Dr. Groves and Dr. Tom Merigan?
 10:56:22 24 A. Yes.
 10:56:22 25 Q. And what did you know about that collaboration?

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Page 54

10:56:25 1 A. Well, I believe Merigan in his consulting role
 10:56:29 2 for Cetus -- he's a physician, so he advised Cetus on
 10:56:34 3 some of the clinical trials that Cetus was conducting.
 10:56:38 4 And I believe Stanford, through Merigan or Stanford
 10:56:44 5 Medical Center, was one of the clinical trial sites for
 10:56:47 6 Interleukin 2 testing with the hypothesis that it would
 10:56:53 7 benefit -- benefit people infected with the AIDS virus,
 10:56:56 8 as I mentioned earlier in the deposition.
 10:56:58 9 Q. And do you know what Merigan's role was as a
 10:57:01 10 consultant in that capacity?
 10:57:03 11 MR. BOOZELL: Vague and ambiguous.
 10:57:07 12 THE WITNESS: Could you be more specific about
 10:57:09 13 the capacity you're referring to?
 10:57:10 14 BY MS. RHYU:
 10:57:11 15 Q. What did he consult on in the context of the
 10:57:14 16 IL-2 clinical studies?
 10:57:16 17 A. Well, he was a consultant to that division, and
 10:57:22 18 I presume it had to do with the clinical trials of the
 10:57:26 19 Interleukin 2. He might have also consulted on the
 10:57:30 20 interferon trial as well earlier, but I don't have a
 10:57:33 21 specific knowledge of his role there.
 10:57:34 22 Q. Do you have any specific knowledge as to any
 10:57:37 23 collaborations between Dr. Merigan and Dr. Groves that
 10:57:40 24 related to detection of HIV sequences using PCR?
 10:57:46 25 MR. BOOZELL: Vague and ambiguous. Calls for

Page 55

10:57:48 1 speculation.
 10:57:51 2 THE WITNESS: I know that that's the reason for
 10:57:53 3 this deposition, but aside from that, Merigan consulted
 10:57:59 4 with Cetus on any or all of Cetus's projects. He was
 10:58:04 5 the general consultant, and he had been a member of
 10:58:08 6 Cetus Immune Corporation, so --
 10:58:10 7 BY MS. RHYU:
 10:58:10 8 Q. But are you specifically aware of any
 10:58:12 9 collaboration that Merigan had with Groves involving the
 10:58:21 10 use of PCR to detect HIV sequences?
 10:58:25 11 MR. BOOZELL: Vague and ambiguous. Asked and
 10:58:27 12 answered. Calls for speculation. Lacks foundation.
 10:58:31 13 THE WITNESS: I'm aware that a collaboration
 10:58:34 14 between Merigan and Cetus is the subject of this lawsuit
 10:58:37 15 and deposition. Beyond that, no.
 10:58:37 16 BY MS. RHYU:
 10:58:40 17 Q. So as the senior -- I'm sorry, as the vice
 10:58:44 18 president of research, you don't recall knowing about
 10:58:49 19 any collaboration that specifically related to PCR and
 10:58:55 20 HIV that Dr. Merigan was involved in while you were at
 10:58:59 21 Cetus?
 10:58:59 22 MR. BOOZELL: Vague and ambiguous. Misleading.
 10:59:01 23 Misstates his testimony. It's argumentative. It calls
 10:59:04 24 for speculation.
 10:59:05 25 THE WITNESS: I was vice president of research

Page 56

10:59:07 1 through February of 1989, so my knowledge of Cetus's
 10:59:10 2 activities as vice president of research are limited to
 10:59:14 3 that time frame. And in 1988 I was on a sabbatical from
 10:59:19 4 that position, and so I had less involvement in managing
 10:59:23 5 the research in 1988.
 10:59:23 6 BY MS. RHYU:
 10:59:31 7 Q. With those qualifications, you don't have any
 10:59:34 8 specific knowledge of Dr. Merigan's involvement in -- in
 10:59:39 9 consulting relating to PCR and HIV?
 10:59:42 10 MR. BOOZELL: Same objections.
 10:59:42 11 BY MS. RHYU:
 10:59:43 12 Q. Is that correct?
 10:59:44 13 MR. BOOZELL: Same objections.
 10:59:48 14 THE WITNESS: As I mentioned earlier, I know
 10:59:51 15 that Merigan was interested in testing Interleukin 2 in
 10:59:56 16 the AIDS patients, and PCR would have been used as part
 11:00:03 17 of that clinical trial.
 11:00:03 18 BY MS. RHYU:
 11:00:10 19 Q. Why do you say "PCR would have been used as
 11:00:12 20 part of that clinical trial"?
 11:00:14 21 A. Because PCR was one of the methods of
 11:00:17 22 diagnosing people who were infected with the AIDS virus,
 11:00:21 23 and we were also interested in the question of whether
 11:00:24 24 effective therapies would reduce the amount of virus.
 11:00:29 25 Q. Do you have any memory today of Dr. Merigan

Page 57

11:00:34 1 working in collaboration with Dr. Groves on using PCR to
 11:00:41 2 detect HIV sequences?
 11:00:42 3 MR. BOOZELL: Asked and answered. Vague and
 11:00:44 4 ambiguous. Calls for speculation. Lacks foundation.
 11:00:47 5 Misleading.
 11:00:49 6 THE WITNESS: Could you repeat the question?
 11:00:50 7 MS. RHYU: Can you read it back, please.
 11:01:03 8 (Record read as follows:
 11:01:03 9 "QUESTION: Do you have any memory
 11:01:03 10 today of Dr. Merigan working in collaboration
 11:01:03 11 with Dr. Groves on using PCR to detect HIV
 11:01:05 12 sequences?")
 11:01:05 13 THE WITNESS: In what period?
 11:01:07 14 BY MS. RHYU:
 11:01:08 15 Q. While you were working at Cetus.
 11:01:09 16 MR. BOOZELL: Same objections.
 11:01:14 17 THE WITNESS: No.
 11:01:14 18 BY MS. RHYU:
 11:01:32 19 Q. I'm handing you what was previously marked as
 11:01:35 20 Exhibit 601.
 11:01:35 21 (Previously marked Exhibit 601 was
 11:01:46 22 presented to the witness.)
 11:01:46 23 BY MS. RHYU:
 11:01:46 24 Q. This is a consulting agreement made between
 11:01:48 25 Cetus and Tom Merigan, and the date is April 13th, 1984

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Page 58

11:01:57 1 Do you recognize Exhibit 601?
 11:02:02 2 A. Yes.
 11:02:03 3 Q. And when did you last look at Exhibit 601?
 11:02:08 4 MR. BOOZELL: I'm going to object to the extent
 11:02:10 5 it might call for attorney-client privileged
 11:02:12 6 communications and instruct the witness not to answer
 11:02:14 7 with respect to any documents I may have shown him in
 11:02:18 8 his prep.
 11:02:18 9 BY MS. RHYU:
 11:02:27 10 Q. I'll help you out.
 11:02:28 11 A. Sorry. I don't know how to answer that
 11:02:30 12 question.
 11:02:30 13 Q. Okay. Aside from your preparation for today's
 11:02:32 14 deposition, have you seen this document before?
 11:02:34 15 A. Not to my knowledge.
 11:02:36 16 Q. Were you involved in preparing or negotiating
 11:02:44 17 or executing any consulting agreements with consultants
 11:02:48 18 while you were working at Cetus?
 11:02:49 19 MR. BOOZELL: Vague and ambiguous. Overbroad,
 11:02:51 20 compound.
 11:02:53 21 THE WITNESS: Yes.
 11:02:54 22 BY MS. RHYU:
 11:02:54 23 Q. Were you involved in preparing, negotiating or
 11:03:02 24 executing any consulting agreements with Dr. Merigan?
 11:03:06 25 MR. BOOZELL: Same objections.

Page 59

11:03:09 1 THE WITNESS: I don't recall specifically, but
 11:03:11 2 it would have been my -- one of my roles to have an
 11:03:17 3 opinion and/or recommend that we have consulting
 11:03:20 4 agreements with certain scientists or physicians, and
 11:03:26 5 Dr. Merigan would have been one of them.
 11:03:26 6 BY MS. RHYU:
 11:03:29 7 Q. So I just want to make clear, then, you don't
 11:03:33 8 specifically recall working on this consulting
 11:03:35 9 agreement, but you think that it was likely that you
 11:03:39 10 were involved in putting this agreement in place?
 11:03:42 11 A. No --
 11:03:42 12 MR. BOOZELL: Vague and ambiguous.
 11:03:43 13 Mischaracterizes his testimony.
 11:03:44 14 THE WITNESS: -- that mischaracterizes my
 11:03:45 15 testimony. What I said was that in general I would make
 11:03:48 16 my opinion known. If the consulting was specifically
 11:03:53 17 for activities in the research area, then I would have
 11:03:57 18 more involvement in the nature of the topics to be
 11:04:01 19 consulted on. In Merigan's case, since he was a
 11:04:05 20 consultant to all of R&D, I would have given my opinion
 11:04:10 21 to Price as to whether or not I thought it would be
 11:04:12 22 useful to the research organization and potentially to
 11:04:15 23 R&D.
 11:04:15 24 BY MS. RHYU:
 11:04:17 25 Q. And do you recall giving your opinion to

Page 60

11:04:19 1 Dr. Price regarding Merigan -- regarding Merigan's
 11:04:25 2 consultancy?
 11:04:27 3 MR. BOOZELL: Vague and ambiguous.
 11:04:29 4 THE WITNESS: No, I don't recall giving my
 11:04:31 5 opinion to Dr. Price specifically with regard to Dr.
 11:04:34 6 Merigan.
 11:04:34 7 BY MS. RHYU:
 11:04:34 8 Q. Do you recall giving your advice to anyone
 11:04:37 9 relating to Dr. Merigan being a consultant for Cetus?
 11:04:42 10 MR. BOOZELL: Same objections.
 11:04:43 11 THE WITNESS: Yes.
 11:04:44 12 BY MS. RHYU:
 11:04:44 13 Q. And what was your advice regarding Merigan
 11:04:49 14 being a consultant for Cetus?
 11:04:50 15 A. It was the same as the other former academic
 11:04:56 16 members of Cetus Immune of Palo Alto, which was they
 11:05:00 17 should be made consultants.
 11:05:02 18 Q. And why did you think that Dr. Merigan should
 11:05:04 19 be made a consultant?
 11:05:06 20 MR. BOOZELL: Vague and ambiguous.
 11:05:09 21 THE WITNESS: Because it was continuing their
 11:05:13 22 roles and funds as consultants, it was one of the ways
 11:05:18 23 of eliminating the subsidiary for Cetus Palo Alto or
 11:05:22 24 Cetus Immune.
 11:05:25 25 BY MS. RHYU:

Page 61

11:05:25 1 Q. Did you also appreciate that Dr. Merigan had
 11:05:28 2 expertise that would be helpful for Cetus?
 11:05:32 3 MR. BOOZELL: Vague and ambiguous. Misleading.
 11:05:39 4 THE WITNESS: I believe that Dr. Merigan had
 11:05:41 5 certain expertise that would be useful to Cetus.
 11:05:41 6 BY MS. RHYU:
 11:05:51 7 Q. You said you gave some advice regarding
 11:05:53 8 consultants. Did you actually read consulting
 11:05:58 9 agreements for Cetus consultants in the course of
 11:06:03 10 getting these consulting agreements in place?
 11:06:06 11 MR. BOOZELL: Vague and ambiguous.
 11:06:07 12 THE WITNESS: I'm not sure what you mean by
 11:06:09 13 "these consulting agreements." You mean a specific one
 11:06:11 14 or consulting agreements in general?
 11:06:13 15 BY MS. RHYU:
 11:06:13 16 Q. I'm just asking you generally to start. Was
 11:06:15 17 that a role of yours? Were you familiar with Cetus
 11:06:18 18 consulting agreements?
 11:06:20 19 A. I was familiar with the Cetus consulting
 11:06:23 20 agreements that specifically would be for consultants
 11:06:26 21 that I wanted to have as -- for the research division.
 11:06:28 22 Those I would usually read carefully. Other ones from
 11:06:32 23 other divisions or even for R&D in general, sometimes
 11:06:36 24 other people, like apparently in this case, Price had
 11:06:39 25 more involvement with or exclusive involvement with.

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Page 62

11:06:43 1 Q. Okay. If you could look at Exhibit 601. On
 11:06:49 2 the first page there's a paragraph 2 that refers to
 11:06:54 3 duties. Do you see that paragraph?
 11:06:55 4 A. Yes.
 11:06:56 5 Q. Does that paragraph look familiar to you?
 11:07:01 6 MR. BOOZELL: Vague and ambiguous.
 11:07:01 7 THE WITNESS: No.
 11:07:01 8 BY MS. RHYU:
 11:07:05 9 Q. Do the terms recited in the paragraph for the
 11:07:07 10 consultant look familiar to you?
 11:07:09 11 MR. BOOZELL: Same objections.
 11:07:11 12 THE WITNESS: I'm not sure what you're
 11:07:13 13 referring to. Is it a different section in 2 or is
 11:07:15 14 it --
 11:07:15 15 BY MS. RHYU:
 11:07:16 16 Q. In section 2, the terms for the duties.
 11:07:19 17 MR. BOOZELL: Vague and ambiguous.
 11:07:41 18 THE WITNESS: Could you read back the question?
 11:07:41 19 (Record read as follows:
 11:07:41 20 "Do the terms recited in the
 11:07:41 21 paragraph for the consultant look familiar to
 11:07:53 22 you?")
 11:07:53 23 BY MS. RHYU:
 11:07:54 24 Q. Actually, let me be more specific. Let me
 11:07:56 25 refer to the sentence, the second sentence of paragraph

Page 63

11:07:59 1 2.
 11:07:59 2 "During the Consulting Period, consultant
 11:08:02 3 agrees to perform to the best of his ability
 11:08:04 4 the scientific consulting duties assigned to
 11:08:06 5 him by Cetus, which may include the functions
 11:08:09 6 of inventing, discovering and developing new
 11:08:11 7 and novel devices, methods and principles
 11:08:15 8 relating to the work of Cetus."
 11:08:18 9 Is that a term that was generally in Cetus
 11:08:22 10 consulting agreements?
 11:08:23 11 MR. BOOZELL: Vague and ambiguous.
 11:08:24 12 THE WITNESS: Not to my -- not to my knowledge
 11:08:24 13 BY MS. RHYU:
 11:08:29 14 Q. Do you know if Dr. Merigan was assigned any
 11:08:32 15 duties by Cetus pursuant to this consulting agreement,
 11:08:38 16 Exhibit 601?
 11:08:39 17 MR. BOOZELL: Vague and ambiguous. Calls for a
 11:08:40 18 legal conclusion. Lacks foundation. Calls for
 11:08:42 19 speculation.
 11:08:44 20 THE WITNESS: I don't know specifically, but I
 11:08:46 21 believe he was involved in the clinical trials of
 11:08:48 22 Interleukin 2, which certainly would have come under the
 11:08:52 23 consulting agreement.
 11:09:08 24 BY MS. RHYU:
 11:09:08 25 Q. And on the next page under paragraph, "3.1

Page 64

11:09:15 1 Institutional Affiliations," do you see where it says in
 11:09:29 2 the second paragraph -- I mean in the second sentence of
 11:09:33 3 paragraph 3.1:
 11:09:36 4 "Consultant represents that he's not a
 11:09:39 5 party to any existing agreement which would
 11:09:41 6 prevent him from entering into this
 11:09:43 7 Agreement, and that the only agreements with
 11:09:46 8 third parties which may restrict his
 11:09:49 9 consulting activities on behalf of Cetus are
 11:09:52 10 consultant's existing employment agreement
 11:09:54 11 with the Institution, the Institution's
 11:09:56 12 policy statement with respect to outside
 11:09:59 13 consulting, and the Institution's standard
 11:10:01 14 Patent Agreement, which are attached hereto
 11:10:03 15 as Exhibits A, B, and C, respectively?"
 11:10:09 16 Do you see that?
 11:10:10 17 A. Yes, I do. Except for Exhibits A, B and C, I
 11:10:13 18 don't see those, but --
 11:10:14 19 Q. Do you recognize that as a limitation that was
 11:10:20 20 commonly seen in consulting agreements of Cetus?
 11:10:24 21 MR. BOOZELL: Objection. Vague and ambiguous
 11:10:25 22 Misstates the document. Calls for a legal conclusion.
 11:10:29 23 Calls for speculation.
 11:10:29 24 THE WITNESS: Yeah, these agreements were
 11:10:33 25 prepared by the legal department. I don't recognize

Page 65

11:10:35 1 that specifically as being a -- a routine statement for
 11:10:42 2 such documents. But this is one consulting agreement
 11:10:45 3 among many, so I can't comment whether it's usual or
 11:10:50 4 unusual.
 11:10:50 5 BY MS. RHYU:
 11:10:50 6 Q. Do you remember seeing that limitation before
 11:10:52 7 in other agreements?
 11:10:53 8 MR. BOOZELL: Same objection. Also
 11:10:55 9 mischaracterizes the document.
 11:10:57 10 THE WITNESS: I don't recall any other
 11:10:58 11 consulting agreements from 15 years ago or, in this
 11:11:03 12 case, 20 years ago.
 11:11:03 13 BY MS. RHYU:
 11:11:21 14 Q. You said these agreements were prepared by the
 11:11:23 15 legal department. What was the procedure that Cetus
 11:11:28 16 undertook to get these agreements in place?
 11:11:32 17 MR. BOOZELL: Vague --
 11:11:32 18 BY MS. RHYU:
 11:11:33 19 Q. I just want to have a sense of who was involved
 11:11:36 20 in preparing these agreements.
 11:11:38 21 MR. BOOZELL: It's vague and ambiguous, and I
 11:11:39 22 caution the witness not to reveal any attorney-client
 11:11:41 23 privileged communications between you and anybody at
 11:11:44 24 Cetus related to any of these agreements.
 11:11:45 25 THE WITNESS: What time frame are you referring

