EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VOLUME IX

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Plaintiff

v.

ROCHE DIAGNOSTICS GmbH, formerly known as BOEHRINGER MANNHEIM GmbH,

Defendant

Civil No. 93-11512-NG

Boston, Massachusetts
July 18, 2001

TRANSCRIPT OF TRIAL DAY 9
BEFORE HON. NANCY GERTNER,
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by stenotype with computer-aided transcription.

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VOLUME IX

WITNESSES FOR THE PLAINTIFF

WITNESSES FOR THE DEFENDANT

EXHIBITS

(All agreed upon exhibits were admitted in evidence.)

PROCEEDINGS
NINTH DAY OF TRIAL

(The following proceedings were held in open court before the Honorable Nancy Gertner, United States District Judge, United States District Court, District of Massachusetts, at the United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on July 18, 2001, at 9:20 a.m.)

THE CLERK: All rise.

THE COURT: You can be seated. Good morning.

(Replies of "Good morning.")

Dr. Weinberg.

ROBERT WEINBERG, RESUMED
CROSS-EXAMINATION, CONTINUED

BY MR. BAUER:

Q. Good morning, Dr. Weinberg.

A. Good morning, Mr. Bauer.

Q. After your testimony yesterday, did you meet with your attorneys?

A. Actually, I didn't, no.

Q. Now, you testified that the technique of protoplast fusion cannot be used to perform unlinked cotransformation; correct?

A. Unlinked cotransformation as defined by me, but not as defined by this Court.

Q. All right. I'm just -- only asking you on your knowledge, what you consider to be unlinked cotransformation. I'm not

asking you to defer to the Court.

THE COURT: Dr. Weinberg, if you remind me of that one more time, I will recite your testimony.

Go on.

BY MR. BAUER:

Q. So, you agree that the technique of protoplast fusion cannot be used to perform unlinked cotransformation?

A. Yes.

Q. Okay. When one performs protoplast fusion, one does not insert purified DNA; isn't that correct?

A. That is correct.

Q. Yesterday you testified that Claim 28 of the '216 patent was infringed. Do you remember that?

A. Allow me, please, to refer to it.

(Pause.)

Yes.

Q. Now, doesn't the first part of that claim say a process for inserting purified DNA I?

A. It does, and that would be inconsistent with the process that GI undertook.

Q. So, are you now saying that GI does not infringe Claim 1 -- or Claim 28?

A. Yes. In the sense that they did not use purified DNA, I would agree with what you said.

Q. You made a statement at the Markman hearing, and I just

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arrival, for example, Recombinant Factor VIII was licensed on a technology basis to Baxter International, where our role at that time was only to develop the cell line and deliver that to Baxter.

Another example prior to my arrival is the -- in this case of erythropoietin, is the arrangement we had with Chugai, where we would be developing the technology in the cell line to develop for Chugai.

And, as I say, before that particular compound, erythropoietin, my first task was to search for and enter into an agreement with a European partner to market our product in Europe.

Q. So, was it your objective to do the same kind of arrangement with the European partner as you had done with Chugai, as the company had done with Chugai before you arrived there?

A. No. The arrangement we would like to enter with the European partner would be on the basis where we would be delivering the bulk product, for them to take that to market -- to obtain regulatory approval and to market the product in it's territory.

Q. And why was there a difference?

A. So that we can retain additional value to the product, commercial value to the product.

Q. And where would that value have come from?

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A. From manufacturing.

Q. Manufacturing the bulk product?

A. That's correct.

Q. Did you have any manufacturing rights in the -- was -- did GI retain any manufacturing rights under the Chugai agreement?

A. No, it did not.

Q. Did GI retain any manufacturing rights under the Boehringer Mannheim agreement?

A. Yes, it did.

Q. And that was one of the significant differences between the two agreements?

A. That's correct.

Q. How did that difference impact the GI business plan in terms of the GI business plan?

A. That corresponds exactly to our business plan as we moved to our second phase of our strategy, where we would like to retain a higher portion of the commercial value of the product beyond just a royalty on the technology.

Q. Okay. And was there a reason why that wasn't the business plan before you arrived?

MR. ZIVIN: Objection.

BY MR. KOCH:

Q. Or was there a reason -- you say when you arrived it was part of your objective to put it into the second phase. Why was that? Why did you want to have a different, a second phase to the business plan?

