

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY- RESTRICTED

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 THE BOARD OF THE TRUSTEES OF
4 THE LELAND STANFORD JUNIOR
5 UNIVERSITY,
6 Plaintiff,
7 vs. No. C-05-04158 MHP
8 ROCHE MOLECULAR SYSTEMS, INC.;
9 ROCHE DIAGNOSTICS CORPORATION;
10 ROCHE DIAGNOSTICS OPERATIONS,
11 INC.; ROCHE DIAGNOSTIC SYSTEMS,
12 INC.,
13 Defendant.

14 AND RELATED COUNTERCLAIM.

15 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - RESTRICTED
16 VIDEOTAPE DEPOSITION OF MICHAEL S. OSTRACH
17 San Francisco, California
18 Monday, August 21, 2006

19 Reported by:
20 SUZANNE F. BOSCHETTI
21 CSR No. 5111
22 Job No. 3-51840

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24
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1 APPEARANCES:
2
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4 the Trustees of the Leland Stanford Junior University,
5 et al.:
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1 UNITED STATES DISTRICT COURT
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14 AND RELATED COUNTERCLAIM.

15 Confidential videotaped deposition of MICHAEL
16 OSTRACH, taken on behalf of Plaintiff and Counterclaim
17 Defendants The Board of the Trustees of the Leland
18 Stanford Junior University, at 50 California, 22nd
19 Floor, San Francisco, California, beginning at 9:04
20 a.m. and ending at 2:30 p.m. on Monday, August 21,
21 2006, before SUZANNE F. BOSCHETTI, Certified Shorthand
22 Reporter No. 5111.

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11:14:27 1 A. Yes.
 11:14:27 2 MR. BOOZELL: Same objections.
 11:14:28 3 THE WITNESS: Absolutely.
 11:14:28 4 BY MR. RODRIGUEZ:
 11:14:46 5 Q. Do you recall whether there were any
 11:14:47 6 policies or procedures in place to monitor work
 11:14:50 7 being done pursuant to agreements such as
 11:14:55 8 Exhibit 30 to make sure that the invention terms of
 11:15:03 9 it and the confidentiality terms of it were
 11:15:06 10 complied with?
 11:15:07 11 MR. BOOZELL: Vague and ambiguous. Compound.
 11:15:09 12 Calls for speculation. Lacks foundation.
 11:15:10 13 THE WITNESS: I'm not aware of any specific
 11:15:13 14 procedures or policies in that regard.
 11:15:13 15 BY MR. RODRIGUEZ:
 11:15:25 16 Q. With respect to agreements like
 11:15:29 17 Exhibit 30, then, is it the case if a person
 11:15:33 18 learned PCR under Exhibit 30 and today used PCR to
 11:15:44 19 make an invention, that Exhibit 30 would provide
 11:15:47 20 rights to Cetus or its successor with respect to
 11:15:52 21 that invention?
 11:15:52 22 MR. BOOZELL: It's vague and ambiguous.
 11:15:54 23 Calls for a legal conclusion. It's an incomplete
 11:15:56 24 hypothetical. Calls for an expert opinion.
 11:16:01 25 THE WITNESS: That's what paragraph 3 says.

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11:17:55 1 paragraph 2. It doesn't say subject to paragraph 2.
 11:17:58 2 It says "information." If I have access to the
 11:18:04 3 inf -- if as a consequence of the access to the
 11:18:07 4 information, then something follows. It has -- it's
 11:18:12 5 not -- the answer is no.
 11:18:12 6 BY MR. RODRIGUEZ:
 11:18:16 7 Q. So to your understanding, Dr. Holodny and
 11:18:22 8 others who signed agreements such as Exhibit 30
 11:18:27 9 have a continuing obligation to assign inventions
 11:18:33 10 to Cetus with respect to information that they
 11:18:38 11 learned pursuant to Exhibit 30; is that correct?
 11:18:42 12 MR. BOOZELL: Again, vague and ambiguous.
 11:18:42 13 THE WITNESS: No.
 11:18:44 14 MR. BOOZELL: Calls for a legal conclusion.
 11:18:46 15 Calls for expert opinion. It's an incomplete
 11:18:49 16 hypothetical.
 11:18:49 17 THE WITNESS: No, I believe it's not correct.
 11:18:53 18 The invention doesn't have to relate to the
 11:19:01 19 confidential information as your question seemed to
 11:19:02 20 imply. Again --
 11:19:02 21 BY MR. RODRIGUEZ:
 11:19:07 22 Q. I didn't -- I didn't mean to imply that,
 11:19:09 23 so let me just restate the question or say it
 11:19:12 24 again.
 11:19:13 25 So to your understanding, Dr. Holodny and

