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## Client Roche Victorious in Supreme Court Ruling

2011-06-08

On June 6, the Supreme Court of the United States decided *Stanford University v. Roche Molecular Systems*, a closely watched case involving patent rights to inventions developed using federal funds. The dispute, which involved tests for measuring the efficacy of HIV treatments, resulted in a decisive ruling in favor of Roche. This is the first patent case in which the Supreme Court has affirmed the Federal Circuit notwithstanding the solicitor general urging reversal.

The case arose from a collaboration between a Stanford researcher and a small biotech startup, Cetus, in which the researcher assigned any resulting inventions to Cetus. Working with Cetus scientists, the researcher developed a technique for quantifying HIV in human blood. Roche later acquired Cetus's assets and now makes HIV test kits that are used to treat AIDS in hospitals and clinics worldwide. After the collaboration ended, Stanford obtained patents on the technique and sued Roche for infringement.

When Roche defended on the ground that it was a co-owner of the patents under the assignment, Stanford argued that the assignment was void because, it claimed, the researcher's work had been federally funded. The district court agreed with Stanford, ruling that the federal Bayh-Dole Act gave title to federally funded inventions to the federal contractor (here, Stanford), regardless of any assignment by the inventor. The Federal Circuit reversed, ruling that the Bayh-Dole Act did not change the ordinary rules of patent assignment.

Stanford petitioned for *certiorari*, and the Supreme Court called for the views of the solicitor general of the United States, who recommended that the Court take the case and reverse the Federal Circuit's ruling in Roche's favor. After the Court granted *certiorari*, the case garnered a great deal of attention from *amici*, due to the potentially broad-ranging implications for government contracting and patent assignments. Stanford was supported by most major research universities, but WilmerHale was able to obtain broad-based support from the pharmaceutical industry, Silicon Valley, the biotech industry, and the American Association of University Professors. The briefs on Roche's side stressed the importance of the longstanding rule that an invention is owned by its inventor, subject to assignment, and the lack of any evidence that Congress had meant to change that.

In a 7-2 decision, the Court affirmed Roche's position. In the opinion, which adopted many of the

arguments made in WilmerHale's brief, Chief Justice Roberts wrote: "Although much in intellectual property law has changed in the 220 years since the first Patent Act, the basic idea that inventors have the right to patent their inventions has not." While Justices Breyer and Ginsburg dissented, they did so on a ground that Stanford had neither raised nor briefed and that was accordingly not before the Court.

WilmerHale Partner [Mark Fleming](#) argued the case in the Supreme Court. The WilmerHale team also included Partner [Paul Wolfson](#), Counsel [Greg Lantier](#) and Associate [Adam Romero](#).