Case 3:05-cv-04158-MHP Document 95-3 Filed 10/27/2006 Page 1 of 17

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

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.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

	Page 50		Page 52
10 26 05 1			-
10:36:05 1	developed a diagnostic test for anything. He didn't	10:53:40 1	scientists wrote regular reports and some never wrote
10:36:08 2	have that expertise. But people in his department could	10:53:43 2	reports. So there wasn't a formal system of report
10:36:10 3	easily have used tests developed by Kwok, Sninsky or	10:53:48 3	writing in the research group. In the development group
10:36:14 4	others for whatever purpose they had in mind. And the	10:53:52 4	people were usually more responsible about writing
10:36:17 5	same would apply to Konrad and people people in this	1	reports. So
10:36:20 6	department. Or they could have tried to develop one	10:53:58 6	BY MS. RHYU:
10:36:22 7	independently since some people in that department did	10:54:00 7	Q. So your distinction between I just want to
10:36:26 8	have the requisite expertise.	10:54:04 8	understand your distinction between the research group
10:36:31 9	BY MS. RHYU:	10:54:06 9	and the development group. What group would John
10:36:32 10	Q. But are you aware specifically of anyone	10:54:08 10	Sninsky and Shirley Kwok fall into?
10:36:34 11	outside of the labs of John Sninsky and Shirley Kwok w	ì	A. John Sninsky and Shirley Kwok were members of
10:36:40 12	had developed any tests for detection of HIV	10:54:14 12	the research group.
10:36:45 13	sequences	10:54:16 13	Q. And Eric Groves, what group was he in?
10:36:48 14	MR. BOOZELL: Vague and ambiguous.	10:54:20 14	A. As I mentioned earlier, Eric Groves was in the
10:36:48 15	BY MS. RHYU:	10:54:24 15	clinical group, which was either clinical or
10:36:49 16	Q using PCR?	10:54:27 16	pharmacology or toxicology. I can't remember
10:36:50 17	MR. BOOZELL: Calls for speculation. Lacks	10:54:30 17	specifically about him. But that was a third segment of
10:36:52 18	foundation.	10:54:35 18	the research and development group, and I believe they
10:36:52 19	THE WITNESS: I'm aware that the reason I'm	10:54:39 19	reported to someone else who reported to Price, but
10:36:54 20	here deposing being deposed today has something to d	į.	and indirectly to me as my associate director of
10:36:58 21	with that question, but beyond that, I have no specific	10:54:45 21	activities. But they were not under Groves was not
10:37:00 22	recollection of it.	10:54:49 22	in the research group.
10:37:02 23	MS. RHYU: Okay. Let's take a break.	10:54:50 23	Q. As to Groves' work, how did you keep updated on
10:37:03 24	VIDEO OPERATOR: The time is 10:37. We are	10:54:55 24	his work?
10:37:07 25	going off the record.	10:54:56 25	MR. BOOZELL: Vague and ambiguous. Assumes
1			
	Page 51		Page 53
10:52:12 1	Page 51 (Recess.)	10:54:57 1	•
10:52:12 1 10:52:21 2		10:54:57 1 10:55:07 2	facts not in evidence. Calls for speculation.
	(Recess.)		facts not in evidence. Calls for speculation. THE WITNESS: As part of my responsibility as
10:52:21 2	(Recess.) VIDEO OPERATOR: The time is 10:52. We are	10:55:07 2 10:55:10 3	facts not in evidence. Calls for speculation. THE WITNESS: As part of my responsibility as associate director of research and development, I tried
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14 (Pages 50 to 53)

1	Page 54	name production of the control of th	Page 56
10:56:25 1	A. Well, I believe Merigan in his consulting role	10:59:07 1	through February of 1989, so my knowledge of Cetus's
10:56:29 2	for Cetus he's a physician, so he advised Cetus on	10:59:10 2	activities as vice president of research are limited to
10:56:34 3	some of the clinical trials that Cetus was conducting.	10:59:14 3	that time frame. And in 1988 I was on a sabbatical from
10:56:38 4	And I believe Stanford, through Merigan or Stanford	10:59:19 4	that position, and so I had less involvement in managing
10:56:44 5	Medical Center, was one of the clinical trial sites for	10:59:23 5	the research in 1988.
10:56:47 6	Interleukin 2 testing with the hypothesis that it would	10:59:23 6	BY MS. RHYU:
10:56:53 7	benefit benefit people infected with the AIDS virus,	10:59:31 7	Q. With those qualifications, you don't have any
10:56:56 8	as I mentioned earlier in the deposition.	10:59:34 8	specific knowledge of Dr. Merigan's involvement in ir
10:56:58 9	Q. And do you know what Merigan's role was as a	10:59:39 9	consulting relating to PCR and HIV?
10:57:01 10	consultant in that capacity?	10:59:42 10	MR. BOOZELL: Same objections.
10:57:03 11	MR. BOOZELL: Vague and ambiguous.	10:59:42 11	•
10:57:07 12	THE WITNESS: Could you be more specific abou	1	Q. Is that correct?
10:57:09 13	the capacity you're referring to?	10:59:44 13	MR. BOOZELL: Same objections.
10:57:10 14	BY MS. RHYU:	10:59:48 14	THE WITNESS: As I mentioned earlier, I know
10:57:11 15	Q. What did he consult on in the context of the	10:59:51 15	that Merigan was interested in testing Interleukin 2 in
10:57:14 16	IL-2 clinical studies?	10:59:56 16	the AIDS patients, and PCR would have been used as pa
10:57:16 17	A. Well, he was a consultant to that division, and	11:00:03 17	of that clinical trial.
10:57:22 18	I presume it had to do with the clinical trials of the	11:00:03 18	BY MS. RHYU:
10:57:26 19	Interleukin 2. He might have also consulted on the	11:00:10 19	Q. Why do you say "PCR would have been used as
10:57:30 20	interferon trial as well earlier, but I don't have a	11:00:12 20	part of that clinical trial"?
10:57:33 21	specific knowledge of his role there.	11:00:14 21	A. Because PCR was one of the methods of
10:57:34 22	Q. Do you have any specific knowledge as to any	11:00:17 22	diagnosing people who were infected with the AIDS viru
10:57:37 23	collaborations between Dr. Merigan and Dr. Groves that	1	and we were also interested in the question of whether
10:57:40 24	related to detection of HIV sequences using PCR?	11:00:24 24	effective therapies would reduce the amount of virus.
10:57:46 25	MR. BOOZELL: Vague and ambiguous. Calls for		Q. Do you have any memory today of Dr. Merigan
	Time 2002222. Tague and amorganis. Can stor		Q. Do you have any memory today of Dr. Wellgan
	Page 55	nero como con esta de la como como como como como como como com	Page 57
10:57:48 1	speculation.	11:00:34 1	working in collaboration with Dr. Groves on using PCR
10:57:51 2	THE WITNESS: I know that that's the reason for	11:00:41 2	detect HIV sequences?
10:57:53 3		§'	· · · · · · · · · · · · · · · · · · ·
1	this deposition, but aside from that, Merigan consulted	11:00:42 3	MR. BUOZELL: Asked and answered. Vague an
10:57:59 4	with Cetus on any or all of Cetus's projects. He was	11:00:42 3 11:00:44 4	MR. BOOZELL: Asked and answered. Vague an ambiguous. Calls for speculation. Lacks foundation.
J		A STATE OF THE STA	ambiguous. Calls for speculation. Lacks foundation.
10:57:59 4	with Cetus on any or all of Cetus's projects. He was the general consultant, and he had been a member of	11:00:44 4	ambiguous. Calls for speculation. Lacks foundation. Misleading.
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15 (Pages 54 to 57)

