



**ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT**

THE PROBLEM

Twenty Eighth Annual Willem C. Vis
International Commercial Arbitration Moot

Vienna, Austria
October 2020 – April 2021

Oral Hearings
March 27 – April 1, 2021

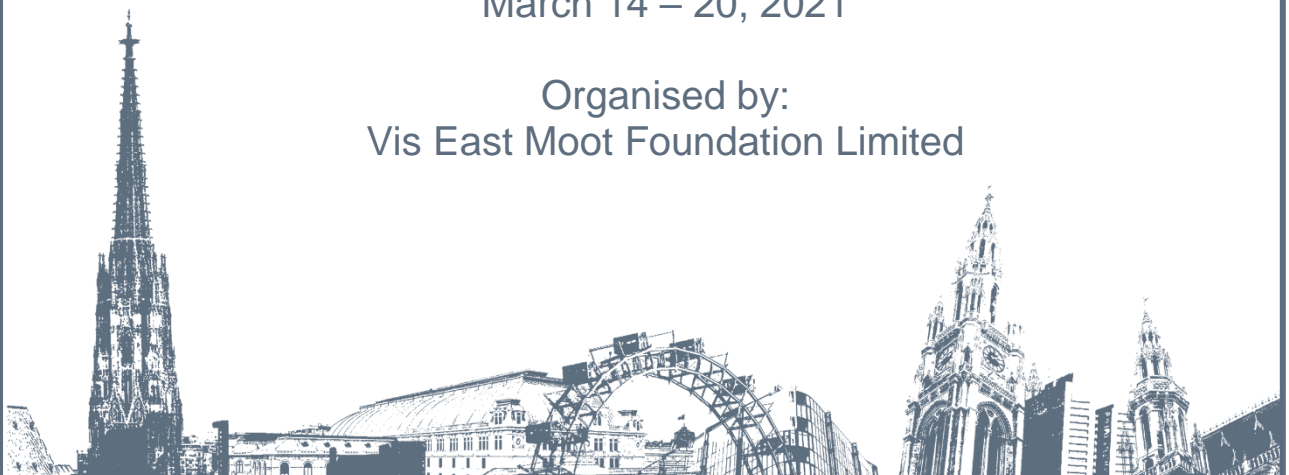
Organised by:
Association for the Organisation and Promotion of the
Willem C. Vis International Commercial Arbitration Moot

and

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International Commercial Arbitration Moot
Hong Kong

Oral Arguments
March 14 – 20, 2021

Organised by:
Vis East Moot Foundation Limited



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By email and courier

Ms Caroline Ming
Swiss Chambers' Arbitration Institution
Secretariat of the Arbitration Court
c/o Geneva Chamber of Commerce, Industry and Services
4, boulevard du Théâtre - P.O. Box 5039
CH-1211 Geneva 11

15 July 2020

Dear Ms Ming,

On behalf of my client, *RespiVac plc*, I hereby submit the enclosed Notice of Arbitration pursuant to Article 3 Swiss Rules of International Arbitration. A copy of the Power of Attorney authorizing me to represent *RespiVac plc* in this arbitration is also enclosed.

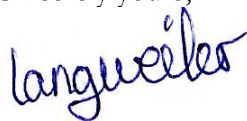
The registration fee has been paid. The relevant confirmation for payment is attached.

The Claimant requests performance of contractual obligations.

The contract giving rise to this arbitration provides that the seat of arbitration shall be Vindobona, Danubia, and that the arbitration shall be conducted in English. The arbitration agreement provides for three arbitrators to be appointed by the Institution.

The required documents are attached.

Sincerely yours,



Joseph Langweiler

Attachments:

Notice of Arbitration with Exhibits
Power of Attorney (not reproduced)
Confirmation of Payment of Registration Fee (not reproduced)

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15 July 2020

Notice of Arbitration

(pursuant to Article 3 of the Swiss Rules of International Arbitration 2012)

in the Arbitral Proceedings

RespiVac plc v. 1) CamVir Ltd, 2) VectorVir Ltd

RespiVac plc
Rue Whittle 9
Capital City
Mediterraneo

- CLAIMANT -

Represented by Joseph Langweiler

CamVir Ltd
112 Rue L. Pasteur
Oceanside
Equatoriana

VectorVir Ltd
67 Wallace Rowe Drive
Oceanside
Equatoriana

- RESPONDENT NO. 1 -

- RESPONDENT NO. 2 -

STATEMENT OF FACTS

1. Claimant, *RespiVac plc*, is a start-up biopharmaceutical company engaged in the development of vaccines for respiratory diseases caused by viruses.
2. Respondent No. 1, CamVir Ltd, and Respondent No. 2, VectorVir Ltd, are both 100% subsidiaries of Roctis AG (“**Roctis**”), the holding company of the Roctis Group which is one of the biggest pharmaceutical companies in the world.
3. Respondent No. 2 is the owner of a patent for the GorAdCam viral vector. The viral vector is based on the adenovirus that normally causes the common cold in gorillas. To obtain the vector, the DNA of the adenovirus is genetically modified so that the genes responsible for the replication of the adenovirus (E1) are deleted. As a consequence, the viral vector constituted by the DNA of a harmless, replication-deficient adenovirus can form the basic structure for a vaccine. The viral vector can then be further genetically modified (be charged) by incorporating parts of the DNA/a gene of interest of the virus against which the vaccine is directed. This gene of the virus of interest will not replicate itself when inserted into the human body. Therefore, the injection of the viral vector charged with the gene of the virus of interest will



