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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 SHIRLEY YEE KWOK
Redwood Shores, California
Thursday, August 10, 2006

Reported by:
SUZANNE F. BOSCHETTI
CSR No. 5111
Job No. 3-50831

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1 UNITED STATES DISTRICT COURT
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4 THE BOARD OF THE TRUSTEES OF
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No. C-05-04158 MHP

8 ROCHE MOLECULAR SYSTEMS, INC.;
9 ROCHE DIAGNOSTICS CORPORATION;
10 ROCHE DIAGNOSTICS OPERATIONS,
INC.; ROCHE DIAGNOSTIC SYSTEMS,
11 INC.,

Defendant.

12
13 AND RELATED COUNTERCLAIM.

14
15 Confidential videotaped deposition of SHIRLEY
16 YEE KWOK, taken on behalf of Plaintiff and
17 Counterclaim Defendants The Board of the Trustees of
18 the Leland Stanford Junior University, at 555 Twin
19 Dolphin Drive, Suite 560, Redwood Shores, California,
20 beginning at 9:36 a.m. and ending at 2:23 p.m. on
21 Thursday, August 10, 2006, before SUZANNE F.
22 BOSCHETTI, Certified Shorthand Reporter No. 5111.

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3 SHIRLEY YEE KWOK

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4 BY MS. RHYU

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<p>11:12:24 1 us the ability to quantify. 11:12:24 2 BY MS. RHYU: 11:12:36 3 Q. And when you're describing using HIV 11:12:38 4 templates of approximate copy numbers and 11:12:43 5 specifically referring to the work that you did 11:12:45 6 between 1986 and 1991, there are you just referring 11:12:50 7 to HIV DNA templates? 11:12:54 8 MR. CANNON: Object as to form. 11:13:01 9 THE WITNESS: Definitely HIV DNA templates 11:13:04 10 were used. 11:13:04 11 BY MS. RHYU: 11:13:11 12 Q. And who else worked with you to -- in this 11:13:16 13 work? Actually, let me withdraw that question. 11:13:21 14 You said definitely DNA templates. Were 11:13:24 15 there any other templates that you worked on in 11:13:27 16 this time period '86 to '91? 11:13:30 17 A. It's the time period that I'm not -- I don't 11:13:32 18 have a good recollection of. We worked with DNA as 11:13:36 19 well as RNA templates, but it's the time frame that 11:13:39 20 I'm not sure of. 11:13:40 21 Q. Okay. Thank you. 11:13:42 22 And let's just talk about the DNA 11:13:44 23 templates work right now. Who else worked with you 11:13:47 24 to demonstrate that quantitative PCR was possible 11:13:51 25 using DNA templates?</p> <p style="text-align: right;">Page 49</p>	<p>11:16:26 1 Q. And do you recall what time frame he did 11:16:28 2 that work? 11:16:30 3 A. No, I don't. 11:16:31 4 Q. Do you have any idea what year he did that 11:16:33 5 work? 11:16:41 6 A. I don't remember. 11:16:41 7 Q. How about Nancy McKinney, do you know if 11:16:44 8 she did any work using an RNA template for 11:16:49 9 quantitation of HIV? 11:16:50 10 A. Actually, let me -- there was one other 11:16:52 11 individual, John Mulder, who was also in my group. 11:16:59 12 Q. Was John Mulder in your group while at 11:17:02 13 Cetus? 11:17:03 14 A. I believe so. 11:17:09 15 Q. You recall John Mulder as an employee of 11:17:13 16 Cetus? 11:17:13 17 A. Yes. Or during -- yes, during that 11:17:16 18 transition. Either before or around the transition 11:17:19 19 period. I don't remember exactly, but I do remember 11:17:22 20 him being at Cetus. 11:17:25 21 Q. Is it possible that -- I'm sorry? 11:17:28 22 A. He was hired while we were at Cetus. 11:17:30 23 Q. He was hired while you were at Cetus? 11:17:32 24 A. Mm-hmm. 11:17:34 25 Q. Is it possible that he was a Roche</p> <p style="text-align: right;">Page 51</p>
<p>11:13:54 1 A. David Kellogg, Nancy McKinney. I don't think 11:14:21 2 Cindy Christopherson joined the group then. Those are 11:14:22 3 the people that come to mind. 11:14:24 4 Q. In this 1986 to 1991 time frame, your 11:14:29 5 title, you list, is Scientist/HIV and HTLV Project 11:14:37 6 Supervisor, Cetus Corporation. As HIV project 11:14:42 7 supervisor, were you supervising all of the work 11:14:48 8 that was being done at Cetus related to 11:14:52 9 quantitation of DNA in this period 1996 to '91? 11:14:58 10 A. Yes, I was. 11:15:08 11 Q. And do you specifically recall whether 11:15:11 12 David Kellogg did any work with quantitation of 11:15:15 13 RNA? 11:15:27 14 A. 1991. Yes, he did. 11:15:30 15 Q. And what do you recall about that? 11:15:34 16 A. My recollection is that he worked on a 11:15:38 17 two-step RT PCR assay for HIV. 11:15:50 18 Q. And what did that two-step RT PCR assay 11:15:54 19 for HIV consist of? That term just doesn't mean 11:15:59 20 anything to me. 11:15:59 21 A. The two-step refers to the fact that the RNA 11:16:02 22 needs to be reverse transcribed to cDNA using an 11:16:08 23 enzyme as a first step. The cRNA then is used -- -- 11:16:16 24 the cDNA is then used for the actual PCR amplification 11:16:22 25 using the DNA polymerase.</p> <p style="text-align: right;">Page 50</p>	<p>11:17:36 1 employee that worked with you at Cetus just prior 11:17:41 2 to the transition where Roche acquired some Cetus 11:17:50 3 assets? 11:17:58 4 A. It's possible, but that's not my 11:18:00 5 recollection. 11:18:01 6 Q. Okay. How about Nancy McKinney; do you 11:18:06 7 know if she did any work with RNA quantification, 11:18:10 8 HIV RNA quantification? 11:18:15 9 A. I believe she did. 11:18:17 10 Q. And do you have any memory of what time 11:18:19 11 frame she did that work? 11:18:22 12 A. I don't remember. 11:18:30 13 Q. Did any of these three people, David 11:18:32 14 Kellogg, Nancy McKinney or John Mulder, use RNA 11:18:41 15 quantitation techniques on samples from treated 11:18:47 16 patients, treated HIV patients? 11:18:50 17 MR. CANNON: Objection as to form. 11:18:57 18 THE WITNESS: Are you asking specifically 11:18:59 19 during this time period? 11:18:59 20 BY MS. RHYU: 11:19:01 21 Q. Yes. 1986 to 1991. 11:19:12 22 A. I don't remember. 11:19:12 23 Q. You don't remember one way or the other or 11:19:14 24 you don't think so? 11:19:16 25 A. No, I don't -- I don't remember. We worked</p> <p style="text-align: right;">Page 52</p>