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11:16:05 1 If the invention was made as a consequence of access
 11:16:08 2 to the information.
 11:16:08 3 BY MR. RODRIGUEZ:
 11:16:14 4 Q. If a person learned PCR through an
 11:16:19 5 agreement such as Exhibit 30 and did not learn PCR
 11:16:25 6 any other way and learned PCR on or about the 1989
 11:16:33 7 time frame and today made an invention that used
 11:16:37 8 PCR and used the knowledge learned under
 11:16:42 9 Exhibit 30, under paragraph 3, that would be
 11:16:47 10 property of Cetus or its successor?
 11:16:50 11 MR. BOOZELL: Incomplete hypothetical. Calls
 11:16:52 12 for a legal conclusion. Calls for expert testimony.
 11:16:54 13 It's vague and ambiguous.
 11:16:59 14 THE WITNESS: Yes.
 11:16:59 15 BY MR. RODRIGUEZ:
 11:17:25 16 Q. So as to your understanding, it is not
 11:17:27 17 your belief that paragraph 2 of Exhibit 30, with
 11:17:31 18 respect to confidentiality, imposes any kind of
 11:17:36 19 constraint on paragraph 3, limiting paragraph 3
 11:17:42 20 only to the use of information that is
 11:17:44 21 confidential?
 11:17:45 22 MR. BOOZELL: Same objections.
 11:17:47 23 THE WITNESS: No, it doesn't say that.
 11:17:50 24 Paragraph 3 says "information." It doesn't say
 11:17:53 25 confidential information. It doesn't refer to

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11:19:19 1 others who signed agreements such as Exhibit 30
 11:19:23 2 have a continuing obligation to assign inventions
 11:19:27 3 to Cetus with respect to information that they
 11:19:31 4 learned under Exhibit 30; is that correct?
 11:19:34 5 A. No.
 11:19:34 6 MR. BOOZELL: Vague and ambiguous. Calls for
 11:19:36 7 a legal conclusion. Calls for an expert opinion.
 11:19:38 8 It's an incomplete hypothetical.
 11:19:38 9 BY MR. RODRIGUEZ:
 11:19:43 10 Q. And -- and -- and no for the same reason?
 11:19:46 11 I'm not trying to imply the confidentiality aspect
 11:19:50 12 of it there.
 11:19:51 13 A. No, no, no. No for the reason that the
 11:19:53 14 question says something like intellectual property --
 11:19:58 15 what's the phrase at the end there? Someone read it.
 11:20:03 16 Q. Information that they learned pursuant to
 11:20:05 17 Exhibit 30? Assigned inventions. I used the word
 11:20:10 18 "inventions."
 11:20:11 19 MR. BOOZELL: Same objections to this
 11:20:13 20 whole --
 11:20:13 21 THE WITNESS: The -- the poi --
 11:20:13 22 MR. BOOZELL: -- line of questioning.
 11:20:14 23 THE WITNESS: Could you read it one more
 11:20:15 24 time, and I'll -- I'll and explain what my problem is
 11:20:15 25 as I --