	Page 58		Page 60
11:01:57 1	Do you recognize Exhibit 601?	11:04:19 1	Dr. Price regarding Merigan regarding Merigan's
11:02:02 2	A. Yes.	11:04:25 2	consultancy?
11:02:03 3	Q. And when did you last look at Exhibit 601?	11:04:27 3	MR. BOOZELL: Vague and ambiguous.
11:02:08 4	MR. BOOZELL: I'm going to object to the extent	11:04:29 4	THE WITNESS: No, I don't recall giving my
11:02:10 5	it might call for attorney-client privileged	11:04:31 5	opinion to Dr. Price specifically with regard to Dr.
11:02:12 6	communications and instruct the witness not to answer	11:04:34 6	Merigan.
11:02:14 7	with respect to any documents I may have shown him in	11:04:34 7	BY MS. RHYU:
11:02:18 8	his prep.	11:04:34 8	Q. Do you recall giving your advice to anyone
11:02:18 9	BY MS. RHYU:	11:04:37 9	relating to Dr. Merigan being a consultant for Cetus?
11:02:27 10	Q. I'll help you out.	11:04:42 10	
11:02:28 11	A. Sorry. I don't know how to answer that	11:04:43 11	· · · · · · · · · · · · · · · · · · ·
11:02:30 12	question.	11:04:44 12	BY MS. RHYU:
11:02:30 13	Q. Okay. Aside from your preparation for today's	11:04:44 13	Q. And what was your advice regarding Merigan
11:02:32 14	deposition, have you seen this document before?	11:04:49 14	being a consultant for Cetus?
11:02:34 15	A. Not to my knowledge.	11:04:50 15	A. It was the same as the other former academic
11:02:36 16	Q. Were you involved in preparing or negotiating	11:04:56 16	members of Cetus Immune of Palo Alto, which was they
11:02:44 17	or executing any consulting agreements with consultants	11:05:00 17	should be made consultants.
11:02:48 18	while you were working at Cetus?	11:05:02 18	Q. And why did you think that Dr. Merigan should
11:02:49 19	MR. BOOZELL: Vague and ambiguous. Overbroa	d,11:05:04 19	be made a consultant?
11:02:51 20	compound.	11:05:06 20	MR. BOOZELL: Vague and ambiguous.
11:02:53 21	THE WITNESS: Yes.	11:05:09 21	THE WITNESS: Because it was continuing their
11:02:54 22	BY MS. RHYU:	11:05:13 22	roles and funds as consultants, it was one of the ways
11:02:54 23	Q. Were you involved in preparing, negotiating or	11:05:18 23	of eliminating the subsidiary for Cetus Palo Alto or
11:03:02 24	executing any consulting agreements with Dr. Merigan?	11:05:22 24	Cetus Immune.
11:03:06 25	MR. BOOZELL: Same objections.	11:05:25 25	BY MS. RHYU:
	Page 59		Page 61
11:03:09 1	THE WITNESS: I don't recall specifically, but	11:05:25 1	Q. Did you also appreciate that Dr. Merigan had
11:03:11 2	it would have been my one of my roles to have an	11:05:28 2	expertise that would be helpful for Cetus?
11:03:17 3	opinion and/or recommend that we have consulting	11:05:32 3	MR. BOOZELL: Vague and ambiguous. Misleading.
11:03:20 4			
11.03.20 4	agreements with certain scientists or physicians, and	11:05:39 4	THE WITNESS: I believe that Dr. Merigan had
11:03:26 5	agreements with certain scientists or physicians, and Dr. Merigan would have been one of them.	11:05:39 4 11:05:41 5	
1		1	THE WITNESS: I believe that Dr. Merigan had
11:03:26 5	Dr. Merigan would have been one of them.	11:05:41 5	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus.
11:03:26 5 11:03:26 6	Dr. Merigan would have been one of them. BY MS. RHYU:	11:05:41 5 11:05:41 6	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus. BY MS. RHYU:
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11:03:26 5 11:03:26 6 11:03:29 7 11:03:33 8	Dr. Merigan would have been one of them. BY MS. RHYU: Q. So I just want to make clear, then, you don't specifically recall working on this consulting	11:05:41 5 11:05:41 6 11:05:51 7 11:05:53 8	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus. BY MS. RHYU: Q. You said you gave some advice regarding consultants. Did you actually read consulting
11:03:26 5 11:03:26 6 11:03:29 7 11:03:33 8 11:03:35 9	Dr. Merigan would have been one of them. BY MS. RHYU: Q. So I just want to make clear, then, you don't specifically recall working on this consulting agreement, but you think that it was likely that you were involved in putting this agreement in place? A. No	11:05:41 5 11:05:41 6 11:05:51 7 11:05:53 8 11:05:58 9	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus. BY MS. RHYU: Q. You said you gave some advice regarding consultants. Did you actually read consulting agreements for Cetus consultants in the course of
11:03:26 5 11:03:26 6 11:03:29 7 11:03:33 8 11:03:35 9 11:03:39 10	Dr. Merigan would have been one of them. BY MS. RHYU: Q. So I just want to make clear, then, you don't specifically recall working on this consulting agreement, but you think that it was likely that you were involved in putting this agreement in place?	11:05:41 5 11:05:41 6 11:05:51 7 11:05:53 8 11:05:58 9 11:06:03 10	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus. BY MS. RHYU: Q. You said you gave some advice regarding consultants. Did you actually read consulting agreements for Cetus consultants in the course of getting these consulting agreements in place?
11:03:26 5 11:03:26 6 11:03:29 7 11:03:33 8 11:03:35 9 11:03:39 10 11:03:42 11	Dr. Merigan would have been one of them. BY MS. RHYU: Q. So I just want to make clear, then, you don't specifically recall working on this consulting agreement, but you think that it was likely that you were involved in putting this agreement in place? A. No	11:05:41 5 11:05:41 6 11:05:51 7 11:05:53 8 11:05:58 9 11:06:03 10 11:06:06 11	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus. BY MS. RHYU: Q. You said you gave some advice regarding consultants. Did you actually read consulting agreements for Cetus consultants in the course of getting these consulting agreements in place? MR. BOOZELL: Vague and ambiguous.
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11:03:26 5 11:03:26 6 11:03:29 7 11:03:33 8 11:03:35 9 11:03:39 10 11:03:42 11 11:03:42 12 11:03:43 13 11:03:44 14 11:03:45 15	Dr. Merigan would have been one of them. BY MS. RHYU: Q. So I just want to make clear, then, you don't specifically recall working on this consulting agreement, but you think that it was likely that you were involved in putting this agreement in place? A. No MR. BOOZELL: Vague and ambiguous. Mischaracterizes his testimony. THE WITNESS: that mischaracterizes my testimony. What I said was that in general I would make	11:05:41 5 11:05:41 6 11:05:51 7 11:05:53 8 11:05:58 9 11:06:03 10 11:06:06 11 11:06:07 12 11:06:09 13 11:06:11 14 11:06:13 15	THE WITNESS: I believe that Dr. Merigan had certain expertise that would be useful to Cetus. BY MS. RHYU: Q. You said you gave some advice regarding consultants. Did you actually read consulting agreements for Cetus consultants in the course of getting these consulting agreements in place? MR. BOOZELL: Vague and ambiguous. THE WITNESS: I'm not sure what you mean by "these consulting agreements." You mean a specific one or consulting agreements in general? BY MS. RHYU:
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16 (Pages 58 to 61)

1	Page 62	and the same of th	Page 64
11 00 12 1	_		The state of the s
11:06:43 1	Q. Okay. If you could look at Exhibit 601. On	11:09:15 1	Institutional Affiliations," do you see where it says in
11:06:49 2	the first page there's a paragraph 2 that refers to	11:09:29 2	the second paragraph I mean in the second sentence of
11:06:54 3	duties. Do you see that paragraph?	11:09:33 3	paragraph 3.1:
11:06:55 4	A. Yes.	11:09:36 4	"Consultant represents that he's not a
11:06:56 5	Q. Does that paragraph look familiar to you?	11:09:39 5	party to any existing agreement which would
11:07:01 6	MR. BOOZELL: Vague and ambiguous.	11:09:41 6	prevent him from entering into this
11:07:01 7	THE WITNESS: No. BY MS, RHYU:	11:09:43 7	Agreement, and that the only agreements with
11:07:01 8		11:09:46 8	third parties which may restrict his
11:07:03 9	Q. Do the terms recited in the paragraph for the consultant look familiar to you?	11:09:49 9	consulting activities on behalf of Cetus are
11:07:07 10	MR. BOOZELL: Same objections.	11:09:52 10	consultant's existing employment agreement
11:07:11 12	THE WITNESS: I'm not sure what you're	11:09:54 11	with the Institution, the Institution's
11:07:13 13	referring to. Is it a different section in 2 or is	11:09:56 12	policy statement with respect to outside
11:07:15 14	it	11:09:59 13	consulting, and the Institution's standard
11:07:15 15	BY MS. RHYU:	11:10:01 14	Patent Agreement, which are attached hereto as Exhibits A, B, and C, respectively"?
11:07:16 16	Q. In section 2, the terms for the duties.	11:10:03 15	Do you see that?
11:07:19 17	MR. BOOZELL: Vague and ambiguous.	11:10:10 17	A. Yes, I do. Except for Exhibits A, B and C, I
11:07:41 18	THE WITNESS: Could you read back the question	4	don't see those, but
11:07:41 19	(Record read as follows:	11:10:14 19	Q. Do you recognize that as a limitation that was
11:07:41 20	"Do the terms recited in the	11:10:20 20	commonly seen in consulting agreements of Cetus?
11:07:4121	paragraph for the consultant look familiar to	11:10:24 21	MR. BOOZELL: Objection. Vague and ambiguous
11:07:53 22	you?")	11:10:25 22	Misstates the document. Calls for a legal conclusion.
11:07:53 23	BY MS. RHYU:	11:10:29 23	Calls for speculation.
11:07:54 24	Q. Actually, let me be more specific. Let me	11:10:29 24	THE WITNESS: Yeah, these agreements were
11:07:56 25	refer to the sentence, the second sentence of paragraph	11:10:33 25	prepared by the legal department. I don't recognize
***************************************		<u> </u>	
	Page 63		Page 65
11:07:59 1	2.	11:10:35 1	that specifically as being a a routine statement for
11:07:59 2	"During the Consulting Period, consultant	11:10:42 2	such documents. But this is one consulting agreement
11:08:02 3	agrees to perform to the best of his ability	11:10:45 3	among many, so I can't comment whether it's usual or
11:08:04 4	the scientific consulting duties assigned to	11:10:50 4	unusual.
11:08:06 5	him by Cetus, which may include the functions	11:10:50 5	BY MS. RHYU:
11:08:09 6	of inventing, discovering and developing new	1 1 10 50 6	
11:08:11 7		11:10:50 6	Q. Do you remember seeing that limitation before
	and novel devices, methods and principles	11:10:50 6	Q. Do you remember seeing that limitation before in other agreements?
11:08:15 8	relating to the work of Cetus."		Q. Do you remember seeing that limitation before
11:08:15 8 11:08:18 9	relating to the work of Cetus." Is that a term that was generally in Cetus	11:10:52 7 11:10:53 8 11:10:55 9	Q. Do you remember seeing that limitation before in other agreements? MR. BOOZELL: Same objection. Also mischaracterizes the document.
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17 (Pages 62 to 65)