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<p>11:19:18 1 with a lot of samples, but I don't -- I don't recall 11:19:22 2 specifically whether they were treated or untreated or 11:19:25 3 a combination of both. 11:19:46 4 Q. So as to the HIV quantitation work that 11:19:49 5 was going on at Cetus in the 1986 to 1991 time 11:19:52 6 frame, is it fair to say that the people doing that 11:19:56 7 work at Cetus were you, David Kellogg, Nancy 11:20:04 8 McKinney and John Mulder? 11:20:06 9 MR. CANNON: Objection as to form. 11:20:11 10 THE WITNESS: As far as I can remember. 11:20:11 11 BY MS. RHYU: 11:20:13 12 Q. You don't remember anyone else doing RNA 11:20:16 13 quantitation work with HIV at Cetus during the 1986 11:20:20 14 to 1991 time frame? 11:20:22 15 MR. CANNON: Objection as to form. 11:20:22 16 BY MS. RHYU: 11:20:29 17 Q. As the HIV project supervisor? 11:20:32 18 A. This was just my small group of four people, 11:20:34 19 so three or four people at the time, so yes. 11:20:36 20 Q. But that was the HIV group, correct? 11:20:39 21 A. Right. In terms of developing -- that was at 11:20:44 22 least the group that I was responsible for that was 11:20:47 23 doing the work. 11:20:47 24 Q. And that was the group at Cetus that was 11:20:50 25 responsible for developing a -- for developing</p> <p style="text-align: right;">Page 53</p>	<p>11:22:19 1 trip to Stanford with John Sninsky. Do you 11:22:23 2 remember when it was, approximately what year? 11:22:27 3 A. No. I have -- I only remember going there. 11:22:32 4 I don't have any recollection of what was discussed. 11:22:37 5 Q. Do you remember if any reagents were taken 11:22:40 6 to Stanford on that occasion? 11:22:42 7 A. I don't remember. 11:22:43 8 Q. Do you remember who you talked to 11:22:45 9 besides -- or do you remember if you talked to 11:22:48 10 anyone besides Dr. Merigan on that trip? 11:22:52 11 A. There was another person present, but I can't 11:22:55 12 remember who it was. 11:22:58 13 Q. And do you remember anything about the 11:23:00 14 subject matter of those discussions -- that 11:23:02 15 discussion? 11:23:03 16 A. No. 11:23:04 17 Q. Do you remember how long you were there? 11:23:07 18 A. No. It was in the afternoon. It wasn't 11:23:12 19 hours. It was -- it was relatively short, but -- 11:23:24 20 Q. Did you ever give Dr. Merigan any 11:23:29 21 materials, scientific materials or reagents? 11:23:33 22 A. Not that I recall. 11:23:39 23 Q. Did you ever talk to him specifically 11:23:41 24 about your experiments? 11:23:43 25 A. No.</p> <p style="text-align: right;">Page 55</p>
<p>11:20:58 1 quantitative assays for detecting HIV nucleic 11:21:06 2 acids, correct? 11:21:07 3 A. Mm-hmm. 11:21:07 4 Q. Is that a yes? 11:21:08 5 A. Yes. 11:21:25 6 Q. Do you know Dr. Thomas Merigan? 11:21:28 7 A. I know of him. 11:21:29 8 Q. Have you ever met him? 11:21:31 9 A. I've met him. 11:21:32 10 Q. When have you met him? 11:21:37 11 A. A long time -- many, many years ago. I don't 11:21:41 12 remember. 11:21:41 13 Q. Do you remember where you met him? 11:21:46 14 A. I think I met him at Stanford. 11:21:49 15 Q. And what were you doing at Stanford? 11:21:51 16 A. I don't remember the exact specifics. My 11:21:56 17 boss and I went to talk to them one afternoon. But I 11:22:02 18 don't remember the context of those discussions. 11:22:05 19 Q. Your boss is John Sninsky? 11:22:08 20 A. Correct. 11:22:08 21 Q. And I guess your boss was John Sninsky at 11:22:13 22 that time? 11:22:13 23 A. Still is. 11:22:15 24 Q. And I just want to make sure that I 11:22:17 25 understand everything that you remember about that</p> <p style="text-align: right;">Page 54</p>	<p>11:23:47 1 Q. Did you ever give Dr. Merigan any 11:23:49 2 confidential -- any information that was 11:23:51 3 confidential to Cetus? 11:23:53 4 A. I didn't speak to him. 11:24:00 5 Q. Do you know Dr. Mark Holodniy? 11:24:04 6 A. I know who he is. 11:24:05 7 Q. Have you met him? 11:24:07 8 A. Yes. 11:24:07 9 Q. And when do you recall meeting him? 11:24:16 10 A. I don't have a specific date. 11:24:18 11 Q. Do you have a general memory of meeting 11:24:21 12 him? 11:24:22 13 A. It was probably in -- when I was at Cetus. 11:24:28 14 Q. So do you have a memory of seeing 11:24:32 15 Dr. Holodniy at Cetus? 11:24:35 16 A. Yes, I did see him at Cetus, but I didn't 11:24:38 17 interact with him. 11:24:40 18 Q. So you didn't have any conversations with 11:24:42 19 him about science? 11:24:46 20 A. Not that I recall. 11:24:53 21 Q. Did you give any reagents or materials to 11:24:57 22 Dr. Holodniy? 11:24:59 23 A. Not that I recall. 11:25:02 24 Q. Did you ever give him any equipment? 11:25:06 25 A. Not that I remember.</p> <p style="text-align: right;">Page 56</p>

