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May 13, 2002

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Hart-Scott-Rodino Notification for Exclusive License Agreement

Dear Mr. Verne:

I write to confirm the discussion you and I had, joined by [redacted] of the [redacted] firm, on April 18, 2002, and the advice you gave us about the following proposed transaction.

Company A and Company B each have intellectual property relating to specific methods and technologies for generating human antibodies against specific antigen targets, which are useful tools in the discovery and development of antibody-based products for diagnosis, prevention and treatment of various human diseases and conditions. Over the last several years, Company A and Company B have collaborated to develop related, jointly-owned new technology for antibody production, and have each granted the other non-exclusive license rights to its platform technology.

Company A and Company B now propose to enter a Collaboration and License Agreement to continue the collaboration, clear potentially blocking patent positions, and allow the parties to commercialize the technology described above more quickly and effectively. Under the proposed Collaboration and License Agreement, each party will grant to the other certain license rights to use and exploit the intellectual property described above, including the jointly-owned intellectual property, and, in the event further development work under these licenses is successful, to produce and sell the resulting products, and sublicense third parties to practice the technology and produce and sell products as well. In addition to non-exclusive cross-licensing, which will give each party broad rights to conduct research, each company will also grant the other certain exclusive licenses under its technology rights

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to exploit specifically-identified antibodies and antibody technology and products. In other words, Company A will acquire exclusive rights to exploit (and to grant sublicenses to exploit) one group of antibodies and antibody technology and products, while Company B will acquire similar exclusive rights with respect to a different group of antibodies and antibody technologies and products. The Collaboration and License Agreement expires at the end of 2014 (with some provisions surviving).

The exclusive licenses granted by each party to the other are intended to be legally binding on the date the Collaboration and License Agreement takes effect, subject to the fufillment of certain conditions for the exercise of those rights with respect to particular antigens and antibodies, including payment of certain licensing fees, the licensee's identification of the particular antibodies and the antigen targets against which such antibodies were generated, confirmation that intellectual property rights with respect to the identified antibodies have not already been outlicensed to a third party, and expiration of the HSR waiting period, if any. Prior to the effective date of the Collaboration and License Agreement, Company A will have identified (on behalf of itself or its sublicensees) one or more antibodies generated against antigen targets as to which it and/or its partners will be able to exercise the exclusive rights. Thereafter, during the term of the Collaboration and License Agreement, each party will over time designate antibodies generated against antigen targets for the exercise of the exclusive rights under the licenses granted to it in the Collaboration and License Agreement.

As noted, the exclusive licenses are present grants of license rights, rather than options, and are, for example, intended to be intellectual property rights of the licensee as of the date the Collaboration and License Agreement takes effect for purposes of Section 365(n) of the Bankruptcy Code. The grants are intended to be legally binding for other purposes as well, irrespective of whether the antibody (or the antigen against which it is generated) is specifically identified now or at some later point during the term of the License Agreement.

In our telephone conversation, you advised that, based on the facts described above, the Collaboration and License Agreement would be viewed for HSR reporting purposes as granting all of the exclusive license rights at the time the Collaboration and Licensing Agreement became effective, whether or not the relevant antigens or antibodies are identified at that time or at some time later during the term of the agreement. Thus, you advised that (assuming the size of person and size of transaction tests are met), the parties should file, at the time the agreement is intended to be effective, HSR notifications with respect to each party's acquisition of all the exclusive rights to be granted under the Collaboration and License Agreement, rather than wait to make a determination whether an HSR filing is required each time during the agreement term that specific individual antibodies or antigens are identified for exercise of those rights.

[redacted]

Thank you for your time and help to confirm these points. If this letter does not accurately summarize the advice that you gave me and the position of your Office, I ask that you please contact me promptly.

Sincerely,

[redacted]

AGREE -
B. Michael Verne
5/14/02