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THE WITNESS: Your Honor, can I answer?

THE COURT: You may answer.

THE WITNESS: Okay.

A. When I arrived in the spring of 1984, the company really was at that time only about two years in its true operations. It's very hard for a company, in its infancy, to retain more rights than the rights to the technology, the royalty derived from technology.

The reason why I joined the company is that the CEO and myself judged that by that time the company has built enough of their platform so that we can -- and technology, so that we can move to the next phase.

Q. And why did you want to move to the next phase?

A. Again, as you build a company, you want to retain more value than just the royalty base.

Q. Okay. Was there further development, a further phase, as well?

A. Yes, your right. Beyond the phase II, where we retained manufacturing rights, we would eventually move into our third phase, which is our ultimate goal, where we would retain marketing rights to our product, in which case we would retain the whole commercial value of the product.

Q. You keep saying -- you keep mentioning the commercial value. Can you put that in terms of what kind of -- what do you mean by that, commercial value? What kind of income does the company get during the various phases, as you've identified them?

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A. This is nothing secret to Genetics Institute. In the industry, a pure royalty base would be 10% or less; to provide bulk product you'd get another 10 to 20%; and then, if you retain marketing rights, then you keep the rest of it minus your marketing and sales expenses.

Q. Okay. Can, then, you also tell me what -- correlate what the abilities of the company of Genetics Institute was at the various stages?

A. I said before, during the first phase, where we only licensed technology, we only essentially have scientists involved in discovery. As we move to manufacturing phase, we start building our own manufacturing capacity. And, obviously, as we attain the third phase, we and I put in the place the marketing and sales infrastructure.

Q. And the phases that you mentioned, is -- you mentioned different percentages. Are you saying that one phase is more profitable than the other phases?

A. Yes. I think that's why we try to build the company, is to move from -- phase III will be more profitable than phase II, and phase II will be more profitable than phase I.

Q. Okay. Thank you.

Do you have any familiarity with the agreement, the

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1995 agreement between Genetics Institute and Boehringer Mannheim?
A. Yes, I do.
Q. Can you tell me what parts of that agreement -- the 1985, did I say? Can you tell me what parts of that agreement you're aware of? What parts you negotiated, or did you negotiate any parts of that agreement?
A. I was the principal negotiator of the whole agreement.
Q. And what did you achieve by that agreement, in your own words?
A. We achieved what we set out to do, which is, number one, to retain a capable marketing partner for the European territory; number two is to retain a larger share of commercial value by being the bulk manufacturer for our partner; and we got going within the time frame that we set out to do.
Q. Okay. And according to that agreement, did GI provide technology to Boehringer Mannheim?
A. I would say that the arrangement, the agreement, provides for GI to manufacture the bulk exclusively for a certain period of time, and then, subsequently, to allow Boehringer Mannheim to manufacture a portion of the demand as part of the -- their right to manufacture a portion of the demand, and there was certain manufacturing technology transferred to Boehringer Mannheim.
Q. Why was there this change in, at first, GI providing the

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bulk EPO, and then later, Boehringer Mannheim producing it's own?
A. It was a concession by Genetics Institute as part of negotiation. We start out in our position to retain 100% manufacturing right all throughout the agreement term. However, Boehringer Mannheim insist that they don't want to be 100% dependent on the supplier across the Atlantic. So, they would like to establish local manufacturing. And that's why it moved from 100% exclusive supply position for Genetics Institute into a shared supply situation for Boehringer Mannheim.
Q. Did Genetics Institute seek or use the assistance of Boehringer Mannheim to assist it in making the cells for production of commercial quantities of EPO?
A. Excuse me, you're talking about making the cells or making the actual product?
Q. Well, let's make it two parts; both the cells and the bulk EPO?
A. Boehringer Mannheim has no involvement in Genetics Institute making the cell, the cell line that we use to produce the bulk product. Boehringer Mannheim was consulted in terms of the specifications that would be in place in order to produce the bulk product. So, I don't know whether you call that -- I forgot the part of your question.
Q. Okay. Well, what do you mean by specifications?

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A. Regulatory specifications. Obviously, we wanted to have our product that we Boehringer Mannheim to be in compliance with the regulatory specifications for its approval in European territory.
Q. Okay. Thank you.
Mr. Ha-Ngoc, I'd like to focus on the relationship between GI and Boehringer Mannheim regarding EPO. When did you first become involved with the EPO project?
A. When I first become involved, that was my first task when I first joined the company in May of 1984.
Q. And at that time you had full authority for seeking out a marketing partner in Europe; is that what you've already testified to?
A. That's correct.
Q. Okay. How did you go about seeking a partner in Europe?
A. We were looking at a marketing partner that would have the presence in the marketplace for erythropoietin, which is the dialysis centers, so we looked into companies having direct sales into that particular market sector.
In addition, based on my past employer, Baxter, I also have knowledge of who are the thought leaders in the area dialysis. So, I went to meet with certain of them in Europe to ask them who they would consider, from the market standpoint, the people that they respect, in terms of the potential commercial partner.

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Q. Can you tell me how it came about that you came in contact with Boehringer Mannheim, specifically?
A. Yes. Specifically, among the thought leaders that I consulted was Prof. Gurland at the clinic outside of Munich, in Germany, where I discussed erythropoietin and also asked Prof. Gurland who he could recommend as a potential European commercial partner for us.
Q. And why did you contact Prof. Gurland?
A. He is one of the recognized thought leaders in the field of dialysis in Europe.
Q. And then what happened after that?
A. I don't remember exactly, but after my visit -- several weeks after my visit I received a letter from the executive in charge of licensing at Boehringer Mannheim that stipulated that pursuant to my discussion with Prof. Gurland they became aware of our interest of searching for a European marketing partner, and would we consider them as a potential candidate.
Q. Did -- when -- and then did you consider them as a potential candidate?
A. Yes, I did.
Q. Were you considering anyone else at that time?
A. Yes. We were obviously -- I wanted to make sure that we had the best partner and the best terms, so we entertained simultaneous discussions with other companies in Europe, as well.

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Boehringer Mannheim, did Boehringer Mannheim want GI to make the bulk EPO?
A. No. As I said before, their position at the beginning of the negotiation was that they would rather be the one manufacturing the product in Europe because they have a biological facility in Europe. And our position, as I stated before, was that we are the one who would supply exclusively the bulk EPO to the European marketing partner.
Q. Okay. And so -- and that's why you reached the compromise on the plan for delivery of bulk EPO?
A. That's correct.
Q. And that was done in the 1985 agreement; correct?
A. That's correct.
Q. Okay. What about technology transfer? Who was to provide the technology, according to that 1985 agreement?
A. To the degree that technology is required to be transferred for Boehringer Mannheim to -- to obtain regulatory approval to the product and to be in position to manufacture its share of the demand, GI was responsible for delivering those technologies.
Q. And was that set out in the agreement, itself?
A. It was spelled out in the 1985 agreement.
Q. If you would look at Plaintiff's Exhibit 29?
A. Where would I find it?
Q. I believe it's in one of the books up there. Let me help you.

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A. Which --
Q. They're numbered. There's a number of books.
(Pause.)
A. Which number?
Q. 29?
A. 29. Yes.
Q. Can you tell me where that is set forth in the -- in this agreement?
A. Where what is set forth?
Q. I'm sorry, where the compromise between who was -- or compromise that you had reached with Boehringer Mannheim on supply of bulk EPO?
A. Spelled out in Schedule G.
Q. Schedule G. Okay. And can you tell me a little bit more about that negotiation and why that served your purpose and how that came about that you agreed to that with Boehringer Mannheim?
A. I said before, we start out with retaining -- our desire to retain 100% of the manufacturing right. They would like to also manufacture the product. So that's why the first three years, year 1, 2, 3, GI is to be the sole supplier of the demand, of the requirements. And starting with year 4, Boehringer Mannheim would have the ability to supply, first, 15%; and year 5, 35%; and year 6 and thereafter, 50% of the

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requirements.
Q. Now, what was the -- what was Boehringer Mannheim required to do by this agreement, under this agreement? What was their task?
A. There task was to conduct clinical trials in Europe, to obtain regulatory approval to market the product, and to market the product.
Q. So, was it conceived at this time, at the time of executing the agreement, that they would need a cell line to do that?
A. May I complete my answer to the previous question?
Q. Sure.
A. There is one more thing that they're obligated to perform under this agreement. It's obviously, according to Schedule G, they would start manufacturing a portion of their -- of the requirement, and, therefore, they also need to perform the manufacturing supply of that portion that they had retained the right to.
Q. Okay.
A. So, could you repeat the question again?
Q. So, was it contemplated that they were to receive -- that you were to supply them with the cell line?
A. In order for them to be positioned to produce their share of the requirement, yes, they would need a cell line delivered by us to them.

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Q. Was it also contemplated that you would supply them with bulk EPO?
A. Yes.
Q. And what was the purpose of that bulk EPO?
A. It's to formulate into the final product for marketing.
Q. Now, was that to include the clinical studies, as well as the final product?
A. That's correct.
Q. Is the -- does the agreement speak to the territory of the market you're referring to?
A. Yes, it did.
Q. And what is that territory?
A. If you go to the agreement in Schedule B and C -- in other words, Schedule B and C listed out the territory that they had included in the agreement.
Q. Can you be more precise as to the --
A. Yes. Schedule B lists out the countries, A, of the territory, which is essentially Europe; countries B, which is essentially Central and South America and Africa; and Schedule C lists out the ComEcon countries, which are the Eastern European countries.
Q. Now, who was responsible for selecting these countries? Was that Genetics Institute or Boehringer Mannheim?
A. It was a negotiated process.
Q. Does that -- did that territory include the United States

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order to effectuate unlinked. So if the Court makes the construction that unlinked means going in separately, then under equivalence, there would be none because one couldn't perform that procedure.

And the second point is that Dr. Weinberg basically conceded that in terms of whether a gene goes in linked or unlinked, he said that the result may be the same, but he clearly admitted that the means was different.

THE COURT: I understand. All I'm saying is that I want to make it clear that that's in play now. That's all.

MR. BAUER: Thank you, your Honor.

THE COURT: And you can address it. I may wind up where I wound up before. But I promised myself when I put on these robes that I would admit when I goofed. And I'm not sure it's a goof yet, but it seems to me I'm prepared to reconsider it.

So proceed with the testimony.

MR. BAUER: Thank you, your Honor.

BY MR. KOCH:

Q. Okay. Mr. Ha-Ngoc, this morning you testified with regard to Paragraph 510 of the DNL agreement of October, that's Plaintiff's Exhibit 29.

Would you look at that section again, 510? I think your testimony was -- I just want to clear this up. I think your testimony was it referred to an Amgen patent that was

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corresponding to a United States patent. But I want to ask you, is it referring to the United States patent or to the European patent?

A. It refers to the European patent.

Q. Okay. And is that because the territory of the agreement is Europe or that the patent concerned is of the territory of the agreement; is that correct?

A. That's correct.

Q. Okay. Did you attend meetings or hearings in Europe regarding the Amgen patent issue at any time?

A. The hearing with whom?

Q. Meetings or conferences or hearings of any kind in Europe regarding the Amgen European patent situation?

A. I believe I attended some high-level discussions with regards to the Amgen patent.

Q. And was that with regard --

A. Or potential patent.

Q. Was that with regard to the Amgen European patents?

A. With regards to focussed primarily with the European patent applications of Amgen.

Q. Okay. Did -- at any of those meetings in Europe, did the subject of the Axel patents come up?

A. I don't recall.

Q. Okay. Now, were there changes to this 1985 agreement or additions or modifications of that 1985 agreement at any time?

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A. Subsequent to this agreement we did enter into another agreement which I believe got finalized in 1988. It pertains to various conditions surrounding the supply of erythropoietin by Genetics Institute to Boehringer Mannheim.

Q. And why was there a subsequent agreement in 1988?

A. It was contemplated in 1985 that there should be additional agreements to cover the specific aspects of whether it is on the issue of forecasting an order, on the issue of specifications of the bulk compound to be sent to Boehringer Mannheim, and on additional issues that -- that was contemplated in 1985 but we did not have sufficient facts at that time to enter into a more definitive understanding.

Q. Like with respect to supply or amounts or anything?

A. Amounts, you know, ordering procedures, regulatory specifications. And I believe in '88 we also add on or addressed additional manufacturing capacity, that I alluded to earlier this morning.

Q. Was the '88 agreement part of --, did you consider that to come under the 1985 agreement or the umbrella of it?

A. The way I viewed it, is the 1985 agreement is a master agreement, and the '88, it just more specific agreement that address aspects that were not fully defined in the '85 agreement.

Q. Okay. Before we're off of the '85 agreement that you have in front of you, are there any quantity -- supplied quantity

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requirements in that agreement?

A. In the '85 agreement?

Q. '85 agreement. In terms of amount.

A. I believe in Schedule F, list out the amount of materials to be supplied, different quality of material to be supplied. First a 20 milligram of non-GMP material, and then next 400 milligram of GMP material, then it covers the pricing for additional material to be supplied.

Q. Okay. And then any additional material was spoken of in, for example, in Schedule G in terms of percentages, not amounts; is that correct?

A. That's correct.

Q. Then in the 1988 agreement, was there any -- did that agreement address amounts with any more specificity?

A. I believe so, but I may need to take a look at that.

Q. Okay. Let me refer you to Plaintiff's Exhibit 44. It's in the same book you have. If you'd like to refresh your recollection with that.

A. Yes. I think that in the 1988 agreement, Section 3 spelled out the conditions surrounding the initial order of 130 grams, the first 130 grams of bulk material.

Q. And does the -- does the Section 3, does that also address the issue of the Amgen European patents once again?

A. It would -- again, refers to the Amgen PCT application.

Q. Okay. And why does it refer to that in this agreement?

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Section 5.10. In fact, this particular provision is not just limited to Amgen, is it?
A. You're referring to the Section 5.10?
Q. Yes, sir.
A. I thought that both the title and the content of this section refers to the Amgen PCT application.
Q. But it also refers to, quote, patent positions of third parties, end quote, doesn't it?
A. I'm not sure that that has any significance other than the drafting.
Q. And it also says, quote, including but not limited to, end quote, does it not?
A. Yes, it does.
Q. At the time this license agreement was being negotiated in 1985, was there any discussion at GI with respect to Columbia Axel patents?
MS. SHANAHAN: Objection.
THE COURT: Again, non-attorney-client issues. Internal discussions among executives in the company are not privileged.
Go on. You can answer only with respect to discussions not involving attorney advice.
THE WITNESS: As I mentioned before, we are ongoing business, senior management had discussions about various technology that we may use from time to time. I cannot recall

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specifically whether or not Axel patent or any of the specific technology patent was part of discussion back in 1985.
Q. Isn't it true that Genetics Institute also had an agreement with Boehringer Mannheim regarding a serum-free product?
A. Yes.
Q. And under that agreement, was Genetics Institute going to make the product for Boehringer?
MR. BAUER: Objection; it's beyond the direct.
THE COURT: No. You may answer.
THE WITNESS: I think I have to go back to the agreement to recollect whether there was specific supply section.
BY MR. ZIVIN:
Q. Let's look at Exhibit P72, if you would.
(Witness reviewed document.)
A. Looks like this serum-free agreement does not contemplate for GI to supply the serum-free product to Boehringer Mannheim.
Q. All right. Was Boehringer Mannheim going to make the product?
A. I believe so.
Q. And by the time this agreement was signed, and I believe it has a date at the end, signed by you on May 30th, 1991; is that correct?
A. May 30th, 1991; yes.

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Q. Right. By that time, there was already an injunction in place precluding Genetic Institute from making EPO in the United States; was that correct?
A. Was that the case? Again, I don't remember exact chronology of the timing, but at one point in time there was an injunction ordered by the Court.
Q. And after that injunction issued, did Genetics Institute make any EPO in the United States?
A. No, we don't.
Q. And after that time, did Genetics Institute ship any EPO out of the United States?
A. No.
Q. And after that time, was any EPO received by Genetics Institute from Boehringer Mannheim?
A. I don't recollect whether such event exist.
Q. In the period shortly before this injunction issued, which I believe was in 1991, did Genetics Institute try very hard to ship as much EPO as possible to Boehringer Mannheim, bulk EPO?
A. In the period preceding?
Q. Yes?
A. -- the injunction?
Q. Yes.
A. We were wrapping up our manufacturing capacity and tried to produce as much as we can, that's our source of revenue; yes.

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Q. Right. So you -- is it fair to say that in the period shortly before the entry of that injunction in 1991, that Genetics Institute shipped about three years' worth of bulk EPO to Boehringer Mannheim?
A. Uhm, I don't remember the specifics, whether it's three years or whether -- whatever it is the requirement of the order that we receive Boehringer Mannheim.
Q. Did there come a time when the agreement between Genetics Institute and Boehringer Mannheim was modified so as to provide that Boehringer Mannheim would have the rights to sell EPO in the United States?
A. I don't remember specifically, but I do recall discussions about Boehringer Mannheim exploring whether or not it would be legally feasible for Boehringer Mannheim to sell erythropoietin in market -- in United States market.
Q. Why don't you look at Exhibit 93, sir, P93. And is that an agreement that you signed on October 22, 1996?
A. October 1996, yes.
Q. And is that an agreement whereby you gave Boehringer Mannheim the right to sell EPO in the United States?
A. I need to reread, I don't recall specifically. But let me --
Q. Why don't you look at the bottom of page 4.
A. Okay. Yes, this say United States. Yes.
Q. Did Boehringer Mannheim and Genetics Institute have a

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worldwide patent strategy?
A. I think we have -- I think we have discussions with Boehringer Mannheim about -- about both companies' positions vis-a-vis Amgen's patent in the territory that Boehringer Mannheim is interested in; yes.
Q. Did your worldwide patent strategy discussions concern Columbia's patents?
MS. SHANAHAN: Objection.
MR. ZIVIN: This is a conversation between two different companies.
THE COURT: Overruled.
THE WITNESS: It may or may not have been the part I was involved with directly. I can speak to I was focussing mostly on the -- primarily on the Amgen patent aspects.
BY MR. ZIVIN:
Q. Well, are you aware of what the discussions were between the two companies?
A. On the specific subject, I'm not -- I don't remember whether there was any specific discussion or not.
Q. You are aware that Genetics Institute took a license from Columbia; is that correct?
A. Yes. I believe I was informed by our chief patent counsel that we did enter into that agreement. I don't recall the date, however.
Q. And were you aware that that license agreement excluded

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EPO?
A. Again, I don't remember the specifics of it. It may or may not, I don't -- I don't remember.
Q. Are you aware that American Home Products was also a licensee of Columbia under the Axel patents?
A. Were they? I don't know.
Q. Do you know whether American Home Products paid any royalties to Columbia under the Axel patents?
A. I'm not aware.
Q. Were you aware of whether Genetics Institute paid royalties to Columbia under the Axel patents?
A. I don't remember the specific arrangement that Genetics Institute had with University of Columbia. Again, all those matters are handled by appropriate department in our company and mostly stay below my radar screen.
Q. Were you aware, was it a total of $23 million that Genetics Institute --
THE COURT: If he's not aware of any of this, he wouldn't be aware of a particular number. Go on, Mr. Zivin.
BY MR. ZIVIN:
Q. Were you aware that pursuant to the development and license agreement, Genetics Institute sent the master cell bank to Boehringer Mannheim?
A. I don't remember specifically whether we sent the master cell bank or master working cell bank. Those are technical

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details that I don't pay attention to.
THE COURT: As to which there's already been testimony. Go on, Mr. Zivin.
MR. ZIVIN: That's the predicate for my next question.
BY MR. ZIVIN:
Q. But you're aware that at least something, either master cell bank or master working cell bank, was sent; is that correct?
A. That's correct.
Q. And were you aware that after you sent that, either that master cell bank or that master working cell bank, to Boehringer Mannheim, that your company was going to receive additional payments from Boehringer Mannheim for the use of those cell banks or working cell banks; is that correct?
A. I don't remember specifically, but if that is in a part of the agreement, that would have triggered that. But I don't remember exactly whether that was any benchmark of the license.
Q. Well, did you anticipate -- did you anticipate, sir, that Genetics Institute would receive substantial amounts of money from Boehringer Mannheim after they met the benchmarks of that development and license agreement?
A. Was that a benchmark of the license and development agreement?
Q. Wasn't it? Do you want to look at it? It's Exhibit 29.

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THE COURT: Isn't it matter of record whether or not GI received substantial amounts of money from BMG?
MR. ZIVIN: I'm asking whether he anticipated receiving it.
THE COURT: What --
MR. ZIVIN: Because I think that falls under the case law.
THE COURT: What different does it make?
MR. ZIVIN: It's a question of damages that we would receive.
THE COURT: If the money is contemplated by the agreement, then he obviously anticipated it. In other words, why is this not a question of documents? What does it matter if he remembers now that money would come after the master cell bank was sent there?
MR. ZIVIN: Well, I think it's -- I don't think it's really in dispute, but if -- I'd like to hear his answer.
THE COURT: Is it in dispute?
MR. KOCH: I think the agreement speaks for itself. It has the benchmark, so it lays it out.
THE COURT: In other words, the question is: Did you anticipate that Genetics institute would receive substantial amounts of money from BMG after they met the benchmarks for that development and license agreement?
Isn't that in the agreement? So why do we need

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testimony on this?
MR. ZIVIN: All right. I'll go on.
THE COURT: All right.
BY MR. ZIVIN:
Q. Isn't it fair to say, sir, that the master cell bank and master working cell bank sent by Genetics Institute to Boehringer Mannheim were extremely valuable items?
A. Yes.
MR. ZIVIN: I don't have any further questions.
MR. KOCH: Just a couple real quick ones.
REDIRECT EXAMINATION
BY MR. KOCH:
Q. You referred to a license agreement with Columbia that you were aware of, vaguely aware of. Is it possible that that license was the Chasin license that you were aware of?
A. I don't remember the details.
Q. Okay. You also testified about some transfer of information from GI to Boehringer Mannheim in the time period from the confidential disclosure agreement before the DNL agreement was executed.
Did you personally attend any meeting or discussions when that information was transferred?
A. I attend some of the meetings, but not all of them.
Q. Did you, uhm -- were you -- would you have been one who was transferring some of that information?

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A. No.
Q. Who would have been, or who was? Who was the person that transferred the information?
A. I think most of the discussions on disclosure at that time that would -- as part of the normal process of negotiating a partnership, came from our various scientists. And one name is Dr. Fritsch.
Q. Dr. Fritsch, thank you.
You mentioned also in your testimony, you talked about a -- a requirement or an order from Boehringer Mannheim. I just want to clarify.
Any requirement for bulk EPO from Boehringer Mannheim or order from Boehringer Mannheim, would that have been -- would that come under the 1985 agreement, any such order or requirement that you were referring to?
A. The 1985 agreement contemplated we would be supplying Boehringer Mannheim. The specific ordering process and quantities were subject of the 1988 agreement that spelled our more clearly what the 1985 agreement contemplated.
Q. And did the 1988 agreement come under the master agreement, 1985 agreement?
A. Yes.
Q. So the requirement would be under the master agreement? Were there any requirements from Boehringer Mannheim that were not under the master agreement, is what I'm asking?

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A. Ah, requirements came under 1985 because, as I say, this is master agreement. However, the specificity, the specific clarification were spelled out in 1988 agreement.
Q. Okay. And my last question: You were referred to this 1990 -- to a subsequent agreement that contained an option for Boehringer Mannheim to -- to operate in the United States. Do you know if that was -- option was ever exercised?
A. To my knowledge, it's never been exercised.
MR. KOCH: Thank you. No further questions.
THE COURT: Thank you very much.
MR. ZIVIN: Can I just ask a follow-up question now?
THE COURT: One follow-up question.
RECROSS-EXAMINATION
BY MR. ZIVIN:
Q. Isn't it true, sir, that disclosure of technical information was also by Dr. Kaufmann and Dr. Kamen, who were your scientists at the time?
A. That's possible, yes.
MR. ZIVIN: Thank you.
THE COURT: Thank you very much. I hope we didn't make you too late.
Now, is it possible to finish Mr. Eisen's testimony today? Could we do that?
MR. ZIVIN: Right now?
MS. SHANAHAN: Mr. Eisen has the time, yes.

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THE COURT: Parties, can we try to do that today? We will take a five-minute break to switch reporters, and we'll continue with Mr. Eisen.
(Recess.)
THE CLERK: All rise.
THE COURT: You can all be seated.
THE CLERK: Doctor, you're still under oath.
MR. ZIVIN: Were they finished with their cross-examination?
MR. BAUER: Yes, we were.
THE COURT: Go ahead.
BRUCE EISEN, RESUMED
REDIRECT EXAMINATION
BY MR. ZIVIN:
Q. During your cross-examination, Mr. Eisen, you referred to a license agreement that you said belonged to Dr. Chasin of Columbia?
A. Yes.
Q. Did that license agreement say anything about the Axel patents?
A. No, I don't believe it said anything specifically.
Q. And did that say anything about cotransformation?
A. I don't believe so.
Q. In fact, did that license agreement bear any signature from Columbia University other than Dr. Chasin, himself?