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11:20:15 1 BY MR. RODRIGUEZ:
 11:20:18 2 Q. Let -- let me see if I can --
 11:20:19 3 MR. BOOZELL: Break it down so you don't have
 11:20:20 4 to --
 11:20:20 5 BY MR. RODRIGUEZ:
 11:20:25 6 Q. Let me see if I can rephrase it.
 11:20:28 7 Okay. So to your understanding,
 11:20:31 8 Dr. Holodniy and others who signed agreements such
 11:20:34 9 as Exhibit 30 have a continuing obligation under
 11:20:41 10 paragraph 3 with respect to information that they
 11:20:46 11 learned pursuant to Exhibit 30; is that correct?
 11:20:49 12 MR. BOOZELL: Same objections.
 11:20:50 13 THE WITNESS: They have a continuing
 11:20:51 14 obligation to assign inventions made as a consequence
 11:20:58 15 of access to the information.
 11:20:58 16 BY MR. RODRIGUEZ:
 11:21:05 17 Q. And how does that differ from my question?
 11:21:08 18 MR. BOOZELL: Same objections. Calls for a
 11:21:10 19 legal conclusion. Calls for an expert opinion.
 11:21:13 20 Incomplete hypothetical. Vague and ambiguous.
 11:21:20 21 THE WITNESS: Because I rea- -- I -- I seem
 11:21:22 22 to read your question as relating the invention to the
 11:21:28 23 information. They don't have to be related. It
 11:21:33 24 merely has to be as a consequence of -- it is -- it
 11:21:38 25 could be -- it could be a totally different subject

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11:23:20 1 BY MR. RODRIGUEZ:
 11:23:28 2 Q. I actually didn't mean whether each of the
 11:23:30 3 provisions continue to impose their own individual
 11:23:34 4 obligations as of today. I just want to make sure
 11:23:37 5 that -- that the record's clear that you're -- that
 11:23:39 6 what I'm saying is that paragraph 3 within the
 11:23:43 7 context of the entirety agreement applies.
 11:23:46 8 A. Yes.
 11:23:46 9 Q. So -- so let me -- let me just rephrase
 11:23:48 10 the question again.
 11:23:50 11 So to your understanding, Dr. Holodniy and
 11:23:55 12 others who signed agreements such as Exhibit 30
 11:24:00 13 have a continuing obligation under paragraph 3 as
 11:24:05 14 part of Exhibit 30 even today?
 11:24:08 15 MR. BOOZELL: Vague and ambiguous. Calls for
 11:24:10 16 a legal conclusion. Calls for expert opinion. It's
 11:24:13 17 an incomplete hypothetical. It's compound. It's
 11:24:16 18 vague.
 11:24:17 19 THE WITNESS: Yes.
 11:24:48 20 (Previously marked Exhibit 29 was
 11:24:53 21 presented to the witness.)
 11:24:53 22 BY MR. RODRIGUEZ:
 11:24:53 23 Q. The reporter's handed you what is marked
 11:24:56 24 as Exhibit 29. This is a document that is a
 11:25:01 25 materials transfer agreement having Bates

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11:21:40 1 matter. So I -- maybe it's a distinction you're not
 11:21:47 2 interested in. I'm not making a distinction. That
 11:21:52 3 doesn't matter for present purposes. So you can ask
 11:22:01 4 one more time.
 11:22:27 5 BY MR. RODRIGUEZ:
 11:22:27 6 Q. Yeah, let -- let me -- I -- I think you're
 11:22:29 7 right, that -- that your distinction is one that
 11:22:34 8 isn't necessary for purposes of my question. So
 11:22:36 9 let me try an -- an even broader question.
 11:22:40 10 My question is, so to your understanding,
 11:22:44 11 Dr. Holodniy and others who signed agreements such
 11:22:48 12 as Exhibit 30 have a continuing obligation under
 11:22:55 13 paragraph 3 to this day?
 11:22:57 14 MR. BOOZELL: Vague and ambiguous. Calls for
 11:22:58 15 a legal conclusion. Calls for expert opinion.
 11:23:00 16 Incomplete hypothetical.
 11:23:02 17 THE WITNESS: That appears to be what
 11:23:04 18 section 3 says.
 11:23:06 19 BY MR. RODRIGUEZ:
 11:23:06 20 Q. Is -- and is that your understanding of --
 11:23:09 21 of the entirety of Exhibit 30?
 11:23:11 22 MR. BOOZELL: Same objections.
 11:23:13 23 THE WITNESS: I'd have to read each one to
 11:23:17 24 see. For example, paragraph 2 may have a limit. I'll
 11:23:20 25 just have to look.