	Page 82		Page 84
11:35:16 1	BY MS. RHYU:	11:38:01 1	point. It says in the letter on September 14th that I'm
11:35:17 2	Q. I'm handing you what's been marked as	11:38:06 2	enclosing two copies of our standard transfer materials
11:35:20 3	Exhibit 688. It's a letter dated September 14th, 1983,	11:38:10 3	form. So for that purpose, if you have the material
11:35:24 4	from you, Tom Thomas J. White to Dr. Thomas Meriga	1	transfer form that was attached to this letter, as it
11:35:31 5	bearing the production number RMS 64033.	11:38:18 5	says enclosure, I would know whether or not the Materia
11:35:31 6	(Deposition Exhibit 688 marked by the	11:38:23 6	Transfer Agreement you previously asked me about,
11:35:48 7	court reporter.)	11:38:24 7	Exhibit 355 dated September 7th, is the Material
11:35:48 8	BY MS. RHYU:	11:38:30 8	Transfer Agreement that we sent with the letter of
11:35:48 9	Q. Do you recognize Exhibit 688?	11:38:31 9	September 14th, or whether there was one that was
11:35:50 10	MR. BOOZELL: Again instruct you not to answer	11:38:34 10	specific and had to do with testing Interleukin 2 in
11:35:53 11	to the extent it would reveal attorney-client privileged	11:38:42 11	invitro studies on herpes simplex viruses. There's
11:35:56 12	communications.	11:38:45 12	nothing you've given me that connects the two, so I
11:35:57 13	THE WITNESS: Yes, I do.	11:38:48 13	can't answer that question.
11:35:57 14	BY MS. RHYU:	11:39:06 14	BY MS. RHYU:
11:35:59 15	Q. And what is it?	11:39:06 15	Q. And do you have any understanding as to why you
11:36:00 16	A. It's a letter in support of a grant application	11:39:11 16	would have enclosed another material transfer form with
11:36:03 17	that Tom Merigan wanted to send to the National	11:39:21 17	the transfer of IL-2 on September 14th, 1983, when there
11:36:07 18	Institutes of Health.	11:39:32 18	was already a Material Transfer Agreement that you had
11:36:23 19	Q. Are you finished?	11:39:42 19	signed on September 9th, 1983, in the form of
11:36:24 20	A. Mm-hmm.	11:39:47 20	Exhibit 355?
11:36:26 21	Q. How was Cetus supporting the grant application	11:39:47 21	MR. BOOZELL: It's vague and ambiguous.
11:36:30 22	that Tom Merigan wanted to send to the National	11:39:50 22	Caution that it potentially misstates the document that
11:36:33 23	Institutes of health?	11:39:53 23	was attached part of the document. Calls for
11:36:33 24	MR. BOOZELL: Vague and ambiguous. The	11:39:55 24	speculation. Lacks foundation.
11:36:34 25	document speaks for itself.	11:40:00 25	THE WITNESS: I don't know what the Materials
1		1	
	Page 83		Page 85
11:36:36 1	Page 83 THE WITNESS: Well, I don't know all ways in	11:40:03 1	-
11:36:36 1 11:36:39 2	_	11:40:03 1 11:40:05 2	Page 85 Transfer Agreement that were enclosed with the letter pertain to, but in some occasions reagents were used for
	THE WITNESS: Well, I don't know all ways in		Transfer Agreement that were enclosed with the letter
11:36:39 2	THE WITNESS: Well, I don't know all ways in which they were supporting it, but one of the ways was to provide him with this letter that would show the reviewers at the National Institutes of Health that he	11:40:05 2 11:40:10 3 11:40:13 4	Transfer Agreement that were enclosed with the letter pertain to, but in some occasions reagents were used for
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22 (Pages 82 to 85)

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	Page 86	ONORPRESANCE	Page 88
11:41:25 1	could be written very broadly, and one might want to	11:48:24 1	sent shortly after the 9th and been signed on the 15th.
11:41:31 2	have additional explicit protection by providing another	11:48:27 2	So but I'm guessing. I don't know. It looks like
11:41:34 3	one.	11:48:29 3	maybe there's another one attached to this thing.
11:41:34 4	But the probable answer to your question is	11:48:31 4	Q. And just to make the record straight, you're
11:41:37 5	that the letter is dated the 14th, and since it was sent	11:48:34 5	saying it looks to you that there was a different
11:41:42 6	by mail, it's unlikely that it would have been signed on	11:48:36 6	Material Transfer Agreement attached to Exhibit 688
11:41:46 7	the 15th, but I'm guessing. Without the enclosures for	11:48:38 7	which is dated September 14th, 1983?
11:41:53 8	this thing, it's difficult to know if there's any	11:48:41 8	MR. BOOZELL: Vague and ambiguous. Misstate
11:41:55 9	connection between the two except they both went to To	m11:48:42 9	his testimony. Calls for speculation.
11:41:58 10	Merigan.	11:48:45 10	THE WITNESS: I can't tell. There is no
11:42:07 11	BY MS. RHYU:	11:48:47 11	enclosure with the letter. And you haven't shown me any
11:42:07 12	Q. Do you see the stamps I'm almost finished	11:48:54 12	agreement agreem
11:42:11 13	with this line of questioning, and I know we want to	11:48:57 13	to cover Interleukin 2. There is this one, Exhibit 355,
11:42:13 14	take a lunch break. But our videotape is running out,	11:49:03 14	signed on the 15th. I don't know if they were
11:42:15 15	so I want to propose that we just take a brief break to	11:49:05 15	to me u
11:42:19 16	change the video, have a few more minutes of	11:49:09 16	the second secon
11:42:21 17	questioning, and then take a lunch break. Is that all	11:49:12 17	14th by mail.
11:42:24 18	right?	11:49:13 18	BY MS. RHYU:
11:42:24 19	MR. BOOZELL: Yes.	11:49:13 19	Q. And it wouldn't be unusual practice for you to
11:42:25 20	VIDEO OPERATOR: The time is 11:42. We're	11:49:18 20	send different material transfer agreements for transfer
11:42:27 21	going off the record, and this will be the completion of	11:49:24 21	of the same reagent if the reagent is to be used for
11:42:30 22	media No. 1.	11:49:27 22	different purposes?
11:46:25 23	(Recess.)	11:49:28 23	MR. BOOZELL: Vague and ambiguous. Misstate
11:46:26 24	VIDEO OPERATOR: The time is 11:46. We are	11:49:29 24	his testimony. It's an incomplete hypothetical.
11:46:43 25	back on the record, and this will be the beginning of	11:49:31 25	THE WITNESS: That misstates my testimony. As
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	Page 87	recon voluntum	Page 89
11:46:44 1	-	11:49:34 1	The state of the s
11:46:44 1 11:46:44 2	media No. 2 in the deposition of Dr. Thomas White.	11:49:34 1 11:49:39 2	I stated earlier, it depends on the breadth of the
	media No. 2 in the deposition of Dr. Thomas White. BY MS. RHYU:	11:49:39 2	I stated earlier, it depends on the breadth of the initial material transfer agreement and whether or not
11:46:44 2	media No. 2 in the deposition of Dr. Thomas White. BY MS. RHYU: Q. Dr. White, you just pointed out with respect to	11:49:39 2 11:49:42 3	I stated earlier, it depends on the breadth of the initial material transfer agreement and whether or not one wanted to obtain more protection from the use of the
11:46:44 2 11:46:53 3	media No. 2 in the deposition of Dr. Thomas White. BY MS. RHYU: Q. Dr. White, you just pointed out with respect to Exhibits 355 and 688 that Exhibit 688 is dated Septembe	11:49:39 2 11:49:42 3	I stated earlier, it depends on the breadth of the initial material transfer agreement and whether or not one wanted to obtain more protection from the use of the material, one might add an additional one, either
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	Page 90			Page 92
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11:51:09 1	THE WITNESS: Detection to me means the ability	11:54:22		not to answer.
11:51:12 2	to detect the subject or the target of detection I'm	11:54:25		THE WITNESS: Not to my knowledge.
11:51:19 3	assuming you mean by PCR now as well as to	11:54:25		BY MS. RHYU:
11:51:24 4	characterize and/or classify it, and to measure how much	11:54:30		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		Thomas Merigan and David Schwartz?
11:51:32 6	diagnostics sense. BY MS. RHYU:	11:54:42		MR. BOOZELL: Vague and ambiguous.
11:51:32 /		11:54:47		THE WITNESS: Could you specify the time frame
11:51:37 8	Q. Was Cetus initially focused on detection of HIV DNA?	11:54:49		you're speaking about here? BY MS. RHYU:
11:51:40 9	MR. BOOZELL: Vague and ambiguous. Calls for	11:54:51		
11:51:42 11	speculation.	11:54:51		Q. In the December 1988 time frame, which is the date of Exhibit 29
11:51:45 12	THE WITNESS: Cetus was initially interested in	11:54:54		
11:51:49 13	finding out whether or not the AIDS virus could be	11:54:58		Q on the face of the document.
11:51:53 14	detected in blood samples, and they were interested in	11:54:58		At the time that you were at Cetus, you were
11:51:57 15	characterizing variants of the AIDS virus and doing	11:55:04		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		Dr. Schwartz and Cetus relating to Exhibit 29?
11:52:05 17	diagnostic tests could be developed to detect, diagnose,	11:55:11		MR. BOOZELL: Vague and ambiguous. Asked an
11:52:10 18	characterize and measure the amount of the virus.	11:55:23		answered. Calls for a legal conclusion. Calls for
11:52:10 19	BY MS, RHYU:	11:55:28		speculation.
11:52:19 20	Q. As its initial focus, Cetus focused on	11:55:29		THE WITNESS: I'll have to look at the subject
11:52:24 21	diagnostic tests for detecting HIV DNA, correct?	11:55:31		matter of Exhibit 29 in order to see whether I can
11:52:29 22	MR. BOOZELL: Vague and ambiguous. Asked and	1		answer that question or not.
11:52:31 23	answered. Calls for speculation. Assumes facts not in	11:56:16		Could you reread the question now, please?
11:52:33 24	evidence.	11:56:34		(Record read as follows:
11:52:33 25	THE WITNESS: The first of Cetus's work on the	11:56:34		"QUESTION: At the time that you were
***************************************				20201.01.1. Its till till till y od word
1				
	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	AIDS virus had to do with detecting the DNA or proviral form of the virus in white blood cells. Then they began	11:56:34	2	at Cetus, you were unaware of any collaboration involving Dr. Merigan and
11:52:42 2 11:52:46 3	AIDS virus had to do with detecting the DNA or proviral form of the virus in white blood cells. Then they began to look to see if they could detect it in serum or	11:56:34 11:56:34	2	at Cetus, you were unaware of any collaboration involving Dr. Merigan and Dr. Schwartz and Cetus relating to Exhibit
11:52:42 2 11:52:46 3 11:52:49 4	AIDS virus had to do with detecting the DNA or proviral form of the virus in white blood cells. Then they began to look to see if they could detect it in serum or plasma. And then they began to look at the possibility	11:56:34	2	at Cetus, you were unaware of any collaboration involving Dr. Merigan and
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11:52:42 2 11:52:46 3 11:52:49 4 11:52:52 5 11:52:52 6 11:53:04 7 11:53:06 8 11:53:22 10 11:53:22 11 11:53:22 11 11:53:23 12 11:53:24 13 11:53:26 14 11:53:28 15 11:53:40 16 11:53:42 17 11:53:42 17 11:53:48 18 11:53:56 20 11:53:56 21	AIDS virus had to do with detecting the DNA or proviral form of the virus in white blood cells. Then they began to look to see if they could detect it in serum or plasma. And then they began to look at the possibility of detecting the RNA form of the virus. BY MS. RHYU: Q. Handing you what was previously marked as Exhibit 29. (Previously marked Exhibit 29 was presented to the witness.) BY MS. RHYU: Q. Do you recognize Exhibit 29? MR. BOOZELL: I instruct you not to answer to the extent that it would reveal attorney-client privileged communications. THE WITNESS: Well, it's a Material Transfer Agreement between Cetus Corporation and Stanford University specifically directed towards the proposed scientific collaboration between Tom Merigan and David Schwartz. BY MS. RHYU:	11:56:34 11:56:35 11:56:37 11:56:41 11:56:54 11:56:54 11:56:59 11:57:09 11:57:09 11:57:12 11:57:14 11:57:23 11:57:29 11:57:29 11:57:34	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	at Cetus, you were unaware of any collaboration involving Dr. Merigan and Dr. Schwartz and Cetus relating to Exhibit 29?") THE WITNESS: Well, I knew that Tom Merigan was a member of the Aids Cooperative Trial Group and that he was a consultant of Cetus's. And that Sninsky was in contact with him. But other than that, I have no knowledge or recollection of the material in Exhibit 29. BY MS. RHYU: Q. Are you aware generally of collaborations that Cetus had with scientists who were members of the Aids Cooperative Trial Group? MR. BOOZELL: Vague and ambiguous. Overbroad. THE WITNESS: I know that Cetus thought the AIDS Cooperative Clinical Trial Group was a useful organization that represented an opportunity for several different kinds of collaborations. But generally, very generally I would say yes. Specifically I don't recall. BY MS. RHYU: Q. And we're both using the term Aids Cooperative
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24 (Pages 90 to 93)