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<p>11:25:22 1 Q. Did you ever tell Dr. Mark Holodniy any 11:25:27 2 information that was confidential to Cetus? 11:25:31 3 A. I don't think so. I don't recall having 11:25:36 4 discussions with him. 11:25:47 5 Q. So you never discussed quantitation of HIV 11:25:52 6 nucleic acids with Mark Holodniy? 11:25:54 7 MR. CANNON: Objection to form. 11:25:58 8 THE WITNESS: I -- we might have spoken years 11:26:02 9 later, but I don't recall any of those discussions 11:26:06 10 during the time period that you've identified. 11:26:10 11 BY MS. RHYU: 11:26:10 12 Q. You said that you knew who Mark Holodniy 11:26:18 13 was. And who do you know Mark Holodniy to be? 11:26:23 14 A. A physician at Stanford working on HIV or 11:26:28 15 treating HIV patients. 11:26:34 16 Q. And how have you come to that 11:26:36 17 understanding? 11:26:38 18 A. He was -- I believe he participated in some 11:26:44 19 of the AIDS clinical trials, and since we had 11:26:51 20 participated in the evaluation of samples from the 11:26:54 21 ACTG, his name came up. 11:27:02 22 Q. How did it come up? 11:27:04 23 A. On certain occasions. They were some -- some 11:27:07 24 of the labs -- he was one of the labs that 11:27:12 25 participated in the -- in some of the evaluations or</p> <p style="text-align: right;">Page 57</p>	<p>11:28:57 1 A. I would have known. 11:28:58 2 Q. And why do you say that? 11:29:05 3 A. Just the way the group was organized. 11:29:25 4 MS. RHYU: I'm going to have to walk over 11:29:28 5 there and get the next exhibit, which is very large 11:29:30 6 and in a box, so forgive me for a sec. 11:29:50 7 Q. So I'm handing you what was previously 11:29:53 8 marked as Exhibit 518. It's a document, first 11:30:00 9 page -- it's called the "Acquisition by 11:30:03 10 Hoffmann-LaRoche and F. Hoffmann-LaRoche Limited of 11:30:08 11 Certain Assets from Cetus Corporation," and it's 11:30:11 12 dated December 11th, 1991. 11:30:11 13 (Previously marked Exhibit 518 was 11:30:32 14 presented to the witness.) 11:30:32 15 THE WITNESS: These are continuous? 11:30:34 16 MR. CANNON: I'm not sure. 11:30:39 17 MS. RHYU: Oh, maybe they're continuous. 11:30:41 18 MR. CANNON: I think you've given me part 11:30:43 19 of -- 11:30:44 20 MS. RHYU: Is it all one? I apologize. It 11:30:46 21 looks like we have just one copy of the document, 11:30:49 22 which is a very large document. 11:30:50 23 Q. And I don't expect you to look through the 11:30:52 24 entire document at all. Do you have an 11:30:54 25 understanding that at some point Roche acquired</p> <p style="text-align: right;">Page 59</p>
<p>11:27:15 1 in the collection of specimens for the studies. 11:27:21 2 Q. And I just want to make sure we're talking 11:27:23 3 about -- we're clear about what time frame we're 11:27:28 4 talking about. 11:27:28 5 A. Yeah. This is not early. We're talking 11:27:32 6 later. 11:27:32 7 Q. Can you give me the approximate year, a 11:27:35 8 range that you're talking about with respect to 11:27:37 9 your interactions with Dr. Holodniy with the ACTG? 11:27:48 10 Was it while you were at Cetus? 11:27:50 11 A. No, as far as I remember. 11:27:55 12 Q. Was it after 1993? 11:28:01 13 A. I don't know. I think that if we look at 11:28:04 14 some of the publications in which we were 11:28:08 15 participating in the ACTG clinical trials, that would 11:28:12 16 give us an idea as to the time frame. 11:28:20 17 Q. To your knowledge, did any of the people 11:28:23 18 who worked in your HIV group give any reagents to 11:28:30 19 Dr. Holodniy? 11:28:32 20 A. No. 11:28:38 21 Q. Would -- would you have known if the 11:28:42 22 people working in the HIV group were interacting 11:28:46 23 with Dr. Holodniy related to quantitation of HIV? 11:28:56 24 A. Yes. 11:28:56 25 Q. You would have known that?</p> <p style="text-align: right;">Page 58</p>	<p>11:30:57 1 certain assets from Cetus? 11:31:00 2 A. Yes. 11:31:00 3 Q. And what's your understanding of what 11:31:04 4 Roche acquired from Cetus? 11:31:06 5 MR. CANNON: Objection. 11:31:06 6 THE WITNESS: That I don't have a good 11:31:09 7 understanding -- 11:31:09 8 BY MS. RHYU: 11:31:11 9 Q. Okay. 11:31:11 10 A. -- of the specifics. 11:31:12 11 Q. And I ask you to turn to RMS 6503. It's a 11:31:29 12 section of the document that's entitled "PCR 11:31:32 13 Agreements MTAs Only Collaborators Database," and 11:31:38 14 this page is -- bears the date 12/05/1991. 11:31:46 15 Did you have any -- strike that. 11:31:56 16 Did you -- did you use material transfer 11:32:04 17 agreements while you were at Cetus? 11:32:06 18 MR. CANNON: Objection as to form. 11:32:09 19 THE WITNESS: Yes, we did. 11:32:09 20 BY MS. RHYU: 11:32:12 21 Q. Did you specifically have any role in 11:32:16 22 distributing material transfer agreements? 11:32:19 23 A. In distributing? 11:32:21 24 Q. Yes. 11:32:26 25 A. Can you clarify that?</p> <p style="text-align: right;">Page 60</p>