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11:25:05 1 Nos. STAN 003860 through 3863.
 11:25:09 2 Would you please take a look at Exhibit 29
 11:25:11 3 and tell me if you recognize it.
 11:25:21 4 A. Yes.
 11:25:21 5 Q. How do you recognize Exhibit 29?
 11:25:26 6 A. It appears to be based on the material
 11:25:30 7 transfer agreement form that I created when I joined
 11:25:36 8 Cetus.
 11:25:38 9 Q. Were you actually involved in the
 11:25:42 10 particular signing or execution of Exhibit 29?
 11:25:47 11 A. I don't recall it. I don't think I was.
 11:25:54 12 Q. Can you generally describe the
 11:26:00 13 circumstances under which materials transfer
 11:26:02 14 agreements such as Exhibit 29 were executed?
 11:26:06 15 MR. BOOZELL: Vague and ambiguous.
 11:26:11 16 THE WITNESS: Scientists that wanted to
 11:26:12 17 obtain our materials would be directed to appropriate
 11:26:17 18 scientists at Cetus, who would then request R&D
 11:26:22 19 administration to provide the samples, and someone in
 11:26:25 20 R&D administration would decide whether those samples
 11:26:29 21 could be provided to outsiders and would provide for
 11:26:33 22 an agreement to accompany the sample if it was
 11:26:37 23 permissible to provide it to others.
 11:26:40 24 BY MR. RODRIGUEZ:
 11:26:40 25 Q. Was there any sort of tracking that was

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01:30:43 1 break?
 01:30:43 2 VIDEO OPERATOR: The time is 1:30 p.m. We're
 01:30:48 3 going off the record.
 01:31:26 4 (Discussion off the record.)
 01:31:28 5 VIDEO OPERATOR: The time is 1:32 p.m. We're
 01:32:20 6 back on record to announce that this will be the
 01:32:22 7 completion of media No. 2, and the time continues to
 01:32:26 8 be 1:32. We are going back off the record.
 01:36:37 9 (Recess.)
 01:36:45 10 VIDEO OPERATOR: The time is 1:36. We're
 01:36:57 11 back on the record. And this will be the beginning of
 01:36:59 12 media No. 3.
 01:36:59 13 BY MR. RODRIGUEZ:
 01:37:01 14 Q. You have next to you in a box a document
 01:37:06 15 that is -- a copy of a document that has been
 01:37:08 16 previously marked as Exhibit 518. It has the asset
 01:37:14 17 purchase agreement between Roche and Cetus in it.
 01:37:17 18 If I could ask you to just take that out,
 01:37:19 19 and then I'll have a few questions relating to that
 01:37:22 20 for you.
 01:37:28 21 A. There's two. These are the exhibits. Okay.
 01:37:57 22 MR. BOOZELL: Is that the only copy?
 01:37:59 23 MR. RODRIGUEZ: Over here.
 01:37:59 24 THE WITNESS: We can share. You want to
 01:38:08 25 share?

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01:39:46 1 A. Okay.
 01:39:47 2 Q. I will represent to you and ask you to
 01:39:49 3 assume that those agreements are not listed amongst
 01:39:54 4 the schedules of the asset purchase agreement,
 01:39:57 5 Exhibit 518.
 01:40:00 6 Keeping that representation and assumption
 01:40:02 7 in mind, how much of a review of the asset purchase
 01:40:09 8 agreement, Exhibit 518, would you have to do in
 01:40:12 9 order to determine whether or not the ownership of
 01:40:18 10 Exhibits 5- -- 601 and 602 were transferred to
 01:40:21 11 Roche from Cetus under the APA, Exhibit 518?
 01:40:26 12 MR. BOOZELL: Vague and ambiguous.
 01:40:29 13 THE WITNESS: I don't know how long it would
 01:40:30 14 take. I mean, to give an answer that I felt
 01:40:33 15 comfortable with completely, I would have to review
 01:40:35 16 the entire agreement, which looks -- and some of the
 01:40:40 17 schedules, which would take me several hours. I mean,
 01:40:52 18 I would first go to the parts of the document that
 01:40:57 19 refer to the schedules, and then I'd also go to the
 01:41:00 20 parts of document that give various grants to Roche.
 01:41:00 21 BY MR. RODRIGUEZ:
 01:41:06 22 Q. Why don't we start with section 2.1. If
 01:41:09 23 you could please direct your attention to
 01:41:12 24 section 2.1.
 01:41:30 25 A. Okay.