stimulate the reaction of the human immune system against the virus of interest without the risk of proliferation of such virus in the patient.

4. Respondent No. 1 is the Contract Manufacturing Organisation of the Roctis Group for the production of pharmaceutical base materials for various vaccines and drugs under the GMP-conditions. The production of these base materials normally occurs under licenses or sublicenses from other companies of the Roctis Group but also from outside companies. In particular, Respondent No. 1 produces the economically extremely successful monoclonal antibodies for the Roctis Group. These antibodies constitute the carrier for many cancer vaccines and are sold at great profit to a considerable number of different companies active in the production and research of cancer medicine.
5. In January 2018, to replicate that successful model of the monoclonal antibodies in the area of viral vectors, Respondent No. 1 acquired a non-exclusive license for the production of HEK-294 cells. These HEK-294 cells are a newly developed cell-line that contains the E1 adenovirus replication gene, which has been deleted in the viral vectors. The cells are further optimised for high virus production rates and can thus be used as “hosts” for the production and amplification of genetically modified viral vectors with gene inserts. In order to support the growth of the HEK-294 cells, Respondent No. 1 developed a specific cell culture growth medium containing necessary energy sources required for the proliferation of the cell lines. The HEK-294 cells as well as the cell culture medium are thus crucial for the production of the viruses in sufficient quantities to use in vaccines.
6. Respondent No. 2 was founded in 2012 as a small start-up trying to commercialize and further develop several patents resulting from a major governmental and industry funded research project in the use of viral vectors for the development of a new type of vaccines. Out of the various patents held the two most promising candidates for further research into vaccines were the GorAdCam viral vector, based on a gorilla adenovirus, and the ChAdCam viral vector, based on a chimpanzee adenovirus. At the time the general expectation was that the ChAdCam vector would have high potential for all kinds of respiratory diseases. By contrast the greatest potential of the GorAdCam vector was seen in the field of malaria.
7. In light of the limited funds available and the expertise of the main researchers Respondent No. 2 decided to concentrate its own further research activities on the development of vaccines for respiratory diseases with the ChAdCam vector. At the same time its own research activities in the field of malaria vaccines with the GorAdCam vector were stopped completely and Respondent No. 2 tried to monetize its know-how in that area.
8. Thus, on 15 June 2014, Respondent No. 2 entered into a Collaboration and License Agreement with Ross Pharmaceuticals (“**Ross Agreement**”) the biggest life-science company in Danubia. Under the Ross Agreement Respondent No. 2 granted Ross Pharmaceuticals an exclusive license for the use of the GorAdCam vector for the development and production of malaria vaccines. The exclusive license was apparently given for “malaria and infectious diseases” (**Claimant Exhibit C 1**).
9. Due to the research done with the GorAdCam viral vector in the following years by Ross Pharmaceuticals and two sublicensees, it became apparent that contrary to the initial expectations the GorAdCam vector might also be useful for vaccination and treatment of respiratory diseases.
10. In August 2018, Roctis acquired Respondent No. 2 and its patents. Immediately after the acquisition by Roctis, Respondent No. 2 entered into an exclusive license agreement with Respondent No. 1. The exclusive license granted Respondent No. 1 the permission for the

production, sale and sublicensing of the GorAdCam viral vector for all applications with the exceptions of malaria (**Claimant Exhibit C 2**).