1			
	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 a
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 fa	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 HI	V01:03:58 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		
*	raye III		Page 113
01:00:59 1	that information would have been covered at least under	01:04:20 1	Page 113
01:00:59 1 01:01:01 2	•	01:04:20 1 01:04:20 2	BY MS. RHYU:
	that information would have been covered at least under this 1984 confidentiality agreement and potentially		
01:01:01 2	that information would have been covered at least under	01:04:20 2	BY MS. RHYU: Q. And you have no reservation arriving at that conclusion?
01:01:01 2 01:01:05 3	that information would have been covered at least under this 1984 confidentiality agreement and potentially other ones that he may have arranged with Cetus after I	01:04:20 2 01:04:23 3	BY MS. RHYU: Q. And you have no reservation arriving at that conclusion? MR. BOOZELL: Argumentative. Vague and
01:01:01 2 01:01:05 3 01:01:08 4	that information would have been covered at least under this 1984 confidentiality agreement and potentially other ones that he may have arranged with Cetus after I left Cetus's employment.	01:04:20 2 01:04:23 3 01:04:23 4	BY MS. RHYU: Q. And you have no reservation arriving at that conclusion? MR. BOOZELL: Argumentative. Vague and ambiguous. Calls for speculation. Lacks foundation.
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29 (Pages 110 to 113)

1 .	Page 118		Page 120
01:11:25 1	another institution who didn't visit Cetus. Visitors	01:14:08 1	legal conclusion. Calls for speculation. Lacks
01:11:28 2	had more access to other scientists and to confidential	01:14:10 2	foundation.
01:11:32 3	information than people who didn't visit Cetus.	01:14:12 3	THE WITNESS: It was not up to the visiting
01:11:32 4	BY MS. RHYU:	01:14:14 4	scientist to determine what was confidential or not.
01:11:37 5	Q. In the 1989 time frame, did you have an	01:14:17 5	The default condition under those agreements was that
01:11:40 6	understanding of what Cetus's visitor's confidentiality	01:14:20 6	everything that they learned during their visit to Cetus
01:11:52 7	agreement required?	01:14:24 7	was Cetus confidential information. If there was any
01:11:53 8	MR. BOOZELL: Vague and ambiguous. Assumes	01:14:29 8	question about that whatsoever, their obligation was to
01:11:54 9	facts not in evidence. Calls for speculation. Lacks	01:14:31 9	provide that to not use it and also to provide any
01:11:56 10	foundation. Calls for a legal conclusion.	01:14:38 10	if they thought they made an invention, it would be
01:11:59 11	THE WITNESS: As I've described earlier, I left	01:14:41 11	owned by Cetus.
01:12:02 12	Cetus in February or March of 1989, so their policies	01:14:41 12	BY MS. RHYU:
01:12:05 13	after I left I'm not familiar with. But they had a	01:14:42 13	Q. I understand what you're saying about the
01:12:08 14	visitor confidentiality agreement or agreements that	01:14:44 14	default presumption of confidentiality. My question is
01:12:11 15	they used prior to the time that I left.	01:14:47 15	if Cetus itself said that some information was not
01:12:11 16	BY MS. RHYU:	01:14:52 16	confidential, did the visitor's confidentiality
01:12:14 17	Q. And based on what you knew at the time that you	01:14:59 17	agreement cover that undisputedly nonconfidential
01:12:17 18	left of Cetus's visitor's confidentiality agreements, do	01:15:06 18	information?
01:12:23 19	you know if there was a form, visitor's confidentiality	01:15:06 19	MR. BOOZELL: It's vague and ambiguous. Calls
01:12:26 20	agreement, at Cetus at that time?	01:15:08 20	for a legal conclusion. Lacks foundation. Calls for
01:12:28 21	MR. BOOZELL: Vague and ambiguous. Compound.	01:15:10 21	speculation. It's an incomplete hypothetical.
01:12:30 22	THE WITNESS: As I've mentioned earlier, Cetus	01:15:12 22	THE WITNESS: I don't have the visitor's
01:12:32 23	had forms. Sometimes the forms could be modified.	01:15:16 23	confidentiality agreement in front of me. I can't
01:12:38 24	There was a visitor's confidentiality agreement used for	01:15:18 24	remember.
01:12:41 25	short-term visitors. Sometimes people who were there	01:15:18 25	BY MS. RHYU:
	Page 119	***************************************	Page 121
01:12:44 1	longer periods had other agreements. But there was a	01:15:18 1	Q. You just can't remember?
01:12:46 2	standard visitor's confidentiality agreement.		
01.12.10 2	standard visitors confidentiality agreement.	01.15.10 2	A No.
01 - 12 - 46 3		01:15:19 2	A. No.
01:12:46 3	BY MS. RHYU:	01:15:27 3	Q. I'm handing you what was previously marked as
01:12:49 4	BY MS. RHYU: Q. And do you know what that standard	01:15:27 3 01:15:29 4	Q. I'm handing you what was previously marked as Exhibit 30.
01:12:49 4 01:12:51 5	BY MS. RHYU: Q. And do you know what that standard confidentiality agreement required of the visitors?	01:15:27 3 01:15:29 4 01:15:29 5	Q. I'm handing you what was previously marked as Exhibit 30. (Previously marked Exhibit 30 was
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	Page 206		Page 208
04:04:49 1	Q. So merely from knowing the subject matter of a	04:07:35 1	·
04:04:52 2	patent and strike that.	04:07:33 1	of these patents, at that time you wouldn't have understood that Roche owned the patents?
04:04:56 3	Merely from knowing that the patent relates to	04:07:37 2	MR. BOOZELL: Same objections.
04:04:59 4	the use of PCR on HIV sequences and knowing that that	04:07:39 4	•
04:05:11 5	patent was issued to Tom Merigan, based on that	04:07:39 4	THE WITNESS: That question cannot be answere
04:05:16 6	information, it wouldn't have been enough for you to	04:07:42 5	the way you phrased it. I've told you I cannot remember
04:05:20 7	think to yourself this patent should fall under a	04:07:48 7	reading the application at the time I became aware of it. And without that information, I would be able to
04:05:26 8	consulting agreement that Tom Merigan had with Cetus?	04:07:48 7	form no opinion on whether or not Roche or Cetus
04:05:29 9	MR. BOOZELL: Vague and ambiguous. Misstates	1	deserved ownership of it or owned it. I'd have to look
04:05:31 10	his testimony. Calls for a legal conclusion.	04:07:38 9	at the list of inventors and the assignees, and I'd have
04:05:34 11	Incomplete hypothetical.	04:08:06 11	to know something about Roche's discussions with
04:05:36 12	THE WITNESS: As I'm sure you know, everything	04:08:08 12	Stanford. So I don't know the answer to your question.
04:05:38 13	about how to answer that question would depend on the	04:08:08 13	BY MS. RHYU:
04:05:41 14	timing of the supposed discovery or invention of Tom	04:08:25 14	Q. Did you well, you did say that it was likely
04:05:46 15	Merigan and its relationship to his consulting	04:08:33 15	that you were aware of at least one of these patents,
04:05:50 16	arrangement with Cetus and/or Roche. Without your bein	1	the '128, the '268 or the '086 prior to even prior to
04:05:54 17	more specific, I can't tell you how I would form an	04:08:43 17	working at Celera, correct?
04:05:57 18	opinion. But I would certainly have to know the content	04:08:46 18	A. I don't know if I said likely or possible.
04:06:00 19	of such a putative invention or the content of the	04:08:47 19	Q. You said likely.
04:06:04 20	patent application and the filing date and the claims of	04:08:48 20	MR. BOOZELL: Let him finish his answer,
04:06:09 21	the application relative to work I knew was under	04:08:51 21	please, and misstates his testimony.
04:06:14 22	being undergone at Cetus during the relevant time period	04:08:51 22	BY MS. RHYU:
04:06:17 23	or before.	04:08:54 23	Q. If you want to change that now, go ahead.
04:06:17 24	BY MS. RHYU:	04:08:56 24	MR. BOOZELL: It's argumentative and
04:06:20 25	Q. You understood that these patents were owned by	04:08:58 25	mischaracterizes his testimony. Let him finish his
***************************************	Page 207		Page 209
04:06:22 1	Stanford, correct?	04:09:00 1	answer.
04:06:22 2	MR. BOOZELL: Vague and ambiguous. Calls for a	}	THE WITNESS: I cannot remember reading either
04:06:25 3	legal conclusion. Assumes facts not in evidence.	04:09:02 3	of these applications. I said it was a common practice
04:06:27 4	THE WITNESS: I didn't understand that and	04:09:06 4	of mine to try to stay in touch with applications filed
04:06:31 5	when you handed them to me, but if it says on here who	04:09:12 5	by other parties on projects on which Roche was working
04:06:35 6	owns them or to whom they're assigned, which I don't see	04:09:12 6	I do not remember reading either of the applications,
04:06:40 7	here anywhere, but I'm assuming they were assigned to	04:09:15 7	and your line of questioning is to ask me what I thought
04:06:43 8	Stanford, but I don't see that in here anywhere. Are	04:09:17 8	of applications that I have told you I cannot remember
04:06:47 9	you	04:09:19 9	reading. So it's extremely difficult to answer a
04:06:49 10	BY MS. RHYU:	04:09:23 10	question about something I've already told you I cannot
04:06:49 11	Q. On the first page? Which patent are you	04:09:25 11	remember.
04:06:51 12	looking at?	04:09:25 12	BY MS. RHYU:
04:06:52 13	A. I'm looking at the '128. Oh, assignee, Leland	04:09:28 13	Q. I'm handing you an exhibit that was previously
04:07:00 14	Stanford Junior. So looking at this, I see that all	04:09:31 14	marked 554.
04:07:03 15	four of them have been assigned to Stanford University.	04:09:31 15	(Previously marked Exhibit 554 was
04:07:07 16	So if your question is do I assume that Stanford owns	04:09:44 16	presented to the witness.)
04:07:11 17	these patents, I would say yes, unless someone else has	04:09:44 17	BY MS. RHYU:
04:07:14 18	bought them from Stanford.	04:09:44 18	Q. Do you recognize Exhibit 554?
04:07:16 19	Q. You didn't understand that Roche owned these	04:09:46 19	MR. BOOZELL: I instruct you not to answer to
04:07:18 20	patents?	04:09:48 20	the extent it would reveal attorney-client privileged
04:07:19 21	MR. BOOZELL: It's vague and ambiguous and	04:09:51 21	communications or work product.
04:07:21 22	calls for a legal conclusion. Calls for speculation.	04:09:53 22	THE WITNESS: I do.
04:07:24 23	Lacks foundation. It's an incomplete hypothetical.	04:09:53 23	BY MS. RHYU:
04:07:24 24	BY MS. RHYU:	04:10:06 24	Q. What is it?
04:07:32 25	Q. I mean at the time that you became aware of one	04:10:13 25	A. It's a letter from a senior licensing associate