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Page 82	Page 84
<p>11:35:16 1 BY MS. RHYU: 11:35:17 2 Q. I'm handing you what's been marked as 11:35:20 3 Exhibit 688. It's a letter dated September 14th, 1983, 11:35:24 4 from you, Tom -- Thomas J. White to Dr. Thomas Merigan 11:35:31 5 bearing the production number RMS 64033. 11:35:31 6 (Deposition Exhibit 688 marked by the 11:35:48 7 court reporter.) 11:35:48 8 BY MS. RHYU: 11:35:48 9 Q. Do you recognize Exhibit 688? 11:35:50 10 MR. BOOZELL: Again instruct you not to answer 11:35:53 11 to the extent it would reveal attorney-client privileged 11:35:56 12 communications. 11:35:57 13 THE WITNESS: Yes, I do. 11:35:57 14 BY MS. RHYU: 11:35:59 15 Q. And what is it? 11:36:00 16 A. It's a letter in support of a grant application 11:36:03 17 that Tom Merigan wanted to send to the National 11:36:07 18 Institutes of Health. 11:36:23 19 Q. Are you finished? 11:36:24 20 A. Mm-hmm. 11:36:26 21 Q. How was Cetus supporting the grant application 11:36:30 22 that Tom Merigan wanted to send to the National 11:36:33 23 Institutes of health? 11:36:33 24 MR. BOOZELL: Vague and ambiguous. The 11:36:34 25 document speaks for itself.</p>	<p>11:38:01 1 point. It says in the letter on September 14th that I'm 11:38:06 2 enclosing two copies of our standard transfer materials 11:38:10 3 form. So for that purpose, if you have the material 11:38:15 4 transfer form that was attached to this letter, as it 11:38:18 5 says enclosure, I would know whether or not the Material 11:38:23 6 Transfer Agreement you previously asked me about, 11:38:24 7 Exhibit 355 dated September 7th, is the Material 11:38:30 8 Transfer Agreement that we sent with the letter of 11:38:31 9 September 14th, or whether there was one that was 11:38:34 10 specific and had to do with testing Interleukin 2 in 11:38:42 11 invitro studies on herpes simplex viruses. There's 11:38:45 12 nothing you've given me that connects the two, so I 11:38:48 13 can't answer that question. 11:39:06 14 BY MS. RHYU: 11:39:06 15 Q. And do you have any understanding as to why you 11:39:11 16 would have enclosed another material transfer form with 11:39:21 17 the transfer of IL-2 on September 14th, 1983, when there 11:39:32 18 was already a Material Transfer Agreement that you had 11:39:42 19 signed on September 9th, 1983, in the form of 11:39:47 20 Exhibit 355? 11:39:47 21 MR. BOOZELL: It's vague and ambiguous. 11:39:50 22 Caution that it potentially misstates the document that 11:39:53 23 was attached -- part of the document. Calls for 11:39:55 24 speculation. Lacks foundation. 11:40:00 25 THE WITNESS: I don't know what the Materials</p>
Page 83	Page 85
<p>11:36:36 1 THE WITNESS: Well, I don't know all ways in 11:36:39 2 which they were supporting it, but one of the ways was 11:36:42 3 to provide him with this letter that would show the 11:36:45 4 reviewers at the National Institutes of Health that he 11:36:50 5 had a company willing to provide him with Interleukin 2 11:36:54 6 for whatever the subject matter of his grant was. 11:36:54 7 BY MS. RHYU: 11:36:58 8 Q. Did this also serve as a -- as documentation of 11:37:06 9 the transfer of IL-2 under the Material Transfer 11:37:17 10 Agreement, Exhibit 355? 11:37:19 11 MR. BOOZELL: Vague and ambiguous. Calls for 11:37:20 12 speculation. Lacks foundation. Calls for a legal 11:37:22 13 conclusion. 11:37:23 14 THE WITNESS: No. This is a letter to 11:37:26 15 Dr. Merigan for him to include with his grant 11:37:30 16 application, indicating we would be willing to provide 11:37:33 17 him with such Interleukin 2 for his studies on herpes 11:37:38 18 simplex viruses. 11:37:38 19 BY MS. RHYU: 11:37:43 20 Q. You're saying Exhibit 688 is unrelated to 11:37:46 21 Exhibit 355? 11:37:47 22 MR. BOOZELL: Vague and ambiguous. Misstates 11:37:49 23 his testimony. Calls for a legal conclusion. Calls for 11:37:51 24 speculation. 11:37:59 25 THE WITNESS: Well, I can't speak to that</p>	<p>11:40:03 1 Transfer Agreement that were enclosed with the letter 11:40:05 2 pertain to, but in some occasions reagents were used for 11:40:10 3 different purposes, and it could be felt that an 11:40:13 4 additional materials transfer agreement was needed in 11:40:16 5 some occasions. Whether that was relevant here or not, 11:40:19 6 I don't know, because there's nothing that connects the 11:40:21 7 two documents that you've given me. 11:40:28 8 BY MS. RHYU: 11:40:29 9 Q. You say in some occasions reagents that were -- 11:40:39 10 I just want to clarify your -- I just want to understand 11:40:43 11 the answer you just provided. You said that in some 11:40:45 12 occasions where reagents were used for different 11:40:48 13 purposes, additional material transfer agreements were 11:40:53 14 needed. And under what circumstances would you need 11:40:56 15 additional material transfer agreements for the same 11:41:01 16 reagents? 11:41:01 17 MR. BOOZELL: It's vague and ambiguous. It's 11:41:03 18 overbroad. Incomplete hypothetical. Calls for 11:41:08 19 speculation. 11:41:08 20 THE WITNESS: Well, a material transfer 11:41:12 21 agreement could have been written narrowly and the 11:41:15 22 request for additional material could be intended to be 11:41:18 23 used for a different purpose, so you wouldn't want an 11:41:20 24 additional materials transfer agreement to cover a 11:41:23 25 different purpose. On the other hand, an agreement</p>

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Page 86

11:41:25 1 could be written very broadly, and one might want to
 11:41:31 2 have additional explicit protection by providing another
 11:41:34 3 one.
 11:41:34 4 But the probable answer to your question is
 11:41:37 5 that the letter is dated the 14th, and since it was sent
 11:41:42 6 by mail, it's unlikely that it would have been signed on
 11:41:46 7 the 15th, but I'm guessing. Without the enclosures for
 11:41:53 8 this thing, it's difficult to know if there's any
 11:41:55 9 connection between the two except they both went to Tom
 11:41:58 10 Merigan.
 11:42:07 11 BY MS. RHYU:
 11:42:07 12 Q. Do you see the stamps -- I'm almost finished
 11:42:11 13 with this line of questioning, and I know we want to
 11:42:13 14 take a lunch break. But our videotape is running out,
 11:42:15 15 so I want to propose that we just take a brief break to
 11:42:19 16 change the video, have a few more minutes of
 11:42:21 17 questioning, and then take a lunch break. Is that all
 11:42:24 18 right?
 11:42:24 19 MR. BOOZELL: Yes.
 11:42:25 20 VIDEO OPERATOR: The time is 11:42. We're
 11:42:27 21 going off the record, and this will be the completion of
 11:42:30 22 media No. 1.
 11:46:25 23 (Recess.)
 11:46:26 24 VIDEO OPERATOR: The time is 11:46. We are
 11:46:43 25 back on the record, and this will be the beginning of

Page 87

11:46:44 1 media No. 2 in the deposition of Dr. Thomas White.
 11:46:44 2 BY MS. RHYU:
 11:46:53 3 Q. Dr. White, you just pointed out with respect to
 11:46:57 4 Exhibits 355 and 688 that Exhibit 688 is dated September
 11:47:06 5 14th and it was sent by mail, and Exhibit 355 was
 11:47:16 6 dated -- was signed September 15th. You said "it's
 11:47:23 7 unlikely that it would have been signed on the 15th, but
 11:47:26 8 I'm guessing." And I just want to understand what you
 11:47:28 9 meant by that.
 11:47:31 10 Was it -- by pointing that out, are you
 11:47:36 11 suggesting that the Material Transfer Agreement,
 11:47:39 12 Exhibit 355, was not the agreement that was attached to
 11:47:43 13 Exhibit 688?
 11:47:45 14 MR. BOOZELL: Vague and ambiguous. Misstates
 11:47:46 15 his testimony. Calls for speculation.
 11:47:55 16 THE WITNESS: I think the beginning part of
 11:47:57 17 your question stated that -- actually, read the
 11:48:03 18 beginning -- maybe you could read that question over
 11:48:05 19 again. It had to do with this thing about was it mailed
 11:48:08 20 on the 14th or not. That's what I'm --
 11:48:08 21 Q. Actually, I'm just asking --
 11:48:10 22 A. I don't know if it was mailed or not, so -- but
 11:48:14 23 aside from that, this was sent on the 14th. It had to
 11:48:17 24 get to Stanford and been signed on the 15th. Whereas it
 11:48:21 25 was prepared on the 9th, my guess is it was probably

Page 88

11:48:24 1 sent shortly after the 9th and been signed on the 15th.
 11:48:27 2 So -- but I'm guessing. I don't know. It looks like
 11:48:29 3 maybe there's another one attached to this thing.
 11:48:31 4 Q. And just to make the record straight, you're
 11:48:34 5 saying it looks to you that there was a different
 11:48:36 6 Material Transfer Agreement attached to Exhibit 688
 11:48:38 7 which is dated September 14th, 1983?
 11:48:41 8 MR. BOOZELL: Vague and ambiguous. Misstates
 11:48:42 9 his testimony. Calls for speculation.
 11:48:45 10 THE WITNESS: I can't tell. There is no
 11:48:47 11 enclosure with the letter. And you haven't shown me any
 11:48:54 12 other material transfer agreements signed by Dr. Merigan
 11:48:57 13 to cover Interleukin 2. There is this one, Exhibit 355,
 11:49:03 14 signed on the 15th. I don't know if they were
 11:49:05 15 associated with each other or not, but it looks to me a
 11:49:09 16 little close in date if he was receiving the letter, the
 11:49:12 17 14th by mail.
 11:49:13 18 BY MS. RHYU:
 11:49:13 19 Q. And it wouldn't be unusual practice for you to
 11:49:18 20 send different material transfer agreements for transfer
 11:49:24 21 of the same reagent if the reagent is to be used for
 11:49:27 22 different purposes?
 11:49:28 23 MR. BOOZELL: Vague and ambiguous. Misstates
 11:49:29 24 his testimony. It's an incomplete hypothetical.
 11:49:31 25 THE WITNESS: That misstates my testimony. As

Page 89

11:49:34 1 I stated earlier, it depends on the breadth of the
 11:49:39 2 initial material transfer agreement and whether or not
 11:49:42 3 one wanted to obtain more protection from the use of the
 11:49:45 4 material, one might add an additional one, either
 11:49:50 5 because the first one was narrow and you wanted to cover
 11:49:52 6 a new use, or even if the first one was broad, you
 11:49:56 7 wanted to cover something more specifically. There are
 11:49:58 8 a variety of reasons one might add additional MTAs or
 11:50:03 9 not.
 11:50:17 10 BY MS. RHYU:
 11:50:17 11 Q. Do you have an understanding of the distinction
 11:50:20 12 between detection of HIV sequences and quantitation of
 11:50:25 13 HIV sequences?
 11:50:27 14 MR. BOOZELL: Vague and ambiguous. Misleading.
 11:50:29 15 THE WITNESS: Well, detection is oftentimes
 11:50:31 16 used to mean both things, but can also refer to a
 11:50:37 17 qualitative assay or an assay for doing sequence
 11:50:42 18 determination. Quantitation, while it is a form of
 11:50:47 19 detection, usually refers to measuring the amount of
 11:50:51 20 something.
 11:50:55 21 BY MS. RHYU:
 11:50:55 22 Q. So detection -- you said detection is
 11:51:03 23 oftentimes used to mean both things. What does it mean
 11:51:07 24 to you?
 11:51:09 25 MR. BOOZELL: Vague and ambiguous.