11. On 1 January 2019, Claimant entered into a Purchase, Collaboration and Licensing Agreement (“**Agreement**”) with Respondent No. 1. The Agreement concerned the delivery and the use of GorAdCam viral vectors for the research, development and subsequent production of a vaccine against respiratory diseases including the necessary licenses (**Claimant Exhibit C 3**). The Agreement was based on a template of a Collaboration and License Agreement which had been used by Respondent No. 2 on other occasions.
12. The template had been provided by Mr. Peter Doherty after he took over the negotiations in December 2018. At the time, he was officially still working for Respondent No. 2 before becoming the new head of the contract department of Respondent No. 1 from 1 January 2019 onwards. The draft of the agreement, which originally had been suggested by Mr. Doherty’s predecessor, had been unacceptable for Claimant. It was based on the model used by Respondent No. 1 for its contract manufacturing and was not suitable for this type of research and development transaction. When Mr. Doherty took over the negotiations instead of trying to amend the original draft accordingly, he suggested to base the further discussions on the template used by Respondent No. 2 for its Collaboration and License Agreements.
13. In addition to some minor other changes, a new Section 16 was added to the template containing additional purchase obligations for Claimant, as well as an option to have the vaccine produced by Respondent No. 1. The purchase obligations arise if a vaccine is successfully developed and produced by Claimant. In that case Claimant has to buy the HEK 294-cells as well as the necessary cell growth medium from Respondent No. 1.
14. The purchase requirement is a very peculiar feature of the Agreement and deviates from the normal practice in the development and production of vaccines based on viral vectors. The prevailing practice is that the patent owner (“**licensor**”) sells and delivers a first batch of different genetically modified harmless viral vectors in the context of a collaboration and license agreement. This batch is produced by the licensor by adding the disease specific inserts requested by the licensee to its basic viral vector. These newly produced viral vectors with inserts (gene of interest) can then be used by the licensee for research to determine the most suitable insert for a subsequent vaccine production. Once an optimised gene of interest is defined, larger quantities of GMP-produced viral vector batches are delivered for clinical trial studies. In case these trials are successful and result in the development of a vaccine the licensee itself produces the required quantities of viral vectors and pays royalties for the use of the viral vectors. There is, however, no obligation to buy the HEK-cells and the growth medium necessary for the production from the licensor. Normally, HEK-293 cells are used for the amplification of the otherwise replication deficient viral vectors and there are standard growth media freely available on the market.
15. A particular feature of the GorAdCam vector is that it is best amplified in special HEK-294 cells. At the end of 2018, Respondent No. 1 was one of two producers which did not only deliver the HEK-294 cells, but also the growth medium required for their reproduction. Consequently, Respondent No. 1 could insist on including the additional purchase requirement for the HEK-294 cells and the growth medium. As Claimant was at the time not in the position to produce the quantities necessary for the production of a vaccine under GMP-conditions, it did not object to the additional purchase obligation.
16. According to the Agreement, Respondent No. 1 was obliged to deliver to Claimant a first batch of the GorAdCam viral vectors for research into vaccines against infectious respiratory diseases. For the delivery of that batch a price of EUR 2,5 million was due. Further license payments in

the overall amount of EUR 3 Million were due upon the fulfilment of particular milestones. These milestones were the successful completion of the various clinical phases and the approval of the vaccine by the Regulatory Authorities.

17. Unlike other collaboration and licensing agreements, the present agreement did not merely provide for additional royalties for the production and sale of the vaccine. In addition, the Agreement obliged Claimant, in case of the commercialization of the product developed under the Agreement, to purchase the HEK 294-cells as well as the culture medium which are needed for the amplification of the GorAdCam vectors required for the production of the vaccine from Respondent No. 1.
18. Due to the research done with the GorAdCam virus during 2019, Claimant immediately recognized the potential of the GorAdCam virus as a vector for a future vaccine against the SARS-CoV-2 (formerly 2019-nCoV) causing COVID-19. Thus, from early February 2020 onwards Claimant concentrated its further research on a vaccine against COVID-19. The first results in April 2020 were very promising.
19. On 1 May 2020, Claimant's COO, Mr. Paul Metschnikow, was given an older article in the Biopharma Science, a local journal of the start-up scene published in Danubia, that there was apparently a dispute between Ross Pharmaceuticals and Respondent No. 2 as to the reach of the license granted in 2014 to Ross Pharmaceuticals under the Ross Agreement (**Claimant Exhibit C 4**). It can be deduced from the article that the license was obviously granted for "malaria and comparable infectious diseases".
20. Mr. Paul Metschnikow immediately contacted Ms. Alexandra Flemming, the CEO of CamVir to clarify the situation. (**Claimant Exhibit C 5**).
21. She replied by email on 4 May 2020, playing down the problem (**Claimant Exhibit C 6**).
22. Unfortunately, Claimant's CFO, Ms. Hübner, who had been working for Ross Pharmaceuticals at the time the Ross Agreement had been concluded with Respondent No. 2, was unable through her contacts to get hold of a copy of this agreement. Her contacts confirmed, however, that in June 2020 there were still ongoing discussions between Roctis and Ross Pharmaceuticals about the scope of the exclusive license granted under the Ross Agreement and the right to use GorAdCam vectors in connections with the research for a vaccine against COVID-19 (**Claimant Exhibit C 7**).

LEGAL EVALUATION

23. The Arbitral Tribunal has jurisdiction to hear this case. The dispute resolution clause contained in Article 14 of the Purchase, Collaboration and License Agreement provides as follows.