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	Page 210		Page 212
04:10:16 1	at Stanford University to Tom MacMahon, the president	of04:13:22 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		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
1			Simisky as the head of research, and myself as head of
04:12:37 13	BY MS. RHYU:	04:15:49 13	research and development.
04:12:37 13 04:12:40 14	Q. Do you know how you obtained this letter?	04:15:49 13 04:15:51 14	
04:12:37 13	Q. Do you know how you obtained this letter?A. Well, I'm not one of the copies on it, so I		research and development.
04:12:37 13 04:12:40 14	Q. Do you know how you obtained this letter? A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon.	04:15:51 14	research and development. MS. RHYU: We need to take a quick break to
04:12:37 13 04:12:40 14 04:12:48 15 04:12:52 16 04:13:02 17	Q. Do you know how you obtained this letter?A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon.Q. Can you think of any other way that you would	04:15:51 14 04:15:53 15	research and development. MS. RHYU: We need to take a quick break to change the video.
04:12:37 13 04:12:40 14 04:12:48 15 04:12:52 16 04:13:02 17 04:13:04 18	 Q. Do you know how you obtained this letter? A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon. Q. Can you think of any other way that you would have received the letter, Exhibit 554? 	04:15:51 14 04:15:53 15 04:15:58 16 04:15:58 17 04:16:01 18	research and development. MS. RHYU: We need to take a quick break to change the video. THE WITNESS: Okay.
04:12:37 13 04:12:40 14 04:12:48 15 04:12:52 16 04:13:02 17 04:13:04 18 04:13:08 19	 Q. Do you know how you obtained this letter? A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon. Q. Can you think of any other way that you would have received the letter, Exhibit 554? MR. BOOZELL: Vague and ambiguous. Calls for 	04:15:51 14 04:15:53 15 04:15:58 16 04:15:58 17 04:16:01 18	research and development. MS. RHYU: We need to take a quick break to change the video. THE WITNESS: Okay. VIDEO OPERATOR: The time is 4:15 p.m. We're
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04:12:37 13 04:12:40 14 04:12:48 15 04:12:52 16 04:13:02 17 04:13:04 18 04:13:08 19 04:13:10 20 04:13:11 21	 Q. Do you know how you obtained this letter? A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon. Q. Can you think of any other way that you would have received the letter, Exhibit 554? MR. BOOZELL: Vague and ambiguous. Calls for speculation. Lacks foundation. THE WITNESS: I would just be speculating. If 	04:15:51 14 04:15:53 15 04:15:58 16 04:15:58 17 04:16:01 18 04:16:03 19	research and development. MS. RHYU: We need to take a quick break to change the video. THE WITNESS: Okay. VIDEO OPERATOR: The time is 4:15 p.m. We're going off the record and this is the completion of media No. 3. (Recess.) VIDEO OPERATOR: The time is 4:19 p.m. We're
04:12:37 13 04:12:40 14 04:12:48 15 04:12:52 16 04:13:02 17 04:13:04 18 04:13:08 19 04:13:10 20 04:13:11 21 04:13:14 22	Q. Do you know how you obtained this letter? A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon. Q. Can you think of any other way that you would have received the letter, Exhibit 554? MR. BOOZELL: Vague and ambiguous. Calls for speculation. Lacks foundation. THE WITNESS: I would just be speculating. If I got a letter to Mr. MacMahon, it was probably from	04:15:51 14 04:15:53 15 04:15:58 16 04:15:58 17 04:16:01 18 04:16:03 19 04:19:42 20	research and development. MS. RHYU: We need to take a quick break to change the video. THE WITNESS: Okay. VIDEO OPERATOR: The time is 4:15 p.m. We're going off the record and this is the completion of media No. 3. (Recess.) VIDEO OPERATOR: The time is 4:19 p.m. We're back on the record and this will be the beginning of
04:12:37 13 04:12:40 14 04:12:48 15 04:12:52 16 04:13:02 17 04:13:04 18 04:13:08 19 04:13:10 20 04:13:11 21 04:13:14 22 04:13:17 23	Q. Do you know how you obtained this letter? A. Well, I'm not one of the copies on it, so I might have received it from Mr. MacMahon. Q. Can you think of any other way that you would have received the letter, Exhibit 554? MR. BOOZELL: Vague and ambiguous. Calls for speculation. Lacks foundation. THE WITNESS: I would just be speculating. If I got a letter to Mr. MacMahon, it was probably from Mr. MacMahon.	04:15:51 14 04:15:53 15 04:15:58 16 04:15:58 17 04:16:01 18 04:16:03 19 04:19:42 20 04:19:54 21	research and development. MS. RHYU: We need to take a quick break to change the video. THE WITNESS: Okay. VIDEO OPERATOR: The time is 4:15 p.m. We're going off the record and this is the completion of media No. 3. (Recess.) VIDEO OPERATOR: The time is 4:19 p.m. We're
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54 (Pages 210 to 213)