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01:38:16 1 BY MR. RODRIGUEZ:
 01:38:16 2 Q. So I -- I want to get a sense of your
 01:38:18 3 familiarity --
 01:38:19 4 MR. BOOZELL: Just a second.
 01:38:19 5 BY MR. RODRIGUEZ:
 01:38:31 6 Q. I want to get a sense of your familiarity
 01:38:33 7 with the asset purchase agreement.
 01:38:35 8 When was the last time you reviewed it?
 01:38:38 9 A. The night before it was signed.
 01:38:40 10 Q. And you haven't reviewed it since then?
 01:38:42 11 A. No. No.
 01:38:46 12 Q. Did you review it at all in preparation
 01:38:50 13 for your deposition?
 01:38:52 14 MR. BOOZELL: You can answer "yes" or "no."
 01:38:54 15 If it refreshed your recollection and you reviewed it,
 01:38:56 16 you can answer "yes" or "no." Otherwise I instruct
 01:39:00 17 you not to answer.
 01:39:02 18 THE WITNESS: I think yes.
 01:39:02 19 BY MR. RODRIGUEZ:
 01:39:07 20 Q. How long did you spend reviewing it in
 01:39:08 21 preparation for your deposition?
 01:39:12 22 A. Five minutes.
 01:39:16 23 Q. If I could direct your attention to the
 01:39:20 24 two Merigan consulting agreements, Exhibit 601 and
 01:39:24 25 602.

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01:41:31 1 Q. All right. And specifically 2.1(c).
 01:41:35 2 Would you please read 2.1(c) to yourself and tell
 01:41:38 3 me when you're done.
 01:42:32 4 A. Okay.
 01:42:32 5 Q. So with respect to section 2.1(c), if you
 01:42:37 6 assume that Exhibit 601 and 602 are not listed in
 01:42:44 7 schedule 2.1(c), are Exhibit 601 and 602
 01:42:52 8 transferred under provision 2.1(c)?
 01:42:55 9 MR. BOOZELL: Calls for a legal conclusion.
 01:42:57 10 Calls for an expert opinion. It's an incomplete
 01:42:59 11 hypothetical. It's vague and ambiguous. And it's
 01:43:08 12 misleading.
 01:43:15 13 THE WITNESS: (c) appears to say that it is
 01:43:19 14 transferring those things listed on 2.1(c). So if the
 01:43:30 15 Merigan consulting agreements are not listed on (c),
 01:43:33 16 then I don't -- 2.1(c), the schedule, I don't see
 01:43:39 17 how -- I don't think that 2.1(c) appears to transfer
 01:43:43 18 those agreements.
 01:43:46 19 BY MR. RODRIGUEZ:
 01:43:46 20 Q. And I have the same question with respect
 01:43:47 21 to 2.1(d).
 01:43:50 22 Assuming that the consulting agreements,
 01:43:55 23 601 and 602, are not listed in schedule 2.1(d),
 01:44:03 24 does provision 2.1(d) transfer the rights to Roche
 01:44:10 25 under Exhibit 601 and 602?