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<p>01:24:04 1 A. -- John Sninsky on the status of HIV-2 and 01:24:10 2 talked about the difficulties of the project, and also 01:24:15 3 the fact that HIV-2 was not going to be the major 01:24:24 4 epidemic that people were originally concerned -- it 01:24:28 5 wasn't clear at the time, since this is early in the 01:24:31 6 epidemic, whether HIV-1 or HIV-2 were going to be 01:24:35 7 major players. And it soon became apparent that HIV-2 01:24:39 8 wasn't, and therefore devoting a lot more time on 01:24:42 9 HIV-2 didn't make a lot of sense to me at the time. 01:24:51 10 Q. And you came to that realization in 01:24:53 11 mid-1991? 01:24:59 12 A. It may have been before that, but this is 01:25:01 13 when I wrote it up. 01:25:02 14 Q. When is when you wrote it up? 01:25:04 15 A. I assume I wrote this up when I put it in the 01:25:07 16 notebook, but I don't know. 01:25:10 17 Q. Well, the entry follows an entry in your 01:25:13 18 notebook that's dated July 1991. 01:25:17 19 A. Mm-hmm. 01:25:25 20 Q. Was it your practice to put things in your 01:25:30 21 notebook as you -- as you created them? 01:25:35 22 A. In general. 01:25:36 23 Q. And then your memorandum itself refers to 01:25:41 24 starting the HIV project in May of 1990, and that 01:25:46 25 that project was initiated in the previous year</p> <p style="text-align: right;">Page 85</p>	<p>01:27:16 1 A. Mm-hmm. 01:27:17 2 Q. -- it says "HIV 2s from Varnier," and that 01:27:21 3 page is dated May 1991. 01:27:23 4 A. Okay. 01:27:23 5 Q. Okay. Does that help your recollection 01:27:27 6 that the memorandum starting at page 69 of your 01:27:31 7 notebook was written sometime after May of 1991? 01:27:39 8 A. That would be consistent. 01:27:42 9 Q. That's consistent with your memory? 01:27:47 10 A. Consistent with my memorandum. I don't have 01:27:51 11 a good memory. 01:28:03 12 Q. The first sentence of your memorandum 01:28:06 13 says: 01:28:06 14 "The HIV-1 and HTLV assays developed in 01:28:11 15 our lab are currently being finalized at 01:28:15 16 RDS." 01:28:15 17 Can you tell me which HIV-1 assay you're 01:28:19 18 referring to there? 01:28:32 19 A. It's HIV DNA assays PCR based. 01:28:35 20 Q. And is that an HIV DNA assay for detection 01:28:38 21 of HIV in peripheral blood mononuclear cells? 01:28:44 22 A. Yes. 01:28:50 23 Q. Being a DNA assay, is that assay useful 01:28:54 24 for monitoring effectiveness of HIV therapy? 01:28:58 25 MR. CANNON: Objection.</p> <p style="text-align: right;">Page 87</p>
<p>01:25:50 1 from the year that you wrote the memo, correct? 01:25:52 2 MR. CANNON: Object as to form. The document 01:25:56 3 says what it says. 01:26:00 4 THE WITNESS: Yeah, I don't remember. 01:26:00 5 BY MS. RHYU: 01:26:02 6 Q. Is there any reason -- I'm sorry. 01:26:06 7 A. I don't remember the specifics. 01:26:07 8 Q. Okay. Just from reading the memorandum 01:26:09 9 which you wrote, do you have any doubt in your mind 01:26:12 10 that this -- that you wrote this memorandum in 01:26:15 11 1991? 01:26:18 12 A. It probably was written in '91. 01:26:30 13 Q. Do you have any reason to think that it 01:26:32 14 wasn't written in 1991? 01:26:33 15 A. No. 01:26:41 16 Q. And just to help your recollection, in the 01:26:44 17 second paragraph, midway through the paragraph, 01:26:47 18 there's a sentence that says: 01:26:49 19 "We have recently initiated a 01:26:50 20 collaboration with Dr. Varnier at the 01:26:55 21 University of Genova in Italy." 01:26:58 22 Do you see that? 01:26:58 23 A. Mm-hmm. 01:26:59 24 Q. And if you flip back to RMS 69904, under 01:27:09 25 the title at the top of the page --</p> <p style="text-align: right;">Page 86</p>	<p>01:28:59 1 THE WITNESS: Potentially. Potentially. 01:28:59 2 BY MS. RHYU: 01:29:04 3 Q. What do you mean by potentially? 01:29:05 4 A. I don't think investigators have looked into 01:29:09 5 that carefully or systematically. We can quantify DNA 01:29:16 6 from peripheral blood, but I don't think any assay -- 01:29:24 7 any studies have been done to look at DNA in response 01:29:29 8 to therapy over time that I'm aware of. 01:29:31 9 Q. And that's as of today? 01:29:35 10 A. I don't know about today. I haven't been 01:29:37 11 following the literature. 01:29:38 12 Q. So as of what date are you -- is your 01:29:41 13 testimony? 01:29:41 14 A. Well, certainly at this time, at the time 01:29:45 15 that this was written and probably after that as well, 01:29:49 16 but I can't pin down the date. 01:29:51 17 Q. Okay. So just to make clear, make it 01:29:54 18 clear on the record, is it your testimony that as 01:29:57 19 of approximately May of 1991, the HIV-1 proviral 01:30:09 20 DNA assay that was developed in your lab, that 01:30:15 21 lab -- that assay had not been shown to be 01:30:24 22 effective for monitoring the effectiveness of an 01:30:29 23 HIV therapeutic treatment? 01:30:32 24 MR. CANNON: Object as to form. 01:30:38 25 THE WITNESS: I don't recall it being used</p> <p style="text-align: right;">Page 88</p>