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Page 90		Page 92	
11:51:09 1	THE WITNESS: Detection to me means the ability	11:54:22 1	not to answer.
11:51:12 2	to detect the subject or the target of detection -- I'm	11:54:25 2	THE WITNESS: Not to my knowledge.
11:51:19 3	assuming you mean by PCR now -- as well as to	11:54:25 3	BY MS. RHYU:
11:51:24 4	characterize and/or classify it, and to measure how much	11:54:30 4	Q. Do you recall a collaboration involving Cetus,
11:51:28 5	of it is present. Detection is used very broadly in a	11:54:34 5	Thomas Merigan and David Schwartz?
11:51:32 6	diagnostics sense.	11:54:42 6	MR. BOOZELL: Vague and ambiguous.
11:51:32 7	BY MS. RHYU:	11:54:47 7	THE WITNESS: Could you specify the time frame
11:51:37 8	Q. Was Cetus initially focused on detection of HIV	11:54:49 8	you're speaking about here?
11:51:40 9	DNA?	11:54:51 9	BY MS. RHYU:
11:51:41 10	MR. BOOZELL: Vague and ambiguous. Calls for	11:54:51 10	Q. In the December 1988 time frame, which is the
11:51:42 11	speculation.	11:54:54 11	date of Exhibit 29 --
11:51:45 12	THE WITNESS: Cetus was initially interested in	11:54:58 12	A. No.
11:51:49 13	finding out whether or not the AIDS virus could be	11:54:58 13	Q. -- on the face of the document.
11:51:53 14	detected in blood samples, and they were interested in	11:55:04 14	At the time that you were at Cetus, you were
11:51:57 15	characterizing variants of the AIDS virus and doing	11:55:07 15	unaware of any collaboration involving Dr. Merigan and
11:52:01 16	epidemiology on it and seeing whether or not a series of	11:55:11 16	Dr. Schwartz and Cetus relating to Exhibit 29?
11:52:05 17	diagnostic tests could be developed to detect, diagnose,	11:55:23 17	MR. BOOZELL: Vague and ambiguous. Asked and
11:52:10 18	characterize and measure the amount of the virus.	11:55:24 18	answered. Calls for a legal conclusion. Calls for
11:52:10 19	BY MS. RHYU:	11:55:28 19	speculation.
11:52:19 20	Q. As its initial focus, Cetus focused on	11:55:29 20	THE WITNESS: I'll have to look at the subject
11:52:24 21	diagnostic tests for detecting HIV DNA, correct?	11:55:31 21	matter of Exhibit 29 in order to see whether I can
11:52:29 22	MR. BOOZELL: Vague and ambiguous. Asked and	11:55:35 22	answer that question or not.
11:52:31 23	answered. Calls for speculation. Assumes facts not in	11:56:16 23	Could you reread the question now, please?
11:52:33 24	evidence.	11:56:34 24	(Record read as follows:
11:52:33 25	THE WITNESS: The first of Cetus's work on the	11:56:34 25	"QUESTION: At the time that you were
Page 91		Page 93	
11:52:37 1	AIDS virus had to do with detecting the DNA or proviral	11:56:34 1	at Cetus, you were unaware of any
11:52:42 2	form of the virus in white blood cells. Then they began	11:56:34 2	collaboration involving Dr. Merigan and
11:52:46 3	to look to see if they could detect it in serum or	11:56:34 3	Dr. Schwartz and Cetus relating to Exhibit
11:52:49 4	plasma. And then they began to look at the possibility	11:56:35 4	29?")
11:52:52 5	of detecting the RNA form of the virus.	11:56:35 5	THE WITNESS: Well, I knew that Tom Merigan was
11:52:52 6	BY MS. RHYU:	11:56:37 6	a member of the Aids Cooperative Trial Group and that he
11:53:04 7	Q. Handing you what was previously marked as	11:56:41 7	was a consultant of Cetus's. And that Sninsky was in
11:53:06 8	Exhibit 29.	11:56:49 8	contact with him. But other than that, I have no
11:53:06 9	(Previously marked Exhibit 29 was	11:56:54 9	knowledge or recollection of the material in Exhibit 29.
11:53:22 10	presented to the witness.)	11:56:54 10	BY MS. RHYU:
11:53:22 11	BY MS. RHYU:	11:56:59 11	Q. Are you aware generally of collaborations that
11:53:23 12	Q. Do you recognize Exhibit 29?	11:57:03 12	Cetus had with scientists who were members of the Aids
11:53:24 13	MR. BOOZELL: I instruct you not to answer to	11:57:09 13	Cooperative Trial Group?
11:53:26 14	the extent that it would reveal attorney-client	11:57:09 14	MR. BOOZELL: Vague and ambiguous. Overbroad.
11:53:28 15	privileged communications.	11:57:12 15	THE WITNESS: I know that Cetus thought the
11:53:40 16	THE WITNESS: Well, it's a Material Transfer	11:57:14 16	AIDS Cooperative Clinical Trial Group was a useful
11:53:42 17	Agreement between Cetus Corporation and Stanford	11:57:23 17	organization that represented an opportunity for several
11:53:48 18	University specifically directed towards the proposed	11:57:26 18	different kinds of collaborations. But generally, very
11:53:52 19	scientific collaboration between Tom Merigan and David	11:57:29 19	generally I would say yes. Specifically I don't recall.
11:53:56 20	Schwartz.	11:57:29 20	BY MS. RHYU:
11:53:56 21	BY MS. RHYU:	11:57:34 21	Q. And we're both using the term Aids Cooperative
11:53:56 22	Q. Did you have any involvement in creating	11:57:40 22	Trial Group fairly loosely. In the agreement there's a
11:54:07 23	Exhibit 29?	11:57:43 23	reference to the AIDS Treatment Cooperative Group. Do
11:54:12 24	MR. BOOZELL: Vague and ambiguous, and to the	11:57:46 24	you know -- and it's referred to as ATCG. Do you know
11:54:19 25	extent that it would involve legal advice, instruct you	11:57:50 25	if that refers to a group of scientists who were working

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Page 110	Page 112
12:59:54 1 everything was considered to be confidential unless	01:02:54 1 MR. BOOZELL: It's vague and ambiguous. It's
12:59:57 2 otherwise designated, would have been covered by a	01:02:55 2 overbroad. Calls for speculation. Lacks foundation.
12:59:59 3 consulting or another type of agreement such as a	01:02:58 3 Calls for a legal conclusion. It's an incomplete
01:00:08 4 materials transfer agreement.	01:03:02 4 hypothetical.
01:00:08 5 BY MS. RHYU:	01:03:02 5 THE WITNESS: I believe that work of that type
01:00:08 6 Q. So it was your understanding that Dr. Merigan	01:03:06 6 was Cetus confidential information and if Merigan used
01:00:10 7 had access to Cetus confidential information about PCR	01:03:09 7 that work and information of Cetus's and/or the
01:00:13 8 and HIV, correct?	01:03:13 8 reagents, he would have been using Cetus confidential
01:00:16 9 A. Yes.	01:03:16 9 information covered by one or more agreements as a
01:00:16 10 MR. BOOZELL: Vague and ambiguous.	01:03:19 10 consultant or a collaborator or as the recipient of
01:00:17 11 THE WITNESS: That I'm certain of.	01:03:23 11 material from Cetus and information from Cetus and as an
01:00:17 12 BY MS. RHYU:	01:03:26 12 attendee at the scientific conferences.
01:00:21 13 Q. So it was further your understanding that any	01:03:26 13 BY MS. RHYU:
01:00:23 14 work that Dr. Merigan did using PCR and HIV would fall	01:03:30 14 Q. And that was your belief in 1991?
01:00:27 15 under his consulting agreement with Cetus?	01:03:34 15 MR. BOOZELL: Same objections.
01:00:30 16 MR. BOOZELL: It's asked and answered. Vague	01:03:37 16 THE WITNESS: As I stated, I left Roche -- I
01:00:31 17 and ambiguous. Overbroad. Calls for a legal	01:03:40 17 left Cetus for Roche in February or March of 1989. If
01:00:33 18 conclusion. Calls for speculation. Lacks foundation.	01:03:44 18 agreements in effect with Merigan were still valid
01:00:35 19 It's an incomplete hypothetical. It's asked and	01:03:47 19 through that period, they would have covered such Cetus
01:00:37 20 answered.	01:03:50 20 confidential information. And in any event, the
01:00:39 21 THE WITNESS: Dr. Merigan was privy to	01:03:53 21 agreements invariably covered for years after the term
01:00:41 22 confidential information at Cetus's work on PCR and HIV	01:03:58 22 of the agreement. So my answer to your question is if
01:00:48 23 from early on as a member of the scientific advisory	01:04:01 23 Merigan used Cetus confidential information, it would
01:00:51 24 group, as a consultant, as an attendee at Cetus	01:04:04 24 have been covered by one of the agreements that Cetus
01:00:55 25 scientific conferences and specific meetings. So all of	01:04:07 25 had with them, including through the early 1990s.
Page 111	Page 113
01:00:59 1 that information would have been covered at least under	01:04:20 1 BY MS. RHYU:
01:01:01 2 this 1984 confidentiality agreement and potentially	01:04:20 2 Q. And you have no reservation arriving at that
01:01:05 3 other ones that he may have arranged with Cetus after I	01:04:23 3 conclusion?
01:01:08 4 left Cetus's employment.	01:04:23 4 MR. BOOZELL: Argumentative. Vague and
01:01:08 5 BY MS. RHYU:	01:04:25 5 ambiguous. Calls for speculation. Lacks foundation.
01:01:14 6 Q. That still doesn't answer my question. I want	01:04:27 6 Calls for a legal conclusion.
01:01:16 7 to know if you have an understanding as to work that Dr.	01:04:42 7 THE WITNESS: I believe that Tom Merigan was
01:01:28 8 Merigan does relating to PCR and HIV, based on what you	01:04:44 8 privy to Cetus confidential information both on the PCR
01:01:39 9 knew about Dr. Merigan's relationship with Cetus in the	01:04:48 9 method and on its use and the diagnosis, detection,
01:01:44 10 late 1980s and early 1990s, was it your conclusion that	01:04:51 10 classification, quantification of the AIDS virus during
01:01:50 11 Dr. Merigan's HIV-related PCR work was subject to or	01:04:54 11 that period of time that you've described. And if he
01:01:59 12 fell under the Cetus consulting agreement?	01:04:58 12 did work on that, he was using Cetus confidential
01:02:03 13 MR. BOOZELL: It's asked and answered. It's	01:05:02 13 information to do such work under an obligation to Cetus
01:02:05 14 vague and ambiguous. It's overbroad. Calls for	01:05:09 14 via his consulting or other agreements that he had with
01:02:07 15 speculation. Lacks foundation. Calls for a legal	01:05:13 15 Cetus Corporation.
01:02:10 16 conclusion. It's an incomplete hypothetical.	01:05:13 16 BY MS. RHYU:
01:02:13 17 THE WITNESS: I can't answer that question	01:05:16 17 Q. So you have no reservation?
01:02:15 18 because you haven't described to me how you define HIV	01:05:17 18 MR. BOOZELL: Asked and answered. Same
01:02:19 19 work using PCR done by Dr. Merigan.	01:05:19 19 objections.
01:02:19 20 BY MS. RHYU:	01:05:20 20 THE WITNESS: I believe I've answered that
01:02:23 21 Q. Okay. I'll define it for you. If Dr. Merigan	01:05:22 21 question.
01:02:27 22 used PCR and showed that one could monitor the efficacy	01:05:22 22 BY MS. RHYU:
01:02:37 23 of HIV therapy by quantitating HIV nucleic acids using	01:05:23 23 Q. What was your answer? Was it "yes" or "no"?
01:02:48 24 PCR, is that work that you would understand belonged to	01:05:25 24 MR. BOOZELL: It doesn't have to be a yes or
01:02:54 25 Cetus?	01:05:27 25 No. It's misleading. Same objections as before.