***“Any dispute, controversy, or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers’ Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.
The number of arbitrators shall be three. All arbitrators are to be appointed by the Institution and should have good knowledge in the field of intellectual property and the developments of vaccines.*”**

*The seat of the arbitration shall be in Vindobona, Danubia. Hearings shall be held, at the Arbitral Tribunal's discretion, either in Vindobona or in the city where the Respondent has its place of business.
The arbitral proceedings shall be conducted in English."*

24. The arbitration clause as well as most other contractual provisions were included in the template for the Collaboration and License Agreement which Mr. Peter Doherty had provided. We were told that this is the standard dispute resolution clause which Respondent No. 2 had been using in its own Collaboration and License Agreements before it had been acquired by Roctis AG. In light of that, the crucial role played by Mr. Doherty in the negotiations of the clause, and since Respondent No. 2 is the patent holder, Respondent No. 2 is brought into these proceedings and bound by the arbitration clause.
25. The Collaboration and License Agreement is governed by the CISG as it involves a sale of goods. Thus, pursuant to Article 42 (1) CISG, Respondent No. 1 was required to deliver batches of GorAdCam viral vectors "which are free from any right or claim of a third party based on industrial property or other intellectual property".
26. In the present case, the use of the GorAdCam viral vectors may, however, be potentially restricted by an IP-right of Ross Pharmaceuticals, to which Respondent No. 2 seems to have granted an exclusive license for all malaria related usages and "comparable infectious diseases".
27. According to the interpretation of the Ross Agreement by Ross Pharmaceuticals, the license also covers the research into a vaccine against COVID-19. Whether that is actually the case, as Respondent No. 2's Press Release seems to imply (**Claimant Exhibit C 1**) or not is irrelevant. Already the mere claim of a third party which is not completely baseless is sufficient to render the goods non-conforming in the sense of Article 42 (1) CISG.
28. In particular, for small start-ups like Claimant, which focus their whole work on one product, certainty concerning unrestricted ability to use the viruses delivered is of crucial importance. Due to the limited funding and manpower already the mere threat of a lawsuit, irrespective of its final outcome, seriously prevents an unaffected use of the goods delivered.
29. While it is clear that this constitutes a breach of contract, Claimant can at present only require a declaration as to existence of a breach of contract. Claimant is not yet in a position, to exactly identify the specific remedy required as that depends on further negotiation between the Parties and their mother companies.

REQUEST

30. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:
 - 1) To declare that Respondent No. 1 breached the Purchase, Collaboration and License Agreement by delivering GorAdCam viral vectors which were not free from third party rights or claims;
 - 2) To order Respondents No. 1 and No. 2 to bear the costs of these arbitration proceedings.



Joseph Langweiler



Press Release

VectorVir, 15 June 2014, Equatoriana

VectorVir clarifies strategy for GorAdCam

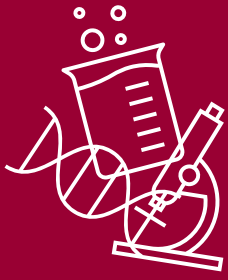
VectorVir (Nasdaq Equatoriana: VeV) concluded today a Collaboration and License Agreement with Ross Pharmaceuticals from Danubia concerning the exclusive right to use the GorAdCam vector and develop on this basis products in the field of vaccination against malaria and infectious diseases.

As one of the biggest pharmaceutical companies world-wide and one of the market leaders in malaria research Ross Pharmaceuticals is the ideal partner for the Collaboration and License Agreement for further research into the use of the GorAdCam vector.

The effort is in line with VectorVir's strategy to focus its own resources on the research for respiratory diseases using the ChAdCam vector. The up-front payment of USD 3 million by Ross Pharmaceuticals and further payments upon the reach of certain milestones in the developments of vaccines ensure sufficient funds for VectorVir's own research with the ChAdCam vector.

The USD 3 million will be used to finance two clinical studies using the ChAdCam vector with different inserts.

Contact: press@vectorvir.eq



Lifescience Today
29 November 2018

CamVir Starts Production of GorAdCam Viral Vectors under GMP-Conditions

Yesterday, CamVir officially announced the start of the production of the GorAdCam viral vectors under GMP-conditions. It is the last addition to CamVir's portfolio of base materials for the production of vaccines.

The production occurs under an exclusive license from VectorVir which had been recently acquired by Roctis, the parent company of CamVir.

Ms Alexandra Flemming, the newly appointed CEO of CamVir praised the initial operation of the newly developed perfusion bioreactor for producing the viral vectors as a milestone in CamVir's endeavour to become one of the leading production companies for all types of base materials of vaccine production including viral vectors. Until now CamVir has primarily produced monoclonal antibodies used for cancer treatment but has not been active in the area of viral vectors.

In Flemming's view vaccines based on genetic material resembling viral genes transported by viral vectors will play an increasing role in the future with an exponential growth chance. Through the acquisition of VectorVir the Roctis Group got access to two of the most promising candidates for adenovirus vectors, the ChAdCam and the GorAdCam. The latter had originally been considered to be particularly suitable for the development of malaria vaccines. Recent studies have shown, however, that it may also be a very promising carrier for the treatment of respiratory diseases.