	Page 214		Page 216
	-	in the second	_
04:20:18 1	PCR assays for monitoring antiviral therapy and making	04:23:46 1	BY MS. RHYU:
04:20:22 2	therapeutic decisions in the treatment of AIDS	04:23:50 2	Q. Did you cross names out when you were just
04:20:28 3	specifically relating to detection of mutations in	04:23:52 3	forwarding notes to people also? So if you received a
04:20:33 4	reverse transcriptase in the October 1998 time frame?	04:23:56 4	letter and you wanted to forward it to someone else and
04:20:39 5	MR. BOOZELL: Vague and ambiguous. Compound.	04:23:59 5	wrote on that a note to the person that you were
04:20:40 6	Calls for speculation. THE WITNESS: I'm not so sure about the Codons	04:24:03 6	forwarding the letter to, would you have crossed that
04:20:43 /	mentioned in this letter here, but otherwise the answer	04:24:06 7	out also, or does that practice only apply to cc's?
04:20:50 8		04:24:10 8	MR. BOOZELL: Vague and ambiguous, and
04:20:53 9	to your question is yes. BY MS. RHYU:	04:24:11 9 04:24:12 10	compound.
04:20:33 10	Q. Upon receipt of this letter, is it likely that	04:24:12:10	THE WITTESS. If you're reterring to forwarding
04:21:04 12	you read it?	04:24:14 11	and a segment of a determined a setter to other people
04:21:04 12	A. Yes.	04:24:18 12	BY MS. RHYU:
04:21:08 14	Q. Were you concerned that the patents might be	04:24:19 13	
04:21:24 15	might have related strike that.	04:24:20 14	•
04:21:31 16	Why did you consider sending copies of this	04:24:20 15	•
04:21:35 17	letter to the people listed on that cc list?	04:24:22 16	A. In that instance I would not have written the
04:21:39 18	MR. BOOZELL: Vague and ambiguous. Calls for	04:24:27 18	letters "cc," I would have written in my customary
04:21:40 19	speculation.	04:24:27 18	practice "circulate," and then the names of the people.
04:21:45 20	THE WITNESS: Well, Tom MacMahon was an	04:24:32 20	And if I wanted to get a copy of it back at the if I
04:21:47 21	important customer of Roche's, and he'd received this	04:24:36 21	wanted it back at the end, I'd put my own name at the
04:21:52 22	letter from Stanford informing him of the existence of	04:24:39 22	bottom of the list. If I didn't care, I wouldn't, and I
04:21:57 23	these two patents, which probably had a bearing on the	04:24:41 23	would have no further information about whether they go
04:22:01 24	kinds of home brew resistance test sequencing that	04:24:44 24	it or read it.
04:22:08 25	LabCorp was offering. And since he was kind enough to	04:24:45 25	Q. And if it was a letter that you didn't draft,
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	Page 215	sandana-pe quar	Page 217
04:22:13 1	· · · · · · · · · · · · · · · · · · ·	04:24:48 1	Page 217
04:22:13 1 04:22:18 2	give me a copy of the letter, for information purposes I	04:24:48 1 04:24:51 2	but a letter that you received and you wanted to forward
1	give me a copy of the letter, for information purposes I copied it to Dr. Sias, who was a director of licensing	04:24:48 1 04:24:51 2 04:24:55 3	but a letter that you received and you wanted to forward that to just one other person
04:22:18 2	give me a copy of the letter, for information purposes I	04:24:51 2	but a letter that you received and you wanted to forward that to just one other person  A. That's what I was referring to in the previous
04:22:18 2 04:22:22 3	give me a copy of the letter, for information purposes I copied it to Dr. Sias, who was a director of licensing at Roche, to Doug Petry, who was in the law department,	04:24:51 2 04:24:55 3	but a letter that you received and you wanted to forward that to just one other person  A. That's what I was referring to in the previous answer.
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04:22:18 2 04:22:22 3 04:22:27 4 04:22:30 5 04:22:34 6	give me a copy of the letter, for information purposes I copied it to Dr. Sias, who was a director of licensing at Roche, to Doug Petry, who was in the law department, since I thought they should be aware that MacMahon had received this letter. And to Myers, Finckh and Sninsky because they were working on a DNA chip base method that could potentially be used to type the virus and make treatment decisions. And then as I say here, I'll let	04:24:51 2 04:24:55 3 04:24:57 4 04:24:57 5 04:24:59 6 04:25:02 7 04:25:06 8	but a letter that you received and you wanted to forward that to just one other person  A. That's what I was referring to in the previous answer.  Q. That is what you're referring to. Okay.
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04:22:18 2 04:22:22 3 04:22:27 4 04:22:30 5 04:22:34 6 04:22:41 7 04:22:44 8 04:22:48 9 04:22:52 10	give me a copy of the letter, for information purposes I copied it to Dr. Sias, who was a director of licensing at Roche, to Doug Petry, who was in the law department, since I thought they should be aware that MacMahon had received this letter. And to Myers, Finckh and Sninsky because they were working on a DNA chip base method that could potentially be used to type the virus and make treatment decisions. And then as I say here, I'll let you know what LabCorp does, assuming MacMahon saw fit to let me know what he did.  BY MS. RHYU:  Q. So you mentioned that you don't have a line	04:24:51 2 04:24:55 3 04:24:57 4 04:24:57 5 04:24:59 6 04:25:02 7 04:25:06 8 04:25:11 9 04:25:13 10	but a letter that you received and you wanted to forward that to just one other person  A. That's what I was referring to in the previous answer.  Q. That is what you're referring to. Okay.  A. My own letters I would send directly to someone and/or copy them on it. You talked about forwarding. I thought you meant forwarding a letter I received rather than one that originated with me.  Q. Upon receiving and reading the letter in
04:22:18 2 04:22:22 3 04:22:27 4 04:22:30 5 04:22:34 6 04:22:41 7 04:22:44 8 04:22:48 9 04:22:52 10 04:22:59 11	give me a copy of the letter, for information purposes I copied it to Dr. Sias, who was a director of licensing at Roche, to Doug Petry, who was in the law department, since I thought they should be aware that MacMahon had received this letter. And to Myers, Finckh and Sninsky because they were working on a DNA chip base method that could potentially be used to type the virus and make treatment decisions. And then as I say here, I'll let you know what LabCorp does, assuming MacMahon saw fit to let me know what he did.  BY MS. RHYU:  Q. So you mentioned that you don't have a line through this cc list here. Given the concerns that you	04:24:51 2 04:24:55 3 04:24:57 4 04:24:57 5 04:24:59 6 04:25:02 7 04:25:06 8 04:25:11 9 04:25:13 10 04:25:17 11	but a letter that you received and you wanted to forward that to just one other person  A. That's what I was referring to in the previous answer.  Q. That is what you're referring to. Okay.  A. My own letters I would send directly to someone and/or copy them on it. You talked about forwarding. I thought you meant forwarding a letter I received rather than one that originated with me.  Q. Upon receiving and reading the letter in Exhibit 554, is it likely that you would have read the
04:22:18 2 04:22:22 3 04:22:27 4 04:22:30 5 04:22:34 6 04:22:41 7 04:22:44 8 04:22:48 9 04:22:52 10 04:22:59 11 04:22:59 12	give me a copy of the letter, for information purposes I copied it to Dr. Sias, who was a director of licensing at Roche, to Doug Petry, who was in the law department, since I thought they should be aware that MacMahon had received this letter. And to Myers, Finckh and Sninsky because they were working on a DNA chip base method that could potentially be used to type the virus and make treatment decisions. And then as I say here, I'll let you know what LabCorp does, assuming MacMahon saw fit to let me know what he did.  BY MS. RHYU:  Q. So you mentioned that you don't have a line	04:24:51 2 04:24:55 3 04:24:57 4 04:24:57 5 04:24:59 6 04:25:02 7 04:25:06 8 04:25:11 9 04:25:13 10 04:25:17 11 04:25:22 12 04:25:24 13 04:25:26 14	but a letter that you received and you wanted to forward that to just one other person  A. That's what I was referring to in the previous answer.  Q. That is what you're referring to. Okay.  A. My own letters I would send directly to someone and/or copy them on it. You talked about forwarding. I thought you meant forwarding a letter I received rather than one that originated with me.  Q. Upon receiving and reading the letter in Exhibit 554, is it likely that you would have read the patents referred to in the letter?
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55 (Pages 214 to 217)