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Page 118

01:11:25 1 another institution who didn't visit Cetus. Visitors
 01:11:28 2 had more access to other scientists and to confidential
 01:11:32 3 information than people who didn't visit Cetus.
 01:11:32 4 BY MS. RHYU:
 01:11:37 5 Q. In the 1989 time frame, did you have an
 01:11:40 6 understanding of what Cetus's visitor's confidentiality
 01:11:52 7 agreement required?
 01:11:53 8 MR. BOOZELL: Vague and ambiguous. Assumes
 01:11:54 9 facts not in evidence. Calls for speculation. Lacks
 01:11:56 10 foundation. Calls for a legal conclusion.
 01:11:59 11 THE WITNESS: As I've described earlier, I left
 01:12:02 12 Cetus in February or March of 1989, so their policies
 01:12:05 13 after I left I'm not familiar with. But they had a
 01:12:08 14 visitor confidentiality agreement or agreements that
 01:12:11 15 they used prior to the time that I left.
 01:12:11 16 BY MS. RHYU:
 01:12:14 17 Q. And based on what you knew at the time that you
 01:12:17 18 left of Cetus's visitor's confidentiality agreements, do
 01:12:23 19 you know if there was a form, visitor's confidentiality
 01:12:26 20 agreement, at Cetus at that time?
 01:12:28 21 MR. BOOZELL: Vague and ambiguous. Compound.
 01:12:30 22 THE WITNESS: As I've mentioned earlier, Cetus
 01:12:32 23 had forms. Sometimes the forms could be modified.
 01:12:38 24 There was a visitor's confidentiality agreement used for
 01:12:41 25 short-term visitors. Sometimes people who were there

Page 119

01:12:44 1 longer periods had other agreements. But there was a
 01:12:46 2 standard visitor's confidentiality agreement.
 01:12:46 3 BY MS. RHYU:
 01:12:49 4 Q. And do you know what that standard
 01:12:51 5 confidentiality agreement required of the visitors?
 01:12:57 6 MR. BOOZELL: Vague and ambiguous.
 01:12:59 7 THE WITNESS: Well, I can't recall the language
 01:13:01 8 specifically, but the general nature of it is that
 01:13:06 9 during their visit to the Cetus laboratory, the
 01:13:09 10 scientist may be exposed to Cetus confidential
 01:13:12 11 information, data, results, business strategy, economic
 01:13:18 12 information, a very, very broad description of the types
 01:13:21 13 of information that they might be exposed to or access
 01:13:26 14 to materials. And that that information was to be held
 01:13:30 15 in strict confidence and not used for any other purpose.
 01:13:35 16 And also any invention or invention concept that might
 01:13:42 17 come to such a visitor as a result of that access to
 01:13:47 18 Cetus information belonged to Cetus, if I recall
 01:13:52 19 correctly.
 01:13:55 20 BY MS. RHYU:
 01:13:56 21 Q. You said as a result of access to Cetus
 01:13:58 22 information belonged to Cetus. So is that as a result
 01:14:02 23 of access to Cetus's confidential information as you
 01:14:06 24 described it?
 01:14:06 25 MR. BOOZELL: Vague and ambiguous. Calls for a

Page 120

01:14:08 1 legal conclusion. Calls for speculation. Lacks
 01:14:10 2 foundation.
 01:14:12 3 THE WITNESS: It was not up to the visiting
 01:14:14 4 scientist to determine what was confidential or not.
 01:14:17 5 The default condition under those agreements was that
 01:14:20 6 everything that they learned during their visit to Cetus
 01:14:24 7 was Cetus confidential information. If there was any
 01:14:29 8 question about that whatsoever, their obligation was to
 01:14:31 9 provide that -- to not use it and also to provide any --
 01:14:38 10 if they thought they made an invention, it would be
 01:14:41 11 owned by Cetus.
 01:14:41 12 BY MS. RHYU:
 01:14:42 13 Q. I understand what you're saying about the
 01:14:44 14 default presumption of confidentiality. My question is
 01:14:47 15 if Cetus itself said that some information was not
 01:14:52 16 confidential, did the visitor's confidentiality
 01:14:59 17 agreement cover that undisputedly nonconfidential
 01:15:06 18 information?
 01:15:06 19 MR. BOOZELL: It's vague and ambiguous. Calls
 01:15:08 20 for a legal conclusion. Lacks foundation. Calls for
 01:15:10 21 speculation. It's an incomplete hypothetical.
 01:15:12 22 THE WITNESS: I don't have the visitor's
 01:15:16 23 confidentiality agreement in front of me. I can't
 01:15:18 24 remember.
 01:15:18 25 BY MS. RHYU:

Page 121

01:15:18 1 Q. You just can't remember?
 01:15:19 2 A. No.
 01:15:27 3 Q. I'm handing you what was previously marked as
 01:15:29 4 Exhibit 30.
 01:15:29 5 (Previously marked Exhibit 30 was
 01:15:40 6 presented to the witness.)
 01:15:40 7 BY MS. RHYU:
 01:15:41 8 Q. This exhibit bears the date February 14th,
 01:15:46 9 1989. Were you still at Cetus February 14th, 1989?
 01:15:51 10 A. I think I left on that date or the next day.
 01:15:55 11 But as I'm -- as I mentioned, it could have been March
 01:15:58 12 14th or 15th. But I think actually it was February, but
 01:16:01 13 I'm not positive. It was either that day or the day
 01:16:04 14 after or a month later.
 01:16:05 15 Q. So Exhibit 30 is a confidential -- Visitor's
 01:16:09 16 Confidentiality Agreement with Dr. Mark Holodniy. Do
 01:16:13 17 you recognize this agreement aside from any preparation
 01:16:16 18 that you did for today's deposition?
 01:16:19 19 A. No.
 01:16:24 20 Q. Do you think you might have reviewed it prior
 01:16:26 21 to its execution?
 01:16:28 22 MR. BOOZELL: Calls for speculation. Lacks
 01:16:30 23 foundation.
 01:16:34 24 THE WITNESS: No.
 01:16:34 25 BY MS. RHYU:

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Page 206

04:04:49 1 Q. So merely from knowing the subject matter of a
04:04:52 2 patent and -- strike that.
04:04:56 3 Merely from knowing that the patent relates to
04:04:59 4 the use of PCR on HIV sequences and knowing that that
04:05:11 5 patent was issued to Tom Merigan, based on that
04:05:16 6 information, it wouldn't have been enough for you to
04:05:20 7 think to yourself this patent should fall under a
04:05:26 8 consulting agreement that Tom Merigan had with Cetus?
04:05:29 9 MR. BOOZELL: Vague and ambiguous. Misstates
04:05:31 10 his testimony. Calls for a legal conclusion.
04:05:34 11 Incomplete hypothetical.
04:05:36 12 THE WITNESS: As I'm sure you know, everything
04:05:38 13 about how to answer that question would depend on the
04:05:41 14 timing of the supposed discovery or invention of Tom
04:05:46 15 Merigan and its relationship to his consulting
04:05:50 16 arrangement with Cetus and/or Roche. Without your being
04:05:54 17 more specific, I can't tell you how I would form an
04:05:57 18 opinion. But I would certainly have to know the content
04:06:00 19 of such a putative invention or the content of the
04:06:04 20 patent application and the filing date and the claims of
04:06:09 21 the application relative to work I knew was under --
04:06:14 22 being undergone at Cetus during the relevant time period
04:06:17 23 or before.
04:06:17 24 BY MS. RHYU:
04:06:20 25 Q. You understood that these patents were owned by

Page 207

04:06:22 1 Stanford, correct?
04:06:22 2 MR. BOOZELL: Vague and ambiguous. Calls for a
04:06:25 3 legal conclusion. Assumes facts not in evidence.
04:06:27 4 THE WITNESS: I didn't understand that and --
04:06:31 5 when you handed them to me, but if it says on here who
04:06:35 6 owns them or to whom they're assigned, which I don't see
04:06:40 7 here anywhere, but I'm assuming they were assigned to
04:06:43 8 Stanford, but I don't see that in here anywhere. Are
04:06:47 9 you --
04:06:49 10 BY MS. RHYU:
04:06:49 11 Q. On the first page? Which patent are you
04:06:51 12 looking at?
04:06:52 13 A. I'm looking at the '128. Oh, assignee, Leland
04:07:00 14 Stanford Junior. So looking at this, I see that all
04:07:03 15 four of them have been assigned to Stanford University.
04:07:07 16 So if your question is do I assume that Stanford owns
04:07:11 17 these patents, I would say yes, unless someone else has
04:07:14 18 bought them from Stanford.
04:07:16 19 Q. You didn't understand that Roche owned these
04:07:18 20 patents?
04:07:19 21 MR. BOOZELL: It's vague and ambiguous and
04:07:21 22 calls for a legal conclusion. Calls for speculation.
04:07:24 23 Lacks foundation. It's an incomplete hypothetical.
04:07:24 24 BY MS. RHYU:
04:07:32 25 Q. I mean at the time that you became aware of one

Page 208

04:07:35 1 of these patents, at that time you wouldn't have
04:07:37 2 understood that Roche owned the patents?
04:07:39 3 MR. BOOZELL: Same objections.
04:07:39 4 THE WITNESS: That question cannot be answered
04:07:42 5 the way you phrased it. I've told you I cannot remember
04:07:46 6 reading the application at the time I became aware of
04:07:48 7 it. And without that information, I would be able to
04:07:52 8 form no opinion on whether or not Roche or Cetus
04:07:58 9 deserved ownership of it or owned it. I'd have to look
04:08:02 10 at the list of inventors and the assignees, and I'd have
04:08:06 11 to know something about Roche's discussions with
04:08:08 12 Stanford. So I don't know the answer to your question.
04:08:08 13 BY MS. RHYU:
04:08:25 14 Q. Did you -- well, you did say that it was likely
04:08:33 15 that you were aware of at least one of these patents,
04:08:37 16 the '128, the '268 or the '086 prior to -- even prior to
04:08:43 17 working at Celera, correct?
04:08:46 18 A. I don't know if I said likely or possible.
04:08:47 19 Q. You said likely.
04:08:48 20 MR. BOOZELL: Let him finish his answer,
04:08:51 21 please, and misstates his testimony.
04:08:51 22 BY MS. RHYU:
04:08:54 23 Q. If you want to change that now, go ahead.
04:08:56 24 MR. BOOZELL: It's argumentative and
04:08:58 25 mischaracterizes his testimony. Let him finish his