One of the major differences of the GorAdCam vector to other viral vectors are the difficulties in its creation and the associated high production costs. These two features, however, make the GorAdCam viral vector so interesting for companies such as CamVir. Many companies involved in the production of vaccines lack the necessary know-how and the technical equipment to "breed" the GorAdCam vector themselves from an original batch delivered as it is the normal procedure with many other viral vectors.

That is even more so as the replication and amplification has to occur in the HEK-294 cells which are much more expensive in production

than the normally used HEK-293 cells and for which only two companies have so far developed a suitable cell culture medium.

That is where Flemming sees the potential for CamVir. As one of the leading contract production companies it has the necessary know-how for the production of greater quantities of adenovirus vectors under GMP-conditions. With the opening of the new and highly sophisticated replication bioreactor Flemming is certain that CamVir will be able to produce GorAdCam vectors in sufficient quantities to fulfill the demand of future vaccine producers.

In addition, CamVir is also able to provide the required HEK-294 cells which it produces since early 2018. The idea is to deliver not only the first batch of viral vectors and to license out its use for further research but to continuously deliver at least the base materials for vaccine production, i.e. the HEK-294 cells and the cell culture medium, or even better to produce the vaccine itself on behalf of other companies.

Flemming is convinced that there will be a considerable number of smaller vaccine producers which will actually benefit from the production services offered by CamVir since they would not have to make the considerable investments to set up a large-scale production of the GorAdCam vector fulfilling GMP-criteria.

The major advantage for CamVir is the recurring business of providing the required vectors and base materials at a price which is overall around 2-5% higher than revenues usually generated for providing other types of viral vectors under the usual conditions of collaboration and license agreements dominating the industry. At the same time that would guarantee a high utilization rate for CamVir's new production facilities.

According to Flemming there is already a high initial interest in batches of GorAdCam vectors and HEK-294 cells with the necessary cell culture medium.

PURCHASE, COLLABORATION AND LICENSE AGREEMENT

This PURCHASE, COLLABORATION AND LICENSE AGREEMENT (the "**Agreement**") is effective as of 1st January 2019 (the "**Effective Date**") and is entered into by and between *RespiVac*, a corporation organized and existing under the laws of Mediterraneo, having a business address at 1 Zinkernagel Avenida, Capital City, Mediterraneo ("**Licensee**"), and, *CamVir*, a corporation organized and existing under the laws of Equatoriana, having its registered office at 112 Rue L. Pasteur, Oceanside, Equatoriana ("**Licensor**"). Licensee and Licensor are referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Licensor is a Contract Manufacturing Organization that produces and sells base materials for the production of innovative treatments and vaccines including viral vectors, HEK-294 cells and cell culture media;

WHEREAS, Licensee is engaged in the research of innovative immune therapy;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for good and sufficient consideration, the sufficiency of which is acknowledged by both Parties, the Parties hereby agree as follows:

1. DEFINITIONS

Unless specifically set forth to the contrary under this Agreement, the following terms, whether used in singular or plural form, shall have the respective meanings set forth below:

- 1.1 [...]
- 1.2 "**Compound**" shall mean (a) GorAdCam vector owned or controlled by Licensor on the Effective Date, (b) any new forms of GorAdCam vector derived during the term of the Agreement by either Party (alone or in collaboration with the other Party) of any GorAdCam vector included in (a) above, and (c) any other GorAdCam vectors generated by the Parties (alone or in collaboration with the other Party) in the conduct of the Research Plan.
- 1.3 "**Field**" means the use of a Product for the diagnosis, treatment, palliation or prevention of a disease or medical condition in humans or animals relating to infectious and non-infectious respiratory diseases.
- 1.4 "**Foreground IP**" means any Intellectual Property (including Compounds, project data and Results) developed by either Party (alone or jointly with the other Party) under the Research Plan or the Agreement. For the avoidance of doubt, Foreground IP shall not include Intellectual Property developed by either Party during the term of this Agreement but not under the Research Plan or the Agreement.
- 1.5 "**Indication**" means a separate and distinct type of disease or condition which a Product is intended to treat or prevent, which use is the subject of a separate IND filing and/or of

a separate Regulatory Approval process resulting in the addition of such Indication in the product label.