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<p>01:30:39 1 for that purpose. 01:30:39 2 BY MS. RHYU: 01:30:42 3 Q. And no one had shown that it's useful for 01:30:45 4 that purpose? 01:30:46 5 MR. CANNON: Object as to form. 01:30:47 6 THE WITNESS: Not that I'm aware of. 01:31:01 7 BY MS. RHYU: 01:31:01 8 Q. Were there any other HIV assays that you 01:31:04 9 could have been referring to there in that first 01:31:06 10 sentence other than the HIV proviral DNA assay that 01:31:11 11 you just mentioned? 01:31:12 12 A. I don't think so. 01:31:32 13 Q. So if you'll turn to the next page, 69924, 01:31:39 14 the second paragraph states: 01:31:41 15 "I propose that rather than devote the 01:31:44 16 entire lab to HIV-2, that we begin to develop 01:31:48 17 a procedure for quantitation of HIV-1 viral 01:31:52 18 load in infected patients." 01:31:55 19 Do you see that? 01:31:55 20 A. Yes, I do. 01:31:57 21 Q. Prior to the time that you wrote this 01:32:00 22 memorandum, were the primary resources being 01:32:03 23 dedicated to an HIV-2 assay? 01:32:08 24 MR. CANNON: Object as to form. 01:32:09 25 MS. RHYU: Withdraw that.</p>	<p>01:33:27 1 had not yet begun to develop a procedure for 01:33:29 2 quantitation of HIV-1 viral load in infected 01:33:33 3 patients? 01:33:33 4 MR. CANNON: Object as to form. 01:33:49 5 THE WITNESS: I can't say for sure that we 01:33:53 6 hadn't begun some limited studies. It's just that if 01:33:56 7 we were to develop -- to develop an assay that we can 01:33:59 8 transfer to -- to Roche or to whoever, it would 01:34:05 9 require dedicated effort to really look at all the 01:34:10 10 parameters systematically. So I can't say that we 01:34:14 11 hadn't done some exploratory work. 01:34:14 12 By MS. RHYU: 01:34:17 13 Q. But by the time you had written this 01:34:18 14 memorandum sometime in the middle of 1991, you 01:34:28 15 hadn't yet proceeded with a dedicated effort to 01:34:35 16 look at the parameters -- 01:34:40 17 A. If we -- 01:34:41 18 Q. Excuse me -- to look at the parameters 01:34:43 19 necessary for developing a quantitative assay for 01:34:46 20 HIV -- for quantitation of HIV viral load? 01:34:50 21 MR. CANNON: Object as to form. 01:34:50 22 BY MS. RHYU: 01:34:52 23 Q. Correct? 01:34:53 24 MR. CANNON: Object as to form. 01:34:54 25 THE WITNESS: If we did anything, it was not</p>
<p>01:32:10 1 Q. Was the entire lab devoted to developing 01:32:13 2 an HIV-2 assay prior to the time that you wrote 01:32:16 3 this memorandum? 01:32:22 4 A. I can't say for sure. 01:32:24 5 Q. Why can't you say for sure? 01:32:26 6 A. I don't know that the entire lab was devoted 01:32:28 7 to HIV-2. 01:32:30 8 Q. And do you know what you're referring to 01:32:32 9 here in the sentence where you say "rather than 01:32:34 10 devote the entire lab to HIV-2"? 01:32:36 11 A. It may mean going forward. I don't know. 01:32:41 12 Q. Do you think it was being considered that 01:32:44 13 the entire lab should be devoting itself to HIV-2? 01:32:47 14 A. I'm sorry? 01:32:48 15 Q. Do you think that at that time folks were 01:32:50 16 considering devoting the entire lab to HIV-2 assay 01:32:54 17 development? 01:32:54 18 MR. CANNON: Object as to form. 01:32:56 19 THE WITNESS: I don't remember. 01:33:09 20 BY MS. RHYU: 01:33:09 21 Q. So the sentence -- in this sentence you 01:33:12 22 propose that the lab "begin to develop a procedure 01:33:15 23 for quantitation of HIV-2 viral load in infected 01:33:19 24 patients." Is that consistent with the fact that 01:33:22 25 prior to the writing of this memorandum, the lab</p>	<p>01:34:56 1 a dedicated effort where an entire lab was devoted to 01:35:00 2 it. I can't say that nothing was done. It's just not 01:35:03 3 a devoted effort at that point. 01:35:03 4 BY MS. RHYU: 01:35:06 5 Q. Can you say that something was done? 01:35:07 6 A. I don't know for sure. 01:35:12 7 Q. Can you point to any documents that would 01:35:17 8 show that work had been done prior to July of 1991 01:35:23 9 on quantitating HIV-1 viral load in infected 01:35:28 10 patients at Cetus? 01:35:31 11 A. I don't know if anybody in my group had done 01:35:34 12 some small experiments on the side. That I can't -- I 01:35:40 13 don't remember. 01:35:40 14 Q. But as a supervisor -- 01:35:41 15 A. But as -- as a supervisor and as a dedicated 01:35:45 16 project, there wasn't a dedicated effort up till that 01:35:51 17 point. 01:35:53 18 Q. Do you have any recollection if anybody 01:35:55 19 within your group would have done a small 01:35:57 20 experiment on the side related to quantitation of 01:36:01 21 HIV viral load in infected patients? 01:36:12 22 A. I couldn't say for sure. 01:36:19 23 Q. What does it mean to you when you say 01:36:21 24 viral load there in that first sentence of the 01:36:25 25 second paragraph?</p>

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23 (Pages 89 to 92)