Page 209

04:09:00 1 answer.
04:09:01 2 THE WITNESS: I cannot remember reading either
04:09:02 3 of these applications. I said it was a common practice
04:09:06 4 of mine to try to stay in touch with applications filed
04:09:12 5 by other parties on projects on which Roche was working.
04:09:12 6 I do not remember reading either of the applications,
04:09:15 7 and your line of questioning is to ask me what I thought
04:09:17 8 of applications that I have told you I cannot remember
04:09:19 9 reading. So it's extremely difficult to answer a
04:09:23 10 question about something I've already told you I cannot
04:09:25 11 remember.
04:09:25 12 BY MS. RHYU:
04:09:28 13 Q. I'm handing you an exhibit that was previously
04:09:31 14 marked 554.
04:09:31 15 (Previously marked Exhibit 554 was
04:09:44 16 presented to the witness.)
04:09:44 17 BY MS. RHYU:
04:09:44 18 Q. Do you recognize Exhibit 554?
04:09:46 19 MR. BOOZELL: I instruct you not to answer to
04:09:48 20 the extent it would reveal attorney-client privileged
04:09:51 21 communications or work product.
04:09:53 22 THE WITNESS: I do.
04:09:53 23 BY MS. RHYU:
04:10:06 24 Q. What is it?
04:10:13 25 A. It's a letter from a senior licensing associate

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

Page 210		Page 212	
04:10:16	1 at Stanford University to Tom MacMahon, the president of	04:13:22	1 that's right next to the note FYI, do you know where
04:10:19	2 LabCorp.	04:13:29	2 that date stamp would have come from?
04:10:20	3 Q. And how do you recognize it? When did you see	04:13:31	3 A. No.
04:10:26	4 it before?	04:13:40	4 Q. Is it your practice to date stamp documents on
04:10:27	5 MR. BOOZELL: I instruct you not to answer to	04:13:45	5 sending them to other parties, to other individuals?
04:10:28	6 the extent it calls for attorney-client privilege and	04:13:50	6 MR. BOOZELL: Vague and ambiguous.
04:10:31	7 work product. Otherwise you can answer.	04:13:55	7 THE WITNESS: No.
04:10:33	8 THE WITNESS: Well, I don't recall it today,	04:13:55	8 BY MS. RHYU:
04:10:36	9 but I can see that the handwritten notes in the upper	04:13:56	9 Q. Was that your practice back in 1998?
04:10:39	10 right-hand corner are my writing.	04:13:59	10 A. No.
04:10:48	11 BY MS. RHYU:	04:13:59	11 MR. BOOZELL: Same.
04:10:48	12 Q. And are you referring to the handwritten notes	04:14:00	12 THE WITNESS: I wrote 10-8 something at the
04:10:51	13 that -- actually, maybe I could ask you to read them	04:14:03	13 top. That was the date at which I believe I read this
04:10:56	14 since it's your handwriting.	04:14:06	14 and made the note at the top. But the date stamp is not
04:11:00	15 A. Well, the date is cut off, but I'm assuming	04:14:15	15 mine. I don't use a date stamp.
04:11:03	16 it's 10/8/98. That's an assumption. And then it says	04:14:15	16 BY MS. RHYU:
04:11:11	17 "cc: Sias, Petry, Meyers, Finckh, Sninsky." And then	04:14:17	17 Q. The people listed on the cc list, are all of
04:11:16	18 below that it says "FYI" with a colon and then my name.	04:14:20	18 these people employees, or were they all employees of
04:11:20	19 And below that it says "I'll let you know what LabCorp	04:14:24	19 Roche Molecular Systems on or about October 1st, 1998?
04:11:23	20 does."	04:14:34	20 A. I believe Sias, Petry, Myers and Sninsky were
04:11:29	21 Q. Does the cc list there indicate that you	04:14:39	21 employees of Roche Molecular Systems. Finckh might have
04:11:34	22 forwarded Exhibit 554, the letter, to the people listed	04:14:43	22 been or he could have been a member of Roche Biochemical
04:11:40	23 on the cc list somewhere around October 8 of 1998?	04:14:52	23 Sciences. I can't remember.
04:11:48	24 A. No, it doesn't. It indicates an intention to	04:14:53	24 Q. And who was Finckh?
04:11:51	25 do that but ordinarily when it's been done, I draw a	04:14:56	25 A. He was a scientist who worked for Roche at
Page 211		Page 213	
04:11:55	1 line through the cc list to indicate that it's actually	04:15:02	1 their laboratory site in Germany who had come to the
04:11:57	2 been done. It doesn't mean that it hadn't been done,	04:15:06	2 U.S. to work with Tom Myers.
04:12:01	3 but my practice is to draw a line through it when it has	04:15:12	3 Q. Were any of these people working on PCR assays
04:12:04	4 been done.	04:15:16	4 for monitoring antiviral therapy?
04:12:08	5 Q. Can you think of any reason why you would not	04:15:23	5 MR. BOOZELL: Vague and ambiguous.
04:12:11	6 have forwarded it after -- forwarded the letter after	04:15:23	6 THE WITNESS: Yes.
04:12:15	7 writing the cc list on there?	04:15:23	7 BY MS. RHYU:
04:12:16	8 MR. BOOZELL: Vague and ambiguous. Calls for	04:15:32	8 Q. Who was working on that subject matter among
04:12:18	9 speculation.	04:15:37	9 the cc list?
04:12:28	10 THE WITNESS: I don't know whether I gave them	04:15:38	10 MR. BOOZELL: Same objections.
04:12:31	11 copies or not. I might have or I might have forgotten	04:15:40	11 THE WITNESS: Well, Myers and Finckh and
04:12:37	12 to.	04:15:45	12 Sninsky as the head of research, and myself as head of
04:12:37	13 BY MS. RHYU:	04:15:49	13 research and development.
04:12:40	14 Q. Do you know how you obtained this letter?	04:15:51	14 MS. RHYU: We need to take a quick break to
04:12:48	15 A. Well, I'm not one of the copies on it, so I	04:15:53	15 change the video.
04:12:52	16 might have received it from Mr. MacMahon.	04:15:58	16 THE WITNESS: Okay.
04:13:02	17 Q. Can you think of any other way that you would	04:15:58	17 VIDEO OPERATOR: The time is 4:15 p.m. We're
04:13:04	18 have received the letter, Exhibit 554?	04:16:01	18 going off the record and this is the completion of media
04:13:08	19 MR. BOOZELL: Vague and ambiguous. Calls for	04:16:03	19 No. 3.
04:13:10	20 speculation. Lacks foundation.	04:19:42	20 (Recess.)
04:13:11	21 THE WITNESS: I would just be speculating. If	04:19:54	21 VIDEO OPERATOR: The time is 4:19 p.m. We're
04:13:14	22 I got a letter to Mr. MacMahon, it was probably from	04:20:00	22 back on the record and this will be the beginning of
04:13:17	23 Mr. MacMahon.	04:20:02	23 media No. 4 in the deposition of Dr. Thomas White.
04:13:17	24 BY MS. RHYU:	04:20:02	24 BY MS. RHYU:
04:13:20	25 Q. Do you know what the date stamp October 8th	04:20:07	25 Q. Did anyone at Roche Molecular Systems work on

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Page 214

04:20:18 1 PCR assays for monitoring antiviral therapy and making
04:20:22 2 therapeutic decisions in the treatment of AIDS
04:20:28 3 specifically relating to detection of mutations in
04:20:33 4 reverse transcriptase in the October 1998 time frame?
04:20:39 5 MR. BOOZELL: Vague and ambiguous. Compound.
04:20:40 6 Calls for speculation.
04:20:45 7 THE WITNESS: I'm not so sure about the Codons
04:20:50 8 mentioned in this letter here, but otherwise the answer
04:20:53 9 to your question is yes.
04:20:53 10 BY MS. RHYU:
04:21:00 11 Q. Upon receipt of this letter, is it likely that
04:21:04 12 you read it?
04:21:06 13 A. Yes.
04:21:08 14 Q. Were you concerned that the patents might be --
04:21:24 15 might have related -- strike that.
04:21:31 16 Why did you consider sending copies of this
04:21:35 17 letter to the people listed on that cc list?
04:21:39 18 MR. BOOZELL: Vague and ambiguous. Calls for
04:21:40 19 speculation.
04:21:45 20 THE WITNESS: Well, Tom MacMahon was an
04:21:47 21 important customer of Roche's, and he'd received this
04:21:52 22 letter from Stanford informing him of the existence of
04:21:57 23 these two patents, which probably had a bearing on the
04:22:01 24 kinds of home brew resistance test sequencing that
04:22:08 25 LabCorp was offering. And since he was kind enough to

Page 215

04:22:13 1 give me a copy of the letter, for information purposes I
04:22:18 2 copied it to Dr. Sias, who was a director of licensing
04:22:22 3 at Roche, to Doug Petry, who was in the law department,
04:22:27 4 since I thought they should be aware that MacMahon had
04:22:30 5 received this letter. And to Myers, Finckh and Sninsky
04:22:34 6 because they were working on a DNA chip base method that
04:22:41 7 could potentially be used to type the virus and make
04:22:44 8 treatment decisions. And then as I say here, I'll let
04:22:48 9 you know what LabCorp does, assuming MacMahon saw fit to
04:22:52 10 let me know what he did.
04:22:59 11 BY MS. RHYU:
04:22:59 12 Q. So you mentioned that you don't have a line
04:23:02 13 through this cc list here. Given the concerns that you
04:23:09 14 just articulated, do you think you would have tried to
04:23:14 15 ensure that this letter was indeed forwarded to people
04:23:21 16 at RMS?
04:23:23 17 MR. BOOZELL: Vague and ambiguous. Misstates
04:23:24 18 his testimony and calls for speculation. Lacks
04:23:27 19 foundation.
04:23:28 20 THE WITNESS: Well, it's clearly my intention
04:23:30 21 that a copy should go to the five people that are named
04:23:33 22 there. I would say it's probable that they got a copy
04:23:36 23 of it. But the fact that it's not crossed out departs
04:23:42 24 from my usual practice of indicating when the copies
04:23:46 25 actually had been sent.