- 1.6 "**Licensed Technology**" means any Intellectual Property rights, including Background IP, which are owned or controlled by Licensor or its Affiliates as of the Effective Date, or which are generated by Licensor or its Affiliates thereafter during the term of the Research Plan, and which claim any of the Compounds, formulations with the Compounds, combinations with such Compounds and/or the intended medical use(s) of the Compounds. The Licensed Technology existing as of the Effective Date shall be listed in Appendix 1.6 of this Agreement.
- 1.7 "**Net Sales**" means, with respect to a certain time period, the gross invoiced sales charged for Product(s) sold by or for Licensee, its Affiliates and Sublicensees in arm's length transactions to Third Parties (but not including sales relating to transactions between Licensee, its Affiliates, and/or their respective Sublicensees) during such time period, less the total of the following charges or expenses as determined consistently, in good faith and in a non-discriminatory manner applied across all products sold by Licensee:
- a) [...]
- 1.8 "**Phase I (II or III) Clinical Trial**" means a human clinical trial conducted in any country that meets the requirements of FDA 21 CFR § 312.21(a) ((b) or (c) respectively).
- 1.9 "**Product**" means any final drug product which includes all or part of a Compound.
- 1.10 "**Research Plan**" means the research plan, including, without limitation, the description of the activities to be performed by Licensor and Licensee during the Research Term, set forth in Appendix 1.10.
- 1.11 "**Research Term**" means the Initial Research Term and, if applicable, any Extended Research Term.
- 1.12 "**Results**" means all materials, information, know-how, data, documents, measurement results, inventions, software and other intellectual property identified or first reduced to practice or writing in the course of the Research Plan.
- 1.13 "**Valid Claim**" means a claim of an issued patent that has not expired or has been abandoned, or has been revoked, held invalid or unenforceable by a patent office, court or other governmental agency of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period).
- 1.14 [...]

2. SCOPE

Scope. This Agreement governs the terms and conditions of the collaborative activities with respect to GorAdCam vectors for the indication of infectious and non-infectious respiratory diseases such as, *inter alia*, the responsibilities and activities to be performed by each Party under the Research Plan, the duration and scope of rights granted, the exclusive license to the Licensed Technology, the ownership of Intellectual Property related to and generated in the course of the research and development activities under

this Agreement, and the consideration payments by Licensee to Licensor as well as potential further purchases.

3. RESEARCH COLLABORATION

- 3.1 **Research Plan.** The Parties agree to the Research Plan outlining the activities and contributions of both Parties (including relevant technology to be used and materials to be provided) as well as the respective deliverables and timelines required for the specific work packages under the Research Plan.
- 3.2 **Research Term / Conduct of Research Plan.** [...].

4. DEVELOPMENT AND COMMERCIALIZATION, DILLIGENCE

[...]

5. LICENSE GRANT

- 5.1 **Background IP License.** Licensee shall grant and hereby grants to Licensor, a worldwide, royalty-free, fully paid-up, cost-free, non-exclusive license to use its Background IP solely for the purpose of carrying out the activities under the Research Plan. Licensor may allow only permitted subcontractors to use Licensee's Background IP for the purposes stated within this Section 5.1.
- 5.2 **Licensed Technology.** Licensor grants to Licensee a non-exclusive, royalty-bearing, worldwide, perpetual (except in case of termination pursuant to Section 13), transferrable, sublicensable (in accordance with Section 5.3) license under the Licensed Technology to research, develop, have developed, manufacture, have manufactured, use, have used, register, have registered, sell, have sold, offer to sell, have offered for sale, distribute, have distributed, import, have imported, export and have exported Products using GorAdCam viral vector in the Field.
- 5.3 **No Implied Licenses / Sublicensing.** [...]

[...]

9. PAYMENT TERMS

- 9.1 **Research Plan Payment.** In consideration for Licensor's work under the Research Plan, Licensee agrees to pay to Licensor the amount agreed in the Research Plan, payable in installments per Calendar Quarter. In addition, Licensee agrees to compensate Licensor for any pass-through costs and expenses pre-approved by Licensee. Licensor shall submit an invoice to Licensee within thirty (30) days after each Calendar Quarter.
- 9.2 **Upfront Payment.** In consideration of the delivery of the first batch of GorAdCam vectors and the non-exclusive access to Licensor's Licensed Technology Licensee shall pay to Licensor a one-time upfront payment of two-and-a-half million Euro (EUR 2,500,000) (the "**Upfront Payment**"). The Upfront Payment shall be due and payable within five (5) days after the execution of this Agreement.

9.3 **Milestone Payments in General.** Each milestone payment shall be due and payable to Licensor within thirty (30) calendar days upon the relevant milestone having been achieved. It is hereby understood that each milestone payment shall be paid only for the first achievement of a given milestone by a Compound or Product, as applicable, and that no additional milestone payments shall be made for any subsequent achievement of such milestone by a subsequent Compound or Product, as applicable.