04:28:49 19 might have extended to the point of having partial 04:32:35 19 (Previously marked Exhibit 683 was 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 04:32:35 21 BY MS. RHYU: 04:29:02 22 familiar with in any detail. But I think the short 04:32:47 22 Q. So Exhibit 683 is a privilege log that was 04:29:06 23 answer to your question is at some point Roche had an 04:32:53 23 produced to Stanford by Roche, by Roche's attorneys.			·	
94.126.120 and/or licensing decisions. 94.126.121 do Dayou recall whether you followed up with Tom 94.126.121 for Dayou have that LabCorp decided to do about these operations of the patients of the patients (a) 12.29.14 or Dayou have that LabCorp has a license to these patients today? 94.126.131 do A. No. 94.126.131 do A.		Page 218	Professional Company of the Company	Page 220
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94/26/22 3 BY MS. RHYU!  94/26/27 5 MacMahon as to what LabCorp decided to do about these patents of day?  94/26/27 5 MacMahon as to what LabCorp decided to do about the patents?  94/26/27 5 MacMahon as to what LabCorp has a license to these patents (day?  94/26/26/39 9 Potents?  94/26/26/39 9 Potents?  94/26/26/39 9 Potents (day?  A. No.  94/26/26/39 9 Potents (day?  A. No.  94/26/26/39 12 LabCorp pint be -in the sense of a business of a business of labcorp in the -in the sense of a business of labcorp in the -in the sense of a business of labcorp in the -in the sense of a business of labcorp pint be -in the sense of a business of labcorp pint be -in the sense of a business of labcorp pint be -in the sense of a business of labcorp pint be -in the sense of a business of labcorp based in the 1998 time frame?  94/27/27/20 19 MS. RHYU:  94/27/28 27 MR. BOOZELL: Vague and ambiguous. Calls for of labcorp based in the 1998 time frame?  94/27/27/29 29 Specillation.  17 HE WITNESS: I don't know how to mawter that question. Are you referring to LabCorp's board of of labcorp based in the 1998 time frame?  94/27/27/29 29 Green of labcorp based in the 1998 time frame?  94/27/27/29 29 Green of labcorp based of labcorp. But which know when he was appointed. It could have been well before that.  94/27/27/29 19 MR. BOOZELL: Same objections.  17 HE WITNESS: I don't know when he was appointed. It could have been well before that.  94/27/27/29 19 MR. BOOZELL: Same objections.  18 MR. BOOZELL: Vague and ambiguous. Calls for specialtion.  19 MR. BOOZELL: Vague and ambiguous could have been well before that.  19 MR.	04:26:20 2		04:29:14 2	
94:26:27 5	04:26:22 3	BY MS. RHYU:	04:29:21 3	
941-26-127 5   MacMahon is to what LabCorp decided to do about these of 12-26-14 5   941-26-131 7   A. No.   941-26-134 8   941-26-131 7   A. No.   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26-134 8   941-26	04:26:22 4	Q. Do you recall whether you followed up with Tom	04:29:29 4	<del>-</del>
94:26:31 6 patents?  A. No. 02:26:34 8 Q. Do you know that LabCorp has a license to these patents today?  94:26:33 9 patents today?  A. No. 03:26:40:11 Q. In 1998, did Roche have any relationship with LabCorp in the	04:26:27 5	· · · · · · · · · · · · · · · · · · ·	1	
04:26:34 T Q. Do you know that LabCorp has a license to these of 42:26:39 P and 42:26:44 I Q. Do you know that LabCorp has a license to these of 42:26:49 I Q. Do you know that LabCorp has a license to these of 42:26:49 I Q. In 1998, did Roche have any relationship with 04:26:49 I LabCorp in the in the sense of a business elationship as defe from the licensing relationship? MR. BOOZELL: Vague. MS. RHYU: Let me try that again. Let me try 04:27:16 16 MR. BOOZELL: Vague and ambiguous. Calls for 04:27:120 19 MR. BOOZELL: Vague and ambiguous. Calls for 04:27:29 23 dracens? Pay MR. BOOZELL: Same objections.  THE WTINESS: I don't know how to answer that question. Are you referring to LabCorp's board of 4:23:29:30 24 Gracens? Q. Yes. Page 219  MR. BOOZELL: Same objections.  THE WTINESS: I don't know how to answer that question. Are you referring to LabCorp's board of 4:23:29:30 24 Gracens? Q. Yes. Page 219  MR. BOOZELL: Same objections.  THE WTINESS: I don't know how to answer that question. Are you referring to LabCorp should in the laboration of the diagnostics of	04:26:31 6		1	
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94 : 26 : 39 9 Patents today?  A. No.  Q. In 1998, did Roche have any relationship with 04 : 26 : 49 12 12 12 12 12 12 12 12 12 12 12 12 12	04:26:34 8	Q. Do you know that LabCorp has a license to these	04:29:48 8	
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04:26:49 1 1	04:26:40 10	A. No.	04:30:01 10	
04:26:49 12 LabCorp in the in the sense of a business relationship aside from the licensing relationship? 04:27:04 15 MR. BOOZELL: Vague. 04:27:04 15 MS. RHYU: Let me try that again. Let me try that again. 04:27:16 16 MS. RHYU: Let me try that again. Let me try that again. 04:27:16 17 MS. RHYU: Let me try that again. Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: Let me try that again. 04:27:16 18 MS. RHYU: D. Did Roche have did Roche appoint members to the LabCorp bard in the 1998 time frame?  MR. BOOZELL: Nague and ambiguous. Calls for 3 directors?  MR. BOOZELL: Same objections. 1HE WITNESS: I think Jean-Luc Belingard, who replaced MacMahon as the head of the diagnostics division, I think he's on the board of directors of 14-27:55 6 could have been well before that.  MR. BOOZELL: Vague and ambiguous. Calls for 3 varieties and 14 don't know when he was appointed. It old-127:59 8 MY. S. RHYU:  MR. BOOZELL: Vague and ambiguous. Calls for 3 varieties and 14 don't know when he was appointed. It old-127:59 8 MY. S. RHYU:  MR. BOOZELL: Vague and ambiguous. Calls for 3 varieties and 14 don't know when he was appointed. It old-127:59 8 MY. S. RHYU:  MR. BOOZELL: Vague and ambiguous. Calls for 3 varieties and 14 don't know when he was appointed. It old-127:59 8 MY. S. RHYU:  MR. BOOZELL: Vague and ambiguous. Calls for 3 varieties and 14 don't know when he was appointed. It old-127:59 8 MY. S. RHYU:  MR. BOOZELL: Vague and ambiguous. Calls for 3 varieties and 14 don't know when he was appointed. It old-127:59 8 MY. S. RHYU:  MR. BOOZELL: Vague and ambiguous with the sort on the bear of directors of 14 don't know when he was appointed. It old-127:59 18 Varieties a	04:26:41 11	Q. In 1998, did Roche have any relationship with	04:30:05 11	· · · · · · · · · · · · · · · · · · ·
94 : 26 : 58   13   relainnship aside from the licensing relationship?  94 : 27 : 10   14   M. BOOZELL: Vague.  MS. RHYU: Let me try that again. Let me try de 1: 27 : 16   18   18   18   18   18   18   18	04:26:49 12		04:30:05 12	
04:27:04 15 MR. BOOZELL: Vague. MR. BOOZELL: Vague. O4:27:108 17 O4:27:28 17 O4:27:28 17 O4:27:22 19 O4:27:22 20 O4:27:22 20 O4:27:22 21 O4:27:22 20 O4:27:27 22 O4:27:27 22 O4:27:27 22 O4:27:27 22 O4:27:27 25 O4:27:37 25 O4:27:37 25 O4:27:37 25 O4:27:39 25 O4:27:30 25 O	04:26:58 13		04:30:13 13	
04:27:04 15 MS, RHYU: Let me try that again. Let me try that again. Let me try that again. Q. Did Roche have did Roche appoint members to 04:27:16 18 the LabCorp board in the 1998 time frame? 04:27:16 19 MR, BOOZELL: Vague and ambiguous. Calls for 04:27:23 21 speculation. Are you referring to LabCorp's board of 04:27:30 24 directors? 04:27:30 24 directors? 04:27:30 25 Days MR, RHYU: Q. Yes.  Page 219 04:27:30 25 Days MR, RHYU: Q. Yes.  Page 219 04:27:32 1 MR, BOOZELL: Same objections. THE WITNESS: I think Jean-Luc Belingard, who replaced MacMahon as the head of the diagnostics of 04:27:55 6 LabCorp, but I don't know when he was appointed. It could have been well before that. 04:27:57 8 WS, RHYU: 04:27:59 8 Q. Was there a point at which LabCorp and Roche was there a point at which Roche had an ownership interest in the successor - sorry. Roche owned MR, BOOZELL: Vague and ambiguous. Calls for 04:31:33 17 04:28:13 11 LabCorp. 04:28:14 17 MR, BOOZELL: Vague and ambiguous. Calls for 04:31:32 5 04:31:33 17 04:28:13 11 LabCorp. 04:28:14 17 MR, BOOZELL: Vague and ambiguous. Calls for 04:31:33 17 04:31:34 20 04:31:32 5 04:31:33 17 04:31:35 16 04:31:31 17 04:31:34 20 04:31:32 5 04:31:33 17 04:31:34 20 04:31:32 5 04:31:33 17 04:31:34 20 04:31:32 5 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:33 17 04:31:34 20 04:31:34 20 04:31:34 20 04:31:34 20 04:31:34 20 04:31:34 20 04:31:35 10 04:31:34 20 04:31:35 10 04:31:34 20 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31:35 10 04:31	04:27:04 14		04:30:22 14	
94:27:06 16 that again.  94:27:08 17  Q. Did Roche have — did Roche appoint members to od:27:20 19  94:27:20 19  94:27:20 19  94:27:22 20  94:27:22 20  94:27:27 22  94:27:37 22  94:27:30 25  94:27:30 25  94:27:30 25  94:27:30 25  94:27:30 25  94:27:30 25  95:29  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20  95:20	04:27:04 15		1	
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04:27:20 19 MR. BOOZELL: Vague and ambiguous. Calls for 04:27:27 22 of 19 MR. BOOZELL: Vague and ambiguous. Calls for 04:27:28 21 THE WITNESS: I don't know how to answer that 04:27:27 22 of directors? 04:27:30 24 BY MS. RHYU: 04:27:30 25 Page 219  WR. BOOZELL: Same objections.  Page 219  WR. BOOZELL: Same objections.  THE WITNESS: I think Jean-Luc Belingard, who 04:27:32 1 could have been well before that. 04:27:35 2 Think Withing when he was appointed. It 04:27:55 6 could have been well before that. 04:27:57 7 BY MS. RHYU: 04:28:24 11 10 interest in LabCorp?  WR. BOOZELL: Vague and ambiguous. Calls for 04:31:31 2 of 4:31:31 1 interest in LabCorp?  WR. BOOZELL: Same objections.  Page 219  Page 219  WR. BOOZELL: Same objections. 04:31:11 1 04:23:14 2 of 4:31:32 3	04:27:08 17			
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94:27:22 20 of 4:27:28 21 directors?  94:27:30 25 directors.  94:27:30 25 directors.  94:27:30 25 directors.  94:27:30 25 directors.  94:27:30 25 dire	1		-	•
104:27:28 21 THE WITNESS: I don't know how to answer that of 4:27:28 23 question. Are you referring to LabCorp's board of directors?  104:27:30 24 Q. Yes.  Page 219  104:27:30 25 BY MS. RHYU:  104:27:32 1 Q. Yes.  Page 219  104:27:32 2 THE WITNESS: I think Jean-Luc Belingard, who of 4:27:40 3 replaced MacMahon as the head of the diagnostics division, I think he's on the board of directors of of 04:27:47 4 doi:27:51 5 LabCorp, but I don't know when he was appointed. It of 04:27:57 7 to 04:27:59 8 Q. Was there a point at which LabCorp and Roche was there a point at which Roche had an ownership interest in LabCorp?  104:28:13 11 004:28:13 11 10	04:27:22 20		1	
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04:29:11 25 BY MS. RHYU: 04:33:06 25 that parties produce that lists documents which the	04:28:44 18 04:28:49 19 04:28:53 20 04:29:00 21 04:29:02 22 04:29:06 23	interest in whatever RBL grew into, and I think that might have extended to the point of having partial ownership of LabCorp. But the acquisition and merger activities of LabCorp are not something that I'm familiar with in any detail. But I think the short answer to your question is at some point Roche had an	04:32:35 18 04:32:35 19 04:32:35 20 04:32:35 21 04:32:47 22 04:32:53 23	Exhibit 683.  (Previously marked Exhibit 683 was presented to the witness.)  BY MS. RHYU:  Q. So Exhibit 683 is a privilege log that was produced to Stanford by Roche, by Roche's attorneys.
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56 (Pages 218 to 221)