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<p>01:36:28 1 A. The amount of virus in a patient's sample.</p> <p>01:36:40 2 Q. Is it intrinsic in the use of that term</p> <p>01:36:44 3 that you would be looking at the RNA?</p> <p>01:36:48 4 MR. CANNON: Object as to form.</p> <p>01:36:50 5 THE WITNESS: Not necessarily. But in the</p> <p>01:36:55 6 context of this memo, I believe we were addressing</p> <p>01:37:00 7 RNA.</p> <p>01:37:00 8 BY MS. RHYU:</p> <p>01:37:00 9 Q. And why do you think that?</p> <p>01:37:02 10 A. Because it says here.</p> <p>01:37:03 11 Q. Where are you pointing to?</p> <p>01:37:04 12 A. (Reading):</p> <p>01:37:04 13 "A quantitative assay for HIV RNA by PCR</p> <p>01:37:08 14 would fill this need."</p> <p>01:37:11 15 Q. And do you know why at this point you have</p> <p>01:37:14 16 directed your efforts to an assay for quantitating</p> <p>01:37:18 17 RNA?</p> <p>01:37:28 18 A. Because of the reputation of HIV going from</p> <p>01:37:30 19 RNA to DNA actively replicating virus would have -- we</p> <p>01:37:36 20 assume at that time would have detectable RNA.</p> <p>01:37:41 21 Q. And at that time did you assume that</p> <p>01:37:44 22 following the RNA levels would give you a more</p> <p>01:37:49 23 sensitive measure of viral load than following DNA?</p> <p>01:37:53 24 A. We felt that it would be.</p> <p>01:38:04 25 Q. So you list some considerations in</p>	<p>01:39:51 1 hypothetical, and I object to the form of the</p> <p>01:39:57 2 question. I don't know if you're asking about her</p> <p>01:40:00 3 understanding today, her opinion today, or her opinion</p> <p>01:40:02 4 back when she wrote the memo.</p> <p>01:40:02 5 BY MS. RHYU:</p> <p>01:40:10 6 Q. I'm asking for your opinion back when you</p> <p>01:40:12 7 wrote the memo, if you can remember that.</p> <p>01:40:15 8 A. I actually don't, and -- yeah, I don't really</p> <p>01:40:23 9 know the difference.</p> <p>01:40:24 10 Q. Do you have an understanding today?</p> <p>01:40:27 11 A. Probably less of an understanding today.</p> <p>01:40:35 12 Q. Do you have an understanding of what type</p> <p>01:40:37 13 of RNA you ultimately did target in the</p> <p>01:40:41 14 quantitation assay that you ultimately did work on?</p> <p>01:40:45 15 A. It's viral, the viral RNA.</p> <p>01:40:50 16 Q. And do you know how you decided to focus</p> <p>01:40:54 17 on viral particulate RNA?</p> <p>01:40:59 18 A. I believe it might have been based on</p> <p>01:41:01 19 literature. I don't recall at this time.</p> <p>01:41:05 20 Q. I'm handing you what was previously marked</p> <p>01:41:08 21 as Exhibit 1.</p> <p>01:41:08 22 (Previously marked Exhibit 1 was</p> <p>11:43:24 23 presented to the witness.)</p> <p>11:43:24 24 BY MS. RHYU:</p> <p>01:41:18 25 Q. Do you recognize Exhibit 1? It's a</p>
<p>01:38:06 1 developing a quantitative assay for HIV RNA; is</p> <p>01:38:13 2 that correct?</p> <p>01:38:13 3 A. That's correct.</p> <p>01:38:22 4 Q. And if you'll turn to 69926, RMS 69926.</p> <p>01:38:34 5 This is following a heading that says "Standards,"</p> <p>01:38:39 6 the subparagraph 1 under that heading says</p> <p>01:38:43 7 "Internal standard to monitor sample recovery."</p> <p>01:38:45 8 Are you there with me?</p> <p>01:38:46 9 A. Mm-hmm.</p> <p>01:38:47 10 Q. And the first sentence in that paragraph</p> <p>01:38:49 11 says:</p> <p>01:38:49 12 "We need to first determine whether</p> <p>01:38:52 13 intracellular genomic RNA, viral particulate</p> <p>01:39:00 14 RNA, or mRNA should be targeted."</p> <p>01:39:01 15 Do you see that?</p> <p>01:39:01 16 A. Yes, I do.</p> <p>01:39:02 17 Q. So at this point in mid-1991, you had not</p> <p>01:39:06 18 yet decided on which category of RNA to target</p> <p>01:39:11 19 to -- for quantification; is that correct?</p> <p>01:39:15 20 A. That appears to be correct.</p> <p>01:39:34 21 Q. And what are the relevant distinctions</p> <p>01:39:37 22 between genomics RNA, viral particulate RNA, and</p> <p>01:39:43 23 mRNA when you're considering quantification assays?</p> <p>01:39:47 24 MR. CANNON: Objection. That calls for</p> <p>01:39:48 25 expert opinion testimony. It's an incomplete</p>	<p>01:41:21 1 publication from 1991 in the Journal of Infectious</p> <p>01:41:27 2 Diseases. The first author is Mark Holodniy.</p> <p>01:41:33 3 A. Yes.</p> <p>01:41:38 4 Q. This article was first published in April</p> <p>01:41:41 5 1991. When did you first become aware of the</p> <p>01:41:45 6 article?</p> <p>01:41:47 7 A. I don't remember.</p> <p>01:41:47 8 Q. Do you remember reading it while you were</p> <p>01:41:49 9 at Cetus?</p> <p>01:41:50 10 A. I don't recall.</p> <p>01:41:52 11 Q. Do you remember discussing with Cetus</p> <p>01:41:59 12 employees the detection and quantification of HIV</p> <p>01:42:08 13 RNA in patient's serum using PCR as described in</p> <p>01:42:14 14 Exhibit 1?</p> <p>01:42:17 15 A. I don't recall these discussions.</p> <p>01:42:21 16 Q. Do you think they happened?</p> <p>01:42:25 17 A. Given that they're using my primers, primer</p> <p>01:42:30 18 sequences, I would assume they got that information</p> <p>01:42:32 19 from me, but I don't recall any specific discussions</p> <p>01:42:34 20 about it.</p> <p>01:42:39 21 Q. I just want to understand what you just</p> <p>01:42:41 22 said. You said given that they're using your</p> <p>01:42:44 23 primer sequences, you would assume that they got</p> <p>01:42:47 24 that information from you. You mean that sequence</p> <p>01:42:50 25 of the primers? You would assume they got the</p>