Page 216

04:23:46 1 BY MS. RHYU:
04:23:50 2 Q. Did you cross names out when you were just
04:23:52 3 forwarding notes to people also? So if you received a
04:23:56 4 letter and you wanted to forward it to someone else and
04:23:59 5 wrote on that a note to the person that you were
04:24:03 6 forwarding the letter to, would you have crossed that
04:24:06 7 out also, or does that practice only apply to cc's?
04:24:10 8 MR. BOOZELL: Vague and ambiguous, and
04:24:11 9 compound.
04:24:12 10 THE WITNESS: If you're referring to forwarding
04:24:14 11 the original of a document like a letter to other people
04:24:18 12 to read?
04:24:19 13 BY MS. RHYU:
04:24:20 14 Q. Yes.
04:24:20 15 A. Is that your question?
04:24:22 16 Q. Yes.
04:24:23 17 A. In that instance I would not have written the
04:24:27 18 letters "cc," I would have written in my customary
04:24:30 19 practice "circulate," and then the names of the people.
04:24:32 20 And if I wanted to get a copy of it back at the -- if I
04:24:36 21 wanted it back at the end, I'd put my own name at the
04:24:39 22 bottom of the list. If I didn't care, I wouldn't, and I
04:24:41 23 would have no further information about whether they got
04:24:44 24 it or read it.
04:24:45 25 Q. And if it was a letter that you didn't draft,

Page 217

04:24:48 1 but a letter that you received and you wanted to forward
04:24:51 2 that to just one other person --
04:24:55 3 A. That's what I was referring to in the previous
04:24:57 4 answer.
04:24:57 5 Q. That is what you're referring to. Okay.
04:24:59 6 A. My own letters I would send directly to someone
04:25:02 7 and/or copy them on it. You talked about forwarding. I
04:25:06 8 thought you meant forwarding a letter I received rather
04:25:11 9 than one that originated with me.
04:25:13 10 Q. Upon receiving and reading the letter in
04:25:17 11 Exhibit 554, is it likely that you would have read the
04:25:22 12 patents referred to in the letter?
04:25:24 13 MR. BOOZELL: Misstates his testimony. It's
04:25:26 14 vague and ambiguous.
04:25:29 15 THE WITNESS: As I said earlier when you asked
04:25:31 16 me about the patent specifically in these four, which
04:25:34 17 two of them are listed here, it's possible that I read
04:25:37 18 them, but I don't recall reading them. And in any
04:25:46 19 event, the letter was not to Roche, it was to Tom
04:25:49 20 MacMahon, so the action that I indicated I would take is
04:25:52 21 to let those five people know what LabCorp had decided
04:25:56 22 to do. And by copying it to Petry, who was in the law
04:26:01 23 department, I assumed he would read them. So it was
04:26:06 24 part of my role as head of R&D, you know, to provide
04:26:11 25 advice to the legal department at Roche in terms of

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<p style="text-align: right;">Page 218</p> <p>04:26:14 1 making assessments of third party intellectual property 04:26:20 2 and/or licensing decisions. 04:26:22 3 BY MS. RHYU: 04:26:22 4 Q. Do you recall whether you followed up with Tom 04:26:27 5 MacMahon as to what LabCorp decided to do about these 04:26:31 6 patents? 04:26:31 7 A. No. 04:26:34 8 Q. Do you know that LabCorp has a license to these 04:26:39 9 patents today? 04:26:40 10 A. No. 04:26:41 11 Q. In 1998, did Roche have any relationship with 04:26:49 12 LabCorp in the -- in the sense of a business 04:26:58 13 relationship aside from the licensing relationship? 04:27:04 14 MR. BOOZELL: Vague. 04:27:04 15 MS. RHYU: Let me try that again. Let me try 04:27:06 16 that again. 04:27:08 17 Q. Did Roche have -- did Roche appoint members to 04:27:16 18 the LabCorp board in the 1998 time frame? 04:27:20 19 MR. BOOZELL: Vague and ambiguous. Calls for 04:27:22 20 speculation. 04:27:25 21 THE WITNESS: I don't know how to answer that 04:27:27 22 question. Are you referring to LabCorp's board of 04:27:29 23 directors? 04:27:30 24 BY MS. RHYU: 04:27:30 25 Q. Yes.</p>	<p style="text-align: right;">Page 220</p> <p>04:29:11 1 Q. Did you understand in the October '98 time 04:29:14 2 frame that Roche had an obligation to LabCorp to assist 04:29:21 3 them in determining whether assays that LabCorp was 04:29:29 4 developing potentially infringing existing patents? 04:29:41 5 MR. BOOZELL: Vague and ambiguous. 04:29:42 6 THE WITNESS: I don't think Roche had any such 04:29:44 7 obligation to LabCorp about LabCorp's commercial 04:29:48 8 business. If Roche was selling LabCorp a product and it 04:29:58 9 carried certain rights with it, those rights would be 04:30:01 10 carried as part of the label license to LabCorp or any 04:30:05 11 other customer. 04:30:05 12 BY MS. RHYU: 04:30:13 13 Q. Do you remember discussing these Stanford 04:30:22 14 patents listed in Exhibit 554 with Tom MacMahon? 04:30:38 15 A. I don't, but it's possible that MacMahon handed 04:30:42 16 me a copy of this thing. I can't remember how I got it. 04:30:50 17 Q. And you're referring to the letter when you say 04:30:52 18 "this thing"? 04:30:53 19 A. I'm referring to Exhibit 554, yes. 04:30:55 20 Q. Is it possible that he also handed you the 04:30:58 21 attached copies of the '268 and the '128 patents as 04:31:04 22 referred to in the letter? 04:31:06 23 MR. BOOZELL: Vague and ambiguous. Calls for 04:31:07 24 speculation. 04:31:08 25 THE WITNESS: I don't recall, but I think</p>
<p style="text-align: right;">Page 219</p> <p>04:27:32 1 MR. BOOZELL: Same objections. 04:27:35 2 THE WITNESS: I think Jean-Luc Belingard, who 04:27:40 3 replaced MacMahon as the head of the diagnostics 04:27:44 4 division, I think he's on the board of directors of 04:27:51 5 LabCorp, but I don't know when he was appointed. It 04:27:55 6 could have been well before that. 04:27:57 7 BY MS. RHYU: 04:27:59 8 Q. Was there a point at which LabCorp and Roche -- 04:28:07 9 was there a point at which Roche had an ownership 04:28:11 10 interest in LabCorp? 04:28:13 11 MR. BOOZELL: Vague and ambiguous. Calls for a 04:28:14 12 legal conclusion. Calls for speculation. 04:28:19 13 THE WITNESS: Roche owned the predecessor of 04:28:22 14 LabCorp, and I believe at some point they owned -- had 04:28:28 15 an ownership interest in the successor -- sorry. Roche 04:28:35 16 owned Roche Biomedical Laboratories. That grew, as I 04:28:41 17 mentioned earlier. Roche had a subsequent ownership 04:28:44 18 interest in whatever RBL grew into, and I think that 04:28:49 19 might have extended to the point of having partial 04:28:53 20 ownership of LabCorp. But the acquisition and merger 04:29:00 21 activities of LabCorp are not something that I'm 04:29:02 22 familiar with in any detail. But I think the short 04:29:06 23 answer to your question is at some point Roche had an 04:29:09 24 ownership interest in LabCorp. 04:29:11 25 BY MS. RHYU:</p>	<p style="text-align: right;">Page 221</p> <p>04:31:11 1 that's unlikely. 04:31:11 2 BY MS. RHYU: 04:31:22 3 Q. Do you recall having any discussions with any 04:31:23 4 of the people on the cc list relating to the patents 04:31:32 5 listed on this -- in this letter? 04:31:35 6 MR. BOOZELL: If the answer is yes to either of 04:31:37 7 the first two people, I instruct you not to answer other 04:31:40 8 than saying yes. Don't reveal any of the communications 04:31:44 9 you had with Dr. Sias or Doug Petry in response to 04:31:47 10 counsel's question. 04:31:53 11 THE WITNESS: Your question is subsequent to 04:31:54 12 this letter, do I recall having any conversations with 04:31:57 13 any of those five people about it? 04:32:00 14 BY MS. RHYU: 04:32:00 15 Q. Yes. 04:32:00 16 A. No. 04:32:32 17 Q. I'm handing you what was previously marked as 04:32:35 18 Exhibit 683. 04:32:35 19 (Previously marked Exhibit 683 was 04:32:35 20 presented to the witness.) 04:32:35 21 BY MS. RHYU: 04:32:47 22 Q. So Exhibit 683 is a privilege log that was 04:32:53 23 produced to Stanford by Roche, by Roche's attorneys. 04:32:58 24 And a privilege log, in case you're not aware, is a log 04:33:06 25 that parties produce that lists documents which the</p>