9.4 **Development and Regulatory Milestone Payments.** Licensee shall pay to Licensor the following one-time, non-refundable, non-creditable development milestone payments set forth below upon the first occurrence of the applicable milestone event with respect to a Compound, provided that each such milestone payment shall be due only once:

Development & Regulatory Milestone Event	Development & Regulatory Milestone Payment
1. Initiation of first Phase I Clinical Trial	EUR 500,000
2. Initiation of first Phase II Clinical Trial for the first Indication	EUR 500,000
3. Initiation of first Phase III Clinical Trial for the first Indication	EUR 1,000,000
4. Acceptance by any Regulatory Authority of the first filing for Regulatory Approval in the respective country for the first Indication	EUR 1,000,000

9.5 Royalties

9.5.1 **Amount.** Licensee shall pay to Licensor the following royalties (the "**Royalty**") on Annual Net Sales in the Territory of a Product in the amount set forth below:

Annual Net Sales	Royalty
On the portion of Annual Net Sales below EUR 25,000,000	6%
On the portion of Annual Net Sales between EUR 25,000,000 and EUR 100,000,000	5%
On the portion of Annual Net Sales higher than EUR 100,000,000	4%

9.5.2 Royalty Term

a. [...]

9.5.3 **Reports and Payments.** Within sixty (60) days following the end of each Calendar Quarter, Licensee shall submit to Licensor a written report of Net Sales of Products sold by or on behalf of Licensee, its Affiliates and Sublicensees during a Calendar Quarter in each country of the Territory in sufficient detail to permit the verification and confirmation of the accuracy of the calculation of the Royalty payments payable, and Licensee shall pay to Licensor, within thirty (30) days thereafter, all Royalty payments payable by Licensee.

9.5.4 **Audit.** [...]

10. CONFIDENTIALITY

- 10.1 **General.** Each Party acknowledges that confidentiality and know-how protection is of paramount importance for the other Party.
- 10.2 **Non-Disclosure and Non-Use Obligation.** During the term of the Agreement, as determined in Section 13 and for a period of ten (10) years thereafter, and except to the extent permitted under this Article 10, each Party (a) shall keep confidential and shall not disclose to any Third Party, and shall not use for any purpose other than as set forth under this Agreement, any Confidential Information of the other Party and (b) shall take all reasonable precautions to protect the Confidential Information of the other Party (including all precautions a Party employs for its own confidential information of a similar nature).
- 10.3 **Permitted Disclosures.** Either Party may disclose Confidential Information disclosed to it by the other Party to the extent such disclosure is required by Applicable Law (including applicable capital market, stock or similar regulation) or in Arbitration Proceedings with State Parties under the UNCITRAL Rules on Transparency in Treaty-based Investor State Arbitrations

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 11.1 **Licensor's Representations.** Licensor represents and warrants to Licensee that as of the Effective Date:
- 11.1.1 Licensor is validly existing under Equatorianian law and Licensor has the full right, power and authority to enter into this Agreement, execute the Research Plan, grant the licenses under this Agreement and disclose to Licensee such information and know-how that is disclosed by Licensor in performance of its obligations under this Agreement;
- 11.1.2 Licensor is not a party to or otherwise bound by any oral or written contract or agreement that will result in any person or entity obtaining any interest in, or that would give to any entity or person any right to assert any claim in or with respect to, any of Licensee's rights granted under this Agreement;
- 11.1.3 To Licensor's best knowledge, Licensor is not aware of any Third Party's Intellectual Property that might be infringed by conducting the Research Plan in the manner contemplated under the Research Plan;

11.1.4 There are to Licensor's Knowledge no claims, judgments or settlements pending with respect to the Licensed Technology and Licensor has not received notice that any such claims, judgments or settlements are threatened.

12. LIMITATION OF LIABILITY, INDEMNIFICATION

[...]

13. TERM & TERMINATION

13.1 **Term.** This Agreement shall become effective upon the Effective Date and, if not otherwise terminated earlier pursuant to this Article **13**, shall continue in full force and effect on a country-by-country and product-by-product basis until the expiration of the Royalty Term. Thereafter, Licensee shall have a perpetual, worldwide, sublicensable, transferable fully paid-up license under the Licensed Technology.

13.2 [...]

14. DISPUTE RESOLUTION

14.1 Any dispute, controversy, or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be three. All arbitrators are to be appointed by the Institution and should have good knowledge in the field of intellectual property and the developments of vaccines.

The seat of the arbitration shall be in Vindobona, Danubia. Hearings shall be held, at the Arbitral Tribunal's discretion, either in Vindobona or in the city where the Respondent has its place of business.

The arbitral proceedings shall be conducted in English.

15. MISCELLANEOUS

15.1 **Good faith.** This Agreement shall be executed by the Parties in good faith. They shall co-operate in all matters concerning the Compound Products and the IP-rights involved.

15.2 **Governing Law.** This Agreement shall be construed in accordance with and governed exclusively by the laws of Danubia.

15.3 **Entire Agreement; Amendments.** This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral, regarding the subject matter of this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties.