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<p>01:42:53 1 sequence of the primers from you? Is that what 01:42:56 2 you're saying? 01:42:56 3 A. Yes. 01:43:00 4 Q. And are you referring to primers 145 and 01:43:04 5 39? 01:43:04 6 A. And 38 and 39. 01:43:07 7 Q. 38. 01:43:07 8 A. And 19 and 145, yes. 01:43:10 9 Q. As of -- as of the time that -- well, 01:43:19 10 let's just say as of 1990, were those primers 01:43:23 11 published in the literature? 01:43:39 12 A. I would assume so. Some of them anyway. 38, 01:43:43 13 39, maybe. 01:43:44 14 Q. So the authors could have obtained the 01:43:49 15 primer sequences from the literature rather than 01:43:51 16 obtaining them directly from you, correct? 01:43:53 17 MR. CANNON: Object as to form. 01:44:01 18 THE WITNESS: Well, we should look at their 01:44:02 19 references. If they're talking about my primers, 01:44:06 20 presumably they referred to it. 01:44:19 21 BY MS. RHYU: 01:44:19 22 Q. On page 865 where the references or the 01:44:27 23 listing begins -- 01:44:31 24 A. Mm-hmm. 01:44:31 25 Q. -- do you see any references in which you</p> <p style="text-align: right;">Page 97</p>	<p>01:46:01 1 MR. CANNON: Objection. Incomplete 01:46:05 2 hypothetical. 01:46:05 3 THE WITNESS: Since I wasn't aware -- no. 01:46:10 4 BY MS. RHYU: 01:46:10 5 Q. Do you see that there are authors on the 01:46:15 6 publication, Exhibit 1, who were employees of 01:46:19 7 Cetus? 01:46:21 8 A. Mm-hmm, yes. 01:46:27 9 Q. Did you -- and -- and by that I'm 01:46:30 10 referring to Alice Wang, Clayton Casipit, Eric 01:46:35 11 Groves and Mike Konrad. Is it your understanding 01:46:39 12 that those four individuals were employees of 01:46:42 13 Cetus? 01:46:44 14 A. Yes. 01:46:48 15 Q. Did you work with any of them in 01:46:51 16 developing an assay for quantitation of nucleic 01:46:58 17 acids, HIV nucleic acids? 01:47:02 18 A. Not in the work that we were doing. 01:47:08 19 Q. And before I forget, do you see David 01:47:11 20 Schwartz listed there as an author? 01:47:14 21 A. Yes, I do. 01:47:14 22 Q. Do you know David Schwartz? 01:47:16 23 A. I remember seeing him. 01:47:18 24 Q. When do you remember seeing him? 01:47:22 25 A. I don't remember when.</p> <p style="text-align: right;">Page 99</p>
<p>01:44:37 1 would have disclosed the sequence of SK38, 39 or 01:44:44 2 145? 01:44:47 3 A. I believe reference 9. 01:44:56 4 Q. You said you recognized Exhibit 1. From 01:45:01 5 what do you recognize Exhibit 1? 01:45:05 6 A. Actually, I was given a copy of this to look 01:45:11 7 at just yesterday. I had completely forgotten about 01:45:17 8 this if I had seen it earlier. 01:45:19 9 Q. But prior to yesterday, you had seen 01:45:21 10 Exhibit 1 earlier? 01:45:22 11 A. I had no recollection. 01:45:26 12 Q. Did you have any recollection of the work 01:45:28 13 that Mark Holodniy did related to detection and 01:45:31 14 quantification of HIV RNA in patient serum using 01:45:36 15 PCR? 01:45:37 16 A. No. 01:45:37 17 MR. CANNON: Objection. Lacks foundation. 01:45:39 18 You can answer that question. 01:45:41 19 THE WITNESS: No, I had no recollection up 01:45:43 20 until yesterday when I was reminded. 01:45:46 21 MR. CANNON: Caution the witness not to 01:45:47 22 reveal any attorney-client communications. 01:45:47 23 BY MS. RHYU: 01:45:58 24 Q. Do you believe that you should be listed 01:45:59 25 as an author on this publication?</p> <p style="text-align: right;">Page 98</p>	<p>01:47:23 1 Q. Was it at Cetus or at Stanford? 01:47:28 2 A. Cetus. 01:47:31 3 Q. Do you remember interacting with him? 01:47:39 4 A. I might have in passing, but I don't recall 01:47:44 5 any long collaborations or extensive discussions with 01:47:49 6 him. 01:47:51 7 Q. Do you remember the context of why he was 01:47:54 8 at Cetus? 01:47:56 9 A. No. 01:47:58 10 Q. Did you ever give him any reagents? 01:48:04 11 A. I don't remember. 01:48:05 12 Q. Did you ever give him any confidential 01:48:08 13 information? 01:48:10 14 A. Oh, I don't think so. 01:48:11 15 Q. Did you ever give him any equipment, Cetus 01:48:15 16 equipment? 01:48:16 17 A. No. 01:48:23 18 MR. CANNON: We've been going for about an 01:48:26 19 hour. Would it be a good time for a break soon? 01:48:28 20 MS. RHYU: Sure, let me just ask one more 01:48:30 21 question and a follow-up if necessary. 01:48:31 22 MR. CANNON: Sure. 01:48:31 23 BY MS. RHYU: 01:48:33 24 Q. Did this article, Exhibit 1, influence 01:48:38 25 your decision to begin to develop a procedure for</p> <p style="text-align: right;">Page 100</p>