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<p>01:44:12 1 MR. BOOZELL: It's vague and ambiguous. It's 01:44:14 2 misleading. Calls for a legal conclusion and expert 01:44:17 3 opinion, for speculation. And it's an incomplete 01:44:26 4 hypothetical. 01:44:26 5 THE WITNESS: Section (d) transfers the 01:44:28 6 rights under the contracts listed in schedule 2.1(d). 01:44:33 7 If -- and therefore, if Merigan contracts aren't on 01:44:36 8 that list, then this clause is not transferring the 01:44:40 9 rights under those contracts. 01:44:40 10 BY MR. RODRIGUEZ: 01:44:44 11 Q. With respect to section 2.1(g), would you 01:44:48 12 please read that to yourself and tell me when 01:44:50 13 you're done. 01:44:56 14 A. Mm-hmm. 01:44:57 15 Q. Does section 2.1(g) transfer to Roche from 01:45:01 16 Cetus any rights pertaining to Exhibit 601 and 602? 01:45:06 17 MR. BOOZELL: Calls for a legal conclusion. 01:45:07 18 Calls for speculation. Calls for an expert opinion. 01:45:10 19 It's vague and ambiguous. 01:45:14 20 THE WITNESS: It appears that it transfers 01:45:16 21 all rights under all agreements with consultants, and 01:45:21 22 therefore -- well, in this case, it says all rights 01:45:30 23 under any confidentiality agreement and all rights 01:45:39 24 under confidentiality provisions of other agreements. 01:45:41 25 So the confidentiality provisions of the two</p> <p style="text-align: right;">Page 145</p>	<p>01:47:01 1 Misleading. Calls for an expert opinion. Calls for a 01:47:05 2 legal conclusion. It's an incomplete hypothetical. 01:47:07 3 Calls for speculation. 01:47:17 4 THE WITNESS: It's possible. 01:47:17 5 BY MR. RODRIGUEZ: 01:47:18 6 Q. Is it likely? 01:47:19 7 MR. BOOZELL: Same objections. 01:47:20 8 THE WITNESS: I can't judge the likelihood or 01:47:25 9 not. 01:47:27 10 BY MR. RODRIGUEZ: 01:47:27 11 Q. Based on your experience -- let me start 01:47:31 12 that again. 01:47:31 13 Based on your legal experience and your 01:47:34 14 experience specifically in connection with the 01:47:36 15 asset purchase agreement, Exhibit 518, do you think 01:47:40 16 it would be reasonable to conclude that 01:47:43 17 Exhibits 601 and 602 are not confidentiality 01:47:49 18 agreements under section 2.1(g), but that under 01:47:53 19 section 2.1(g), the confidentiality provisions 01:47:56 20 within 601 and 602 do transfer? 01:48:01 21 MR. BOOZELL: Vague and ambiguous. 01:48:02 22 Misleading. Complex. Calls for a legal conclusion. 01:48:06 23 Calls for speculation. Calls for an expert opinion. 01:48:10 24 And incomplete hypothetical. 01:48:13 25 THE WITNESS: It's reasonable.</p> <p style="text-align: right;">Page 147</p>
<p>01:45:44 1 consulting agreements would be transferred by this 01:45:47 2 clause. 01:45:47 3 BY MR. RODRIGUEZ: 01:45:49 4 Q. Would you consider Exhibit 601 and 602 to 01:45:53 5 be confidentiality agreements as that term is used 01:45:56 6 in section 2.1(g) of Exhibit 518? 01:46:00 7 MR. BOOZELL: Calls for a legal conclusion. 01:46:02 8 Calls for expert opinion. It's vague and ambiguous. 01:46:05 9 Calls for speculation. Incomplete hypothetical. 01:46:10 10 THE WITNESS: Each of the 601 and 602 01:46:13 11 exhibits are styled as consulting agreements. I only 01:46:20 12 observe that. I really can't characterize them as 01:46:27 13 whether or not they're meant to be confidentiality 01:46:29 14 agreements within the meaning of this agreement, the 01:46:34 15 asset purchase agreement. 01:46:34 16 BY MR. RODRIGUEZ: 01:46:37 17 Q. Do you recall any discussion between the 01:46:40 18 parties with respect to the meaning of the term 01:46:42 19 "confidentiality agreement"? 01:46:44 20 A. No. 01:46:47 21 Q. Do you think it's possible that the term 01:46:52 22 "confidentiality agreement" as is used in 01:46:53 23 section 2.1(g) does not include consulting 01:46:57 24 agreements such as Exhibit 601 and 602? 01:47:00 25 MR. BOOZELL: Vague and ambiguous.</p> <p style="text-align: right;">Page 146</p>	<p>01:48:13 1 BY MR. RODRIGUEZ: 01:48:29 2 Q. If you could please take a look at table 01:48:32 3 of contents of Exhibit 518. Earlier, you were 01:48:36 4 referring to a cross-licensing provision or a 01:48:38 5 provision relating to licensing of PCR work. 01:48:43 6 Do you recall in looking at the table of 01:48:46 7 contents what provision you may have been referring 01:48:49 8 to? 01:50:23 9 A. There seem to be some license provisions, 01:50:26 10 pretty complicated, in section 2.8. 01:51:17 11 I might want to spend some more time in the 01:51:20 12 back here. There seem to be some further 01:51:23 13 assurance-type provisions which might shed light on 01:51:26 14 the questions you're asking. But right now, there's a 01:51:28 15 section 2.8, which seems to be some back-and-forth 01:51:32 16 licenses. 01:51:36 17 Q. If I could direct your attention to 01:51:38 18 section 2.8, subsection b. 2.8(b). Would you 01:51:44 19 please read 2.8(b) to yourself and tell me when 01:51:44 20 you're done. 01:52:33 21 A. Okay. I've read it. 01:52:35 22 Q. Do you see the exception -- just before 01:52:40 23 the middle of the -- just after the middle of that 01:52:43 24 subsection, where it states that: 01:52:49 25 "To the extent such grant is precluded</p> <p style="text-align: right;">Page 148</p>