16. PURCHASE OBLIGATIONS FOR VACCINE PRODUCTION

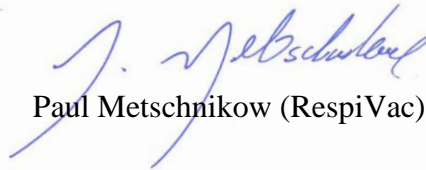
- 16.1 **Purchase Obligation.** In case of a commercialization of the Product, Licensee will acquire its need of HEK-294 cells and cell culture medium for the production and the amplification of the GorAdCam vectors for the production of a vaccine from Licensor at a price of two million Euro (EUR 2,000,000) per 2,000 l batch.
- 16.2 **Production Option.** Licensee has the option to request Licensor to produce the vaccines under GMP-conditions using the purchased HEK-294 cells and the cell culture medium at a price to be agreed by the parties reflecting the price generally charged at the time of the conclusion of the contract.
- 16.3 For all vaccines produced directly by Licensor the reduced Royalty scheme set forth below shall replace the Royalty scheme in Section 9.5:

Annual Net Sales	Royalty
On the portion of Annual Net Sales below EUR 25,000,000	5%
On the portion of Annual Net Sales between EUR 25,000,000 and EUR 100,000,000	4%
On the portion of Annual Net Sales higher than EUR 100,000,000	2,5%

Signatures



Alexandra Flemming (CamVir)



Paul Metschnikow (RespiVac)

Biopharma Science

| News | Business | Science |

19 December 2019

Companies

Danubia • In a press conference Mr. Paul Müller, the CEO of Ross Pharmaceuticals, confirmed rumors about ongoing discussions with Roctis AG about the delivery and use of the GorAdCam vector for Ross Pharmaceuticals' research on vaccines for various infectious respiratory diseases.

The patent for the GorAdCam viral vector is held by VectorVir Ltd, which had been acquired in 2018 by Roctis AG. As a start-up based on patents granted in the context of a major government and industry funded research into the use of viral vectors for vaccination, in 2014, VectorVir had apparently granted Ross Pharmaceuticals an exclusive license for the use of its GorAdCam viral vector for the development of a malaria vaccine. According to Mr. Müller, the license was, however, not limited to the use of the viral vector for malaria. Allegedly, the contract clearly stated that the exclusive license was obtained for malaria and "comparable infectious diseases".

Ross Pharmaceuticals interprets that as covering also its most recent research in using the GorAdCam as a viral vector for its research into vaccines against several infectious respiratory diseases including that caused by the MERS-coronavirus.

Mr. Müller was confident that an amicable solution to the dispute could be reached within the next few months given the interests of both parties in legal certainty.

In his view, the different interpretations of the IP-situation present no obstacle to the continuation of the research activities of Ross Pharmaceuticals into these infectious respiratory diseases. He was convinced that in light of the public interest in vaccines against such diseases causing thousands of deaths every year, governments would ensure that whoever holds the IP-rights would grant licenses on fair and reasonable terms to anyone doing research or producing a vaccine. Ross Pharmaceuticals would definitely do so and had adopted that position in the discussion with Roctis AG. Roctis AG refused to comment officially on the dispute. According to internal sources at Roctis AG, the dispute is mainly about the terms of the license Roctis' subsidiaries are willing to grant to outside licensees including Ross Pharmaceuticals. The biggest obstacle appears to be a specific purchase obligation included in the proposed licenses.

Industry insiders are surprised that no solution has been found yet for that dispute which was first mentioned by this journal in the issue of 14 December 2018. Already then Mr. Müller had been confident that a solution could be reached within a short time. Apparently, his confidence was not justified.



From: Paul Metschnikow <p.metschnikow@respivac.me>
Sent: Saturday 2 May 2020, 8:25 am
To: Alexandra Flemming <alexandra.flemming@camvir.eq>
Re: Exclusive license to Ross?

Dear Alexandra,

I hope you are doing well in these difficult times.

I have received yesterday from a friend an article from Biopharma Science of 19 December 2019. It reports about an allegedly existing dispute between Roctis AG and Ross Pharmaceuticals concerning the interpretation of an earlier exclusive (???) license in relation to the GorAdCam viral vector.

Could we have a talk about this either on the weekend but at the latest on Monday!! Any such claim would be a serious threat to our entire future work on the vaccine. For us an unrestricted access to the GorAdCam viral vector is absolutely essential for the further research and the production and distribution of the vaccine.

As a small company we cannot devote any resources to fending off IP-claims by third parties. And we both know that Ross Pharmaceuticals is fairly aggressive in defending its IP-rights!

We hope that you can dispel our concerns. Otherwise we would have to rethink the whole contractual structure.

Sincerely,
Paul

Chief Operating Officer

RespiVac Plc

1 Zinkernagel Avenida

Capital City

Mediterraneo

Email: p.metschnikow@respivac.me



From: Alexandra Flemming <alexandra.flemming@