	Page 222		Page 224
04:33:12 1	producing party claims are subject to certain	04:37:12 1	· ·
04:33:12 1	privileges, so that the party's claiming that they don't	04:37:12 1	MR. BOOZELL: Vague and ambiguous. Compound.
04:33:22 3	have to turn over the document because the substance of	1	You can answer yes or no. THE WITNESS: No.
04:33:24 4	the document contains privileged information. But	04:37:17 4	
04:33:27 5	because of the rules that we conduct litigation by, the	04:37:17 4	BY MS. RHYU:
04:33:33 6	party is obligated to identify the information that's	04:37:32 5	Q. Was Doug Petry a patent agent at Roche?
04:33:38 7	listed here to describe what that document is.	04:37:37 6	A. I believe he was a patent agent in the law
04:33:46 8	Do you follow me?	04:37:40 7	department at Roche Molecular Systems.
04:33:48 9	A. So far.	04:37:47 8	Q. Do you know if he undertook analyses of patents in his role as a Roche patent agent?
04:33:48 10	Q. Okay. So I'd like you to turn to page I	04:37:55 9	in his role as a Roche patent agent?
04:33:53 11	believe it's page 7. And I'm wrong, it's page 9 of	04:38:02 10	MR. BOOZELL: You can answer that yes or no.
04:34:09 12	Exhibit 683. And look at the entries dated 12/15/1999.	04:38:07 11	THE WITNESS: Well, that would have been
04:34:23 13	There are two such entries.	04:38:10 12	consistent with his responsibilities. I don't recall
04:34:25 14	The first entry identifies a document dated	04:38:11 13	specifically if he did or didn't. BY MS. RHYU:
04:34:30 15	12/15/1999 that is from a D. Petry. The recipients	04:38:14 14	
04:34:30 15	named are T. White, J. Sninsky, S. Sias, K. Ordonez, V.	04:38:15 15	Q. Do you recall receiving any memoranda, not just
04:34:43 17	Lee and M. Griffith. The privilege the privileges	04:38:21 16	this one, but any memoranda about any patents drafted by Doug Petry?
04:34:48 18	asserted are AC, attorney-client privilege, and WP, work	1	-
04:34:53 19	product privilege. And the description of the document	04:38:31 19	MR. BOOZELL: Vague and ambiguous. You can
04:34:55 20	is "Memorandum reflecting attorney-client communicati	f .	answer yes or no.
04:34:58 21	and attorney work product regarding U.S. Patent No's,"	04:38:40 21	THE WITNESS: Could you read the question back
04:35:02 22	and then it lists the '730, the '086, the '128 and the	04:38:52 22	again? (Record read as follows:
04:35:08 23	'268 patents.	04:38:52 22	`
04:35:10 24	Do you see that line?	04:38:52 24	"QUESTION: Do you recall receiving
04:35:12 25	A. Yes.	04:38:52 25	any memoranda, not just this one, but any memoranda about any patents drafted by Doug
1		01.30.32 23	
		***************************************	······································
	Page 223		Page 225
04:35:15 1	Page 223 Q. Do you recall a memorandum circulated around	04:38:54 1	
04:35:15 1 04:35:22 2		04:38:54 1 04:38:54 2	Page 225
	Q. Do you recall a memorandum circulated around	STATE OF THE PROPERTY OF THE P	Page 225 Petry?")
04:35:22 2	<ul><li>Q. Do you recall a memorandum circulated around</li><li>December 1999 relating to these listed patents?</li><li>A. No.</li><li>MR. BOOZELL: You can answer that yes or no.</li></ul>	04:38:54 2	Page 225 Petry?") THE WITNESS: I have no specific recollection
04:35:22 2 04:35:31 3	Q. Do you recall a memorandum circulated around December 1999 relating to these listed patents?  A. No.  MR. BOOZELL: You can answer that yes or no. BY MS. RHYU:	04:38:54 2 04:38:55 3	Page 225  Petry?")  THE WITNESS: I have no specific recollection of receiving any memoranda from Doug Petry about patents
04:35:22 2 04:35:31 3 04:35:31 4	Q. Do you recall a memorandum circulated around December 1999 relating to these listed patents?  A. No.  MR. BOOZELL: You can answer that yes or no. BY MS. RHYU: Q. You have no recollection at all of receiving	04:38:54 2 04:38:55 3 04:39:03 4	Page 225  Petry?")  THE WITNESS: I have no specific recollection of receiving any memoranda from Doug Petry about patents that he assessed. Is that your question?
04:35:22 2 04:35:31 3 04:35:31 4 04:35:41 5	Q. Do you recall a memorandum circulated around December 1999 relating to these listed patents?  A. No.  MR. BOOZELL: You can answer that yes or no. BY MS. RHYU:  Q. You have no recollection at all of receiving any memorandum in the 1999 time frame relating to the	04:38:54 2 04:38:55 3 04:39:03 4 04:39:06 5	Page 225  Petry?")  THE WITNESS: I have no specific recollection of receiving any memoranda from Doug Petry about patents that he assessed. Is that your question?  BY MS. RHYU:
04:35:22 2 04:35:31 3 04:35:31 4 04:35:41 5 04:35:41 6 04:35:45 7 04:35:54 8	Q. Do you recall a memorandum circulated around December 1999 relating to these listed patents?  A. No.  MR. BOOZELL: You can answer that yes or no. BY MS. RHYU:  Q. You have no recollection at all of receiving any memorandum in the 1999 time frame relating to the '730, the '086, the '128 and '268 patents?	04:38:54 2 04:38:55 3 04:39:03 4 04:39:06 5 04:39:07 6	Page 225  Petry?")  THE WITNESS: I have no specific recollection of receiving any memoranda from Doug Petry about patents that he assessed. Is that your question?  BY MS. RHYU:  Q. Yes. In the 1999 time frame, what was your
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57 (Pages 222 to 225)

	Page 246	Transconding	Page 248
05:14:22 1	BY MS. RHYU:	05:17:37 1	Q. And an invention disclosure that attained the
05:14:22 2	Q. Yes.	05:17:40 2	rank of 1 was a disclosure that Cetus would file a
05:14:24 3	MR. BOOZELL: Same objections.	05:17:44 3	patent on?
05:14:27 4	THE WITNESS: I didn't understand that, but I	05:17:47 4	MR. BOOZELL: Vague and ambiguous. Misstate
05:14:29 5	could surmise it from the fact that he's a coauthor on	05:17:48 5	his testimony.
05:14:32 6	the paper with four scientists from Cetus.	05:17:50 6	THE WITNESS: Well, any invention disclosure
05:14:32 7	BY MS. RHYU:	05:17:55 7	that or any other subject that came up for
05:14:39 8	Q. And does looking at Exhibit 1 refresh your	05:17:58 8	consideration in the meeting, which could also include
05:14:42 9	recollection at all as to whether you had the	05:18:03 9	foreign filings or continuations in part, other things,
05:14:46 10	understanding that Dr. Holodniy was a visiting scientist	05:18:06 10	if it was ranked 1, it was simply given the highest
05:14:57 11	at Cetus?	05:18:10 11	priority for action by the law department. That could
05:15:10 12	A. Exhibit 1 does not refresh my memory on that	05:18:14 12	include filing a patent application, but it could
05:15:15 13	subject.	05:18:16 13	include, as I said, a continuation in part or any of
05:15:19 14	Q. Were you a member of the patent committee at	05:18:23 14	several other things that had to do with patent
05:15:25 15	Cetus?	05:18:25 15	prosecutions and filings. So I think that answered your
05:15:26 16	MR. BOOZELL: It's vague and ambiguous.	05:18:29 16	question.
05:15:30 17	THE WITNESS: You asked me that question	05:18:29 17	BY MS. RHYU:
05:15:32 18	before. What I said was that there was a group of	05:18:29 18	Q. What did the lowest rank indicate?
05:15:34 19	people who met at Cetus to discuss patents and invention	05:18:33 19	MR. BOOZELL: Vague and ambiguous. Calls for
05:15:39 20	disclosures, etcetera, and that I would have	05:18:35 20	speculation. It's overbroad. It's an incomplete
05:15:42 21	participated in some of those discussions.	05:18:42 21	hypothetical.
05:15:42 22	BY MS. RHYU:	05:18:42 22	THE WITNESS: There were several different
05:15:47 23	Q. I'm sorry, I thought that the prior questioning	05:18:43 23	rankings, as I replied earlier, and the lower of the
05:15:48 24	was related to a patent committee at Roche.	05:18:48 24	ranks could indicate that the committee thought the
05:15:51 25	A. Oh, I thought it was at Cetus, but maybe you	05:18:52 25	material had already been covered, there was not enough
	Page 247		Page 249
05:15:54 1	could check.	05:18:56 1	information to make a decision at that meeting or
05:15:55 2	Q. All right. Sorry. I'll check that later. But	05:18:58 2	something to be revisited, or something to be published
4			something to be revisited, or something to be published in
05:15:57 3	at Cetus you did participate	05:19:02 3	
05:15:57 3 05:16:02 4	at Cetus you did participate A. While I was employed there, yes, mostly up	05:19:02 3 05:19:05 4	because it had already been published and it was time to
1	A. While I was employed there, yes, mostly up	05:19:05 4	because it had already been published and it was time to publish it, or to publish it in order to get it into the
05:16:02 4	A. While I was employed there, yes, mostly up through 1987. And I don't believe that was the case in	05:19:05 4 05:19:09 5	because it had already been published and it was time to publish it, or to publish it in order to get it into the public domain or to be retained as know-how and/or
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63 (Pages 246 to 249)

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## HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

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1	I december of the contract of		
2 3 R	I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:		
4	That the foregoing proceedings were taken		
1	efore me at the time and place herein set forth; that		
	ny witnesses in the foregoing proceedings, prior to		
	estifying, were placed under oath; that a verbatim		
8 re	ecord of the proceedings was made by me using machine	ė	
	horthand which was thereafter transcribed under my		
	irection; further, that the foregoing is an accurate		
	ranscription thereof.		
12	I further certify that I am neither		
	nancially interested in the action nor a relative or		
14 er	mployee of any attorney of any of the parties.		
1	IN WITNESS WHEREOF, I have this date ubscribed my name.		
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