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01:59:27 1 question. May I clarify? You're asking would it be
 01:59:30 2 reasonable to conclude that the tran- -- this
 01:59:33 3 provision does not transfer?
 01:59:33 4 BY MR. RODRIGUEZ:
 01:59:36 5 Q. Yes. That's my question.
 01:59:38 6 MR. BOOZELL: Same objections.
 01:59:50 7 THE WITNESS: It would be reasonable to
 01:59:52 8 assume either, it does or it doesn't.
 01:59:52 9 BY MR. RODRIGUEZ:
 01:59:54 10 Q. Let's go back to the issue that you had
 01:59:57 11 described earlier with respect to consulting
 01:59:59 12 agreements as an example that were multifaceted.
 02:00:07 13 Do you think that section 2.1(h) provides
 02:00:10 14 for the transfer of ownership of multifaceted
 02:00:16 15 consulting agreements to Roche from Cetus?
 02:00:19 16 MR. BOOZELL: Same objections.
 02:00:20 17 THE WITNESS: Yes.
 02:00:20 18 BY MR. RODRIGUEZ:
 02:00:25 19 Q. And just to be clear, do you believe that
 02:00:29 20 section 2.1(h) effectuates the transfer of the
 02:00:34 21 rights to such multifaceted agreements as opposed
 02:00:38 22 to just the hard copies of the agreements
 02:00:40 23 themselves?
 02:00:40 24 MR. BOOZELL: Same objections.
 02:00:51 25 THE WITNESS: I can't conclude either way.

02:02:36 1 overlap.
 02:02:37 2 So, for example, we have been talking about
 02:02:41 3 contracts like a consulting agreement that may result
 02:02:44 4 in inventions that might have a dual use. And in (d),
 02:02:54 5 for example, it says, all of the rights under the
 02:02:57 6 listed contracts. And given that our intent was to
 02:03:03 7 transfer all rights relating to PCR, we would not list
 02:03:08 8 a dual-purpose consulting agreement in (d), for
 02:03:14 9 example, but we would in (h) be willing to give any
 02:03:18 10 PCR rights that arose under that nonlisted agreement
 02:03:26 11 because (h) talks about to the extent -- to the extent
 02:03:38 12 that these records and documents pertain to the PCR
 02:03:41 13 business or technology.
 02:03:41 14 BY MR. RODRIGUEZ:
 02:03:43 15 Q. But then wouldn't section 2.1(h) already
 02:03:46 16 effectuate the transfer of things already that are
 02:03:49 17 identified in section 2.1(d)?
 02:03:52 18 A. My point --
 02:03:52 19 MR. BOOZELL: Same objections.
 02:03:53 20 THE WITNESS: My point is if something wasn't
 02:03:56 21 in 2.1(d) because it had more applications than PCR,
 02:04:01 22 then it could be picked up by (h), which would be
 02:04:04 23 something that we, Cetus, would be quite happy to be
 02:04:09 24 compromising upon, which is, we're not giving up the
 02:04:13 25 therapeutic ideas of Merigan to Roche. We're giving