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<p>02:09:31 1 Q. Do you see where it says: 02:09:33 2 "NOTE! Shirley Kwok summarized the 02:09:36 3 results from several HIV viremia studies in 02:09:40 4 the following chart." 02:09:41 5 Do you remember preparing the chart that's on 02:09:43 6 this page? 02:09:50 7 A. I don't remember it, but -- 02:09:55 8 Q. Do you see that the Holodniy article 02:09:59 9 regarding amplification of HIV-1 RNA in sera is 02:10:03 10 listed as the third reference in this so-called 02:10:08 11 chart? 02:10:09 12 MR. CANNON: Object as to form. 02:10:13 13 THE WITNESS: I see that. 02:10:13 14 BY MS. RHYU: 02:10:15 15 Q. Does that refresh your recollection as to 02:10:19 16 when you became aware of the Holodniy reference? 02:10:25 17 A. It doesn't help me now, but given that this 02:10:28 18 was in '92 -- 02:10:35 19 Q. Does that -- 02:10:36 20 A. -- I must have seen something, but I don't 02:10:38 21 have any recollection today. 02:10:43 22 Q. You must have seen the Holodniy reference 02:10:48 23 referred to there by June 16th, 1992? 02:11:01 24 A. Assuming the date on this is correct, yes. 02:11:17 25 Q. I'm handing you what was previously marked</p>	<p>02:12:44 1 MS. RHYU: Yes. 02:12:46 2 MR. CANNON: Clear a spot for you. 02:12:52 3 BY MS. RHYU: 02:12:52 4 Q. Do you have 596 in front of you? 02:12:55 5 A. Yes, I do. 02:12:56 6 Q. Did you read a manuscript of this 02:12:58 7 publication -- let me withdraw that question. 02:13:01 8 Did you help prepare this manuscript for 02:13:04 9 publication? 02:13:04 10 A. No, I didn't. 02:13:05 11 Q. Did you read a copy of the manuscript 02:13:08 12 before it was published? 02:13:12 13 A. I -- I assume so. 02:13:15 14 Q. Would it have been your practice to read a 02:13:18 15 copy of a manuscript on which you were a coauthor 02:13:21 16 before it was published? 02:13:22 17 A. Yes. 02:13:25 18 Q. And if you turn to page 711 in the 02:13:29 19 manuscript, reference No. 14; do you see that? 02:13:35 20 A. Mm-hmm. 02:13:37 21 Q. That reference is actually referring to 02:13:40 22 the publication in Exhibit 46. Generally would you 02:13:49 23 have been aware of the references cited in the 02:13:54 24 manuscript on which you're a coauthor? 02:13:57 25 MR. CANNON: Objection as to form.</p>
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<p>02:11:20 1 as Exhibit 46. 02:11:20 2 (Previously marked Exhibit 46 was 02:11:20 3 presented to the witness.) 02:11:20 4 BY MS. RHYU: 02:11:26 5 Q. Do you recognize Exhibit 46? It's an 02:11:30 6 article from the Journal of Clinical Investigation 02:11:33 7 published in November of 1991. Mark Holodniy is 02:11:37 8 the first author. 02:11:41 9 A. I don't recognize this. 02:11:43 10 Q. Do you remember ever having seen this 02:11:48 11 publication? 02:11:48 12 A. I don't recall. 02:11:53 13 Q. At the time you were working on methods 02:11:57 14 for quantitating HIV, did you try to keep abreast 02:12:01 15 of developments in the field of HIV quantitation 02:12:06 16 using PCR? 02:12:09 17 A. I tried as much as I could, but in those days 02:12:12 18 I don't remember there being electronic journals, and 02:12:19 19 I don't remember seeing these particular articles -- 02:12:23 20 this particular article. 02:12:24 21 Q. Can you go back to Exhibit 596. It's the 02:12:28 22 article where R.W. Coombs is the first author. 02:12:33 23 A. Coombs. 02:12:34 24 Q. Coombs, thank you. 02:12:43 25 MR. CANNON: Are you done with this?</p>	<p>02:14:00 1 THE WITNESS: I think I was most concerned 02:14:03 2 with making sure that the entries that were 02:14:08 3 particularly pertinent to our contribution to the 02:14:10 4 manuscript were correct. In that case we'd be looking 02:14:14 5 over the procedure. I usually don't pay that much 02:14:18 6 attention to the references. 02:14:18 7 BY MS. RHYU: 02:14:28 8 Q. So the fact that the Holodniy reference, 02:14:30 9 Exhibit 46, is listed as a reference in 02:14:34 10 Exhibit 596, doesn't refresh your recollection one 02:14:36 11 way or another whether you were aware of the JCI 02:14:42 12 publication, Exhibit 46? 02:14:44 13 A. No, it doesn't. 02:14:45 14 Q. Okay. 02:14:56 15 I'm handing you what was previously marked 02:14:58 16 as Exhibit 115. It's a patent on which Tom Merigan 02:15:06 17 is the first named inventor, the patent is the -- 02:15:09 18 I'll refer to it in shorthand as the '730 patent. 02:15:09 19 (Previously marked Exhibit 115 was 11:43:24 20 presented to the witness.) 11:43:24 21 BY MS. RHYU: 02:15:15 22 Q. Have you ever seen it before? 02:15:16 23 A. No, I haven't. 02:15:20 24 Q. I'm handing you what was previously marked 02:15:22 25 as Exhibit 16, the '705 patent.</p>
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8 I, SHIRLEY YEE KWOK, do hereby declare
9 under penalty of perjury that I have read the
10 foregoing transcript of my deposition; that I have
11 made such corrections as noted herein, in ink,
12 initialed by me, or attached hereto; that my testimony
13 as contained herein, as corrected, is true and
14 correct.
15 EXECUTED this _____ day of
16 _____, 20____, at
17 _____,
18 (City) (State)

19
20 _____
SHIRLEY YEE KWOK
21
22
23
24
25

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1
2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of California, do hereby
4 certify:
5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath; that a verbatim
9 record of the proceedings was made by me using machine
10 shorthand which was thereafter transcribed under my
11 direction; further, that the foregoing is an accurate
12 transcription thereof.
13 I further certify that I am neither
14 financially interested in the action nor a relative or
15 employee of any attorney of any of the parties.
16 IN WITNESS WHEREOF, I have this date
17 subscribed my name.

18
19 Dated: _____
20
21
22
23 _____
24 SUZANNE F. BOSCHETTI
25 CSR No. 5111

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