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Page 222	Page 224
<p>04:33:12 1 producing party claims are subject to certain 04:33:17 2 privileges, so that the party's claiming that they don't 04:33:22 3 have to turn over the document because the substance of 04:33:24 4 the document contains privileged information. But 04:33:27 5 because of the rules that we conduct litigation by, the 04:33:33 6 party is obligated to identify the information that's 04:33:38 7 listed here to describe what that document is. 04:33:46 8 Do you follow me? 04:33:48 9 A. So far. 04:33:48 10 Q. Okay. So I'd like you to turn to page -- I 04:33:53 11 believe it's page 7. And I'm wrong, it's page 9 of 04:34:09 12 Exhibit 683. And look at the entries dated 12/15/1999. 04:34:23 13 There are two such entries. 04:34:25 14 The first entry identifies a document dated 04:34:30 15 12/15/1999 that is from a D. Petry. The recipients 04:34:37 16 named are T. White, J. Sninsky, S. Sias, K. Ordenez, V. 04:34:43 17 Lee and M. Griffith. The privilege -- the privileges 04:34:48 18 asserted are AC, attorney-client privilege, and WP, work 04:34:53 19 product privilege. And the description of the document 04:34:55 20 is "Memorandum reflecting attorney-client communication 04:34:58 21 and attorney work product regarding U.S. Patent No's," 04:35:02 22 and then it lists the '730, the '086, the '128 and the 04:35:08 23 '268 patents. 04:35:10 24 Do you see that line? 04:35:12 25 A. Yes.</p>	<p>04:37:12 1 MR. BOOZELL: Vague and ambiguous. Compound. 04:37:14 2 You can answer yes or no. 04:37:17 3 THE WITNESS: No. 04:37:17 4 BY MS. RHYU: 04:37:32 5 Q. Was Doug Petry a patent agent at Roche? 04:37:37 6 A. I believe he was a patent agent in the law 04:37:40 7 department at Roche Molecular Systems. 04:37:47 8 Q. Do you know if he undertook analyses of patents 04:37:55 9 in his role as a Roche patent agent? 04:38:02 10 MR. BOOZELL: You can answer that yes or no. 04:38:07 11 THE WITNESS: Well, that would have been 04:38:10 12 consistent with his responsibilities. I don't recall 04:38:11 13 specifically if he did or didn't. 04:38:14 14 BY MS. RHYU: 04:38:15 15 Q. Do you recall receiving any memoranda, not just 04:38:21 16 this one, but any memoranda about any patents drafted by 04:38:26 17 Doug Petry? 04:38:27 18 MR. BOOZELL: Vague and ambiguous. You can 04:38:31 19 answer yes or no. 04:38:38 20 THE WITNESS: Could you read the question back 04:38:40 21 again? 04:38:52 22 (Record read as follows: 04:38:52 23 "QUESTION: Do you recall receiving 04:38:52 24 any memoranda, not just this one, but any 04:38:52 25 memoranda about any patents drafted by Doug</p>
Page 223	Page 225
<p>04:35:15 1 Q. Do you recall a memorandum circulated around 04:35:22 2 December 1999 relating to these listed patents? 04:35:31 3 A. No. 04:35:31 4 MR. BOOZELL: You can answer that yes or no. 04:35:41 5 BY MS. RHYU: 04:35:41 6 Q. You have no recollection at all of receiving 04:35:45 7 any memorandum in the 1999 time frame relating to the 04:35:54 8 '730, the '086, the '128 and '268 patents? 04:35:59 9 MR. BOOZELL: Asked and answered, and it's 04:36:01 10 vague and ambiguous. And you can answer that yes or no. 04:36:08 11 THE WITNESS: You started -- I have no 04:36:09 12 recollection. Is that the way you're -- yeah, it's 04:36:12 13 correct, I have no recollection of receiving a 04:36:15 14 memorandum of that description on page 9. 04:36:15 15 BY MS. RHYU: 04:36:22 16 Q. Do you recall any meetings taking place that 04:36:39 17 discuss the subject matter of the patents, the '730, 04:36:47 18 '086, '128 and/or the '268 patents? 04:36:50 19 MR. BOOZELL: It's compound. It's vague and 04:36:53 20 ambiguous, and you can answer yes or no. 04:37:02 21 THE WITNESS: No. 04:37:02 22 BY MS. RHYU: 04:37:02 23 Q. Do you recall discussing any of these patents 04:37:05 24 with Doug Petry or any of the other individuals listed 04:37:10 25 on the recipient's list?</p>	<p>04:38:54 1 Petry?") 04:38:54 2 THE WITNESS: I have no specific recollection 04:38:55 3 of receiving any memoranda from Doug Petry about patents 04:39:03 4 that he assessed. Is that your question? 04:39:06 5 BY MS. RHYU: 04:39:07 6 Q. Yes. In the 1999 time frame, what was your 04:39:11 7 title at Roche Molecular Systems? 04:39:15 8 A. I think it was senior vice president of 04:39:16 9 research and development. 04:39:21 10 Q. At that time, were you involved generally in 04:39:25 11 assessing or evaluating patents which may potentially be 04:39:41 12 asserted against Roche? 04:39:44 13 MR. BOOZELL: It's vague and ambiguous. 04:39:48 14 THE WITNESS: As part of my responsibility as 04:39:51 15 head of R&D, at the request of the law department I 04:39:55 16 would sometimes provide them with my opinion on various 04:40:03 17 matters in order for them to make a legal assessment and 04:40:08 18 advise management of their assessment. I only provided 04:40:12 19 scientific assessment. 04:40:12 20 BY MS. RHYU: 04:40:17 21 Q. And you say you would sometimes -- sometimes 04:40:19 22 provide them with your opinion. Under what 04:40:24 23 circumstances were you requested to provide an opinion 04:40:30 24 on assessments of patents? 04:40:35 25 MR. BOOZELL: It's vague and ambiguous. It</p>

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<p style="text-align: right;">Page 246</p> <p>05:14:22 1 BY MS. RHYU: 05:14:22 2 Q. Yes. 05:14:24 3 MR. BOOZELL: Same objections. 05:14:27 4 THE WITNESS: I didn't understand that, but I 05:14:29 5 could surmise it from the fact that he's a coauthor on 05:14:32 6 the paper with four scientists from Cetus. 05:14:32 7 BY MS. RHYU: 05:14:39 8 Q. And does looking at Exhibit I refresh your 05:14:42 9 recollection at all as to whether you had the 05:14:46 10 understanding that Dr. Holodniy was a visiting scientist 05:14:57 11 at Cetus? 05:15:10 12 A. Exhibit I does not refresh my memory on that 05:15:15 13 subject. 05:15:19 14 Q. Were you a member of the patent committee at 05:15:25 15 Cetus? 05:15:26 16 MR. BOOZELL: It's vague and ambiguous. 05:15:30 17 THE WITNESS: You asked me that question 05:15:32 18 before. What I said was that there was a group of 05:15:34 19 people who met at Cetus to discuss patents and invention 05:15:39 20 disclosures, etcetera, and that I would have 05:15:42 21 participated in some of those discussions. 05:15:42 22 BY MS. RHYU: 05:15:47 23 Q. I'm sorry, I thought that the prior questioning 05:15:48 24 was related to a patent committee at Roche. 05:15:51 25 A. Oh, I thought it was at Cetus, but maybe you</p>	<p style="text-align: right;">Page 248</p> <p>05:17:37 1 Q. And an invention disclosure that attained the 05:17:40 2 rank of 1 was a disclosure that Cetus would file a 05:17:44 3 patent on? 05:17:47 4 MR. BOOZELL: Vague and ambiguous. Misstates 05:17:48 5 his testimony. 05:17:50 6 THE WITNESS: Well, any invention disclosure 05:17:55 7 that -- or any other subject that came up for 05:17:58 8 consideration in the meeting, which could also include 05:18:03 9 foreign filings or continuations in part, other things, 05:18:06 10 if it was ranked 1, it was simply given the highest 05:18:10 11 priority for action by the law department. That could 05:18:14 12 include filing a patent application, but it could 05:18:16 13 include, as I said, a continuation in part or any of 05:18:23 14 several other things that had to do with patent 05:18:25 15 prosecutions and filings. So I think that answered your 05:18:29 16 question. 05:18:29 17 BY MS. RHYU: 05:18:29 18 Q. What did the lowest rank indicate? 05:18:33 19 MR. BOOZELL: Vague and ambiguous. Calls for 05:18:35 20 speculation. It's overbroad. It's an incomplete 05:18:42 21 hypothetical. 05:18:42 22 THE WITNESS: There were several different 05:18:43 23 rankings, as I replied earlier, and the lower of the 05:18:48 24 ranks could indicate that the committee thought the 05:18:52 25 material had already been covered, there was not enough</p>
<p style="text-align: right;">Page 247</p> <p>05:15:54 1 could check. 05:15:55 2 Q. All right. Sorry. I'll check that later. But 05:15:57 3 at Cetus you did participate -- 05:16:02 4 A. While I was employed there, yes, mostly up 05:16:07 5 through 1987. And I don't believe that was the case in 05:16:12 6 1988 and would not have been the case from '89 to '91. 05:16:18 7 Q. When you did participate, was there a system in 05:16:30 8 place of ranking invention disclosures that were 05:16:34 9 submitted by Cetus scientists? 05:16:43 10 MR. BOOZELL: It's vague and ambiguous. 05:16:45 11 THE WITNESS: I think there was a rough system 05:16:46 12 of ranking things in terms of whether something should 05:16:50 13 be filed on right away or held for more information or 05:16:56 14 potentially published because it was already covered, or 05:17:03 15 held as know-how and never published, or held as 05:17:12 16 confidential information because it was too early to 05:17:15 17 determine that and might be revisited later. 05:17:15 18 BY MS. RHYU: 05:17:20 19 Q. And do you recall that the ranking system 05:17:22 20 ranked invention disclosures with a number between 1 and 05:17:27 21 5? 05:17:27 22 A. That sounds right, but I can't remember if it 05:17:29 23 was from 1 to 10 or 1 to 3 or whatever. But there was 05:17:33 24 some -- some such number. I know 1 was the most 05:17:37 25 important.</p>	<p style="text-align: right;">Page 249</p> <p>05:18:56 1 information to make a decision at that meeting or 05:18:58 2 something to be revisited, or something to be published 05:19:02 3 because it had already been published and it was time to 05:19:05 4 publish it, or to publish it in order to get it into the 05:19:09 5 public domain or to be retained as know-how and/or 05:19:12 6 confidential material. So the 5 -- sometimes people 05:19:17 7 interpret that as meaning it was freedom to publish, but 05:19:21 8 that wasn't the only meaning of the designation. 05:19:24 9 BY MS. RHYU: 05:19:25 10 Q. But if something that's designated at the 05:19:27 11 lowest rank, say 5, and it was published, is it fair to 05:19:32 12 say that that ranking -- is it fair to say that that 05:19:38 13 disclosure was one that the patent committee felt was 05:19:48 14 okay to make public without -- without having any 05:19:55 15 further action with respect to filing the patent? 05:19:58 16 MR. BOOZELL: It's vague and ambiguous. Calls 05:20:00 17 for speculation. Lacks foundation. It's an incomplete 05:20:03 18 hypothetical. 05:20:03 19 THE WITNESS: No. 05:20:03 20 BY MS. RHYU: 05:20:06 21 Q. Why not? 05:20:07 22 MR. BOOZELL: Same objections. 05:20:08 23 THE WITNESS: Well, as I mentioned earlier, it 05:20:11 24 could mean any of four or five different things 05:20:13 25 including retaining the information as confidential;</p>

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Page 270

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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

69 (Page 270)