02:00:53 1 It may or may not include the rights.
 02:00:53 2 BY MR. RODRIGUEZ:
 02:01:08 3 Q. If section 2.1(h) effectuates the transfer
 02:01:13 4 of any and all documents that Cetus has, wouldn't
 02:01:19 5 it then effectuate the transfer of the ownership of
 02:01:23 6 all of the documents and agreements and contracts
 02:01:28 7 that are listed in the other provisions of
 02:01:30 8 section 2.1?
 02:01:31 9 MR. BOOZELL: Calls for a legal conclusion.
 02:01:33 10 Calls for speculation and lacks foundation. Calls for
 02:01:35 11 an expert opinion. Misstates the document. It's
 02:01:38 12 misleading, vague and ambiguous, and an incomplete
 02:01:44 13 hypothetical.
 02:01:44 14 THE WITNESS: Are you asking whether (h) may
 02:01:47 15 duplicatively transfer something?
 02:01:50 16 BY MR. RODRIGUEZ:
 02:01:51 17 Q. Well, what I'm looking at is if, in fact,
 02:01:54 18 you assume that 2.1(h) does effectuate the transfer
 02:01:57 19 of rights under contracts, then what would the
 02:02:02 20 purpose be of the remaining sections of 2.1 that
 02:02:06 21 actually specify and -- and identify schedules
 02:02:10 22 relating to contracts that are transferred?
 02:02:12 23 MR. BOOZELL: Same objections.
 02:02:31 24 THE WITNESS: Well, there is -- there could
 02:02:33 25 be overlap, but there's obvious areas where it doesn't

02:04:20 1 up the PCR ideas of Merigan to Roche.
 02:04:26 2 BY MR. RODRIGUEZ:
 02:04:26 3 Q. But then wouldn't 2.1(d) be superfluous.
 02:04:30 4 A. No, because --
 02:04:30 5 MR. BOOZELL: Same objections.
 02:04:31 6 THE WITNESS: Because in this -- in this
 02:04:33 7 theory, the only contracts that would be in (d) would
 02:04:38 8 be those that relate specifically or generally to PCR
 02:04:42 9 and not just generally.
 02:04:42 10 BY MR. RODRIGUEZ:
 02:04:45 11 Q. But would a contract that relates
 02:04:47 12 specifically to PCR, wouldn't that also be
 02:04:50 13 transferred by section 2.1(h) under the
 02:04:53 14 interpretation you've just given?
 02:04:55 15 THE WITNESS: Yes.
 02:04:56 16 MR. BOOZELL: Same objections.
 02:04:56 17 BY MR. RODRIGUEZ:
 02:04:57 18 Q. So, then, 2.1(d) would not be necessary;
 02:04:59 19 is that right?
 02:05:00 20 MR. BOOZELL: Same objections. Calls for a
 02:05:01 21 legal conclusion.
 02:05:02 22 THE WITNESS: No, that is not right.
 02:05:02 23 BY MR. RODRIGUEZ:
 02:05:04 24 Q. Why not?
 02:05:04 25 A. Because one way to look at these provisions

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02:30:15 1 MR. BOOZELL: Okay.
02:30:17 2 MR. RODRIGUEZ: I have no further questions
02:30:18 3 at this time.
02:30:20 4 Thank you for your time.
02:30:22 5 THE WITNESS: Okay.
02:30:23 6 MR. BOOZELL: Given the documents that have
02:30:25 7 been entered into the deposition and the testimony
02:30:28 8 given by Mr. Ostrach, Roche would like to designate
02:30:32 9 the transcript as highly restricted, attorneys' eyes
02:30:35 10 only, and would also like to request -- Mr. Ostrach
02:30:37 11 would like to request that he be given the opportunity
02:30:40 12 to review and sign and correct his transcript if that
02:30:43 13 be necessary prior to it becoming final.
02:30:47 14 VIDEO OPERATOR: This concludes today's
02:30:52 15 deposition of Michael Ostrach. The number of media
02:30:55 16 used was three. We're going off the record at
02:30:59 17 2:31 p.m.
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1 STATE OF CALIFORNIA)
:SS
2 COUNTY OF SAN MATEO)
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby
5 certify:
6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that a verbatim
10 record of the proceedings was made by me using machine
11 shorthand which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.
14 I further certify that I am neither
15 financially interested in the action nor a relative
16 or employee of any attorney of any of the parties.
17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.
19
20
21 Dated: _____
22
23
24 _____
SUZANNE F. BOSCHETTI
CSR No. 5111
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6
7 I, MICHAEL S. OSTRACH, do hereby declare
8 under penalty of perjury that I have read the
9 foregoing transcript of my deposition; that I have
10 made such corrections as noted herein, in ink,
11 initialed by me, or attached hereto; that my testimony
12 as contained herein, as corrected, is true and
13 correct.
14 EXECUTED this ____ day of _____,
15 200__, at _____,
(City) (State)
16
17 _____
MICHAEL S. OSTRACH
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