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BY E-MAIL (CONFIRMATION BY MAIL)

John Maroney, Esq.
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Hammond/Hannon CSHL 010 Family of Patent Applications

Dear Mr. Maroney:

This responds to the request in your May 9 letter to me that we provide you information to demonstrate that your understanding concerning Mr. Vincent's actions in connection with the filing and prosecution of the Hannon "P02" patent application (Ser. No. 09/866,557) and the preceding provisional application (Ser. No. 60/243097) is mistaken. You have asserted that in drafting the provisional application Mr. Vincent, while he was an attorney at the firm of Foley, Hoag & Eliot, improperly copied various pages from a published Fire PCT Application (WO 99/32619) (the "Fire Application"), without informing the Patent Office or CSHL that he did so, and that later applications in the '010 family, including the '557 application, improperly retained portions of the copied Fire text. You have also alleged that the Fire Application was not cited sufficiently promptly to the PTO in the '557 application. You have informed us that you believe that these actions constitute malpractice in the prosecution of the above-referenced family of patent applications and you have requested a tolling agreement, which request has triggered an obligation that we notify our carrier.

Because your assertion, combined with your request that our New York office take over the prosecution of these applications, creates a potential conflict of interest between CSHL and our firm, we have requested that you provide us with a waiver, acknowledging that you will not assert that our continued representation is a conflict between the interest of CSHL and the interests of our firm.

We vigorously deny that Mr. Vincent's actions constitute a basis for a claim of malpractice and we dispute the direct and implicit assumptions in your claims, as Mr. Ellis' April 22 and April 29 letters to you made clear.

Without specifically addressing CSHL's allegations concerning the 010 family of patent applications, it is our understanding that including in a patent application text that originated from prior published patents or patent applications is an accepted practice. Indeed, incorporating such text, either directly or with slight modification, in patent applications without specific attribution is often done to expediently provide descriptive information such as definitions, lists, descriptions of uses or other information that may be relevant to the invention disclosed in the application.¹ Such copying constitutes neither a violation of the applicants' duty of candor nor scientific plagiarism.²

Indeed, this practice is widespread among CSHL filings. Portions of various prior published applications have been used in CSHL applications handled by other law firms. Tab 1 provides two representative examples that compare in red-lined format the text of a previously filed third party application with that of a later-filed application of CSHL, as well as an example where text of a CSHL application appears to have been copied into the application of a third party.

Moreover, portions of the same text from the Fire Application that were used in the CSHL-010 filings also have been used without attribution in applications filed on behalf of various parties by other law firms, including applications filed in the name of Chiron, the United States (through the National Institutes of Health), and Baylor College of Medicine. These passages are compared to the respective applications in Tab 2. Still other applications incorporating text from the Fire Application include US and PCT Published Patent Applications 20080085999 (Oligoengine, Inc), 20070213293 (Nastech Pharmaceutical), WO07064759 (Scripps Research Institute), 20070020652 (University of Utah), 20060275769 (Oregon Health & Science University), 20050060771 (Becton Dickinson), 20040242521 (University Of Texas), 20070275465 (Alnylam), and 20060142228 (Ambion).

It is noteworthy that several of these U.S. filings were, or are now, being handled by the USPTO's Examiner Sean McGarry, who is currently the lead or supervisory examiner on the CSHL-010 family of U.S. applications. This would appear to demonstrate that Examiner McGarry is generally aware of the practice of using portions of previously published patent

¹Indeed, it appears that certain of the passages from the Fire Application were themselves taken from even earlier published patents. See, for example, US Patent 5,629,154 (Geron Corporation), and US Patent 5,489,508 (University of Texas).

²To the extent CSHL's real concern is that text from the Fire Application did not receive attribution, CSHL could consider filing continuation applications that amend the specifications to include citations as attribution. If we can get beyond the conflict waiver, Mr. Haley and his team would be happy to advise you concerning how to proceed with the prosecution of this family of applications.

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John Maroney, Esq.

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applications for supporting information in new applications, and specifically that this practice has been pervasive among applications in RNAi technology.

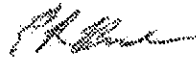
Furthermore, we simply do not understand CSHL's assertion that the Fire Application was not timely cited to the USPTO in the '557 application, to which Mr. Drozdoff has pointed. In that application, Ropes & Gray first cited the Fire Application in a November 24, 2004 Information Disclosure Statement ("IDS"). Ropes & Gray also cited the corresponding Fire U.S. patent 6,506,559 to the PTO in a January 7, 2005 IDS. Both of these IDSs preceded by many months the first USPTO citation of either Fire document. That citation was in a September 6, 2006 Office Action by Examiner McGarry. Ropes & Gray responded to that Office Action and the Fire citation (03/06/2007 and 06/28/2007). The Examiner then issued another Office Action (09/04/2007). Ropes & Gray filed a Notice of Appeal on 03/04/2008.

Based on the foregoing, there is no basis, in our view, that you can legitimately assert that Mr. Vincent's actions constitute malpractice, and we urge you to reconsider your position, withdraw your claim and request for a tolling agreement and execute the waiver we have requested so that we can move expeditiously to advise you on what should be done to prosecute the 010 family of patent applications in a way that maximizes CSHL's likelihood for success.

Finally, as to your May 30 letter requesting copies of certain files, we are copying the files for the other applications requested. We will send them to you soon. We also are reviewing what other written documents we have in the physical files or in electronic folders.

We sincerely hope that the foregoing information will allow us to move forward in a way such that there is no recrimination or concern that our advice is compromised because of a conflict of interest.

Very truly yours,



Eric R. Hubbard

ERH:RT:emh
Encls.

cc: Roscoe Trimmier, Jr., Esq. (w/encls.)
Douglass N. Ellis, Jr., Esq. (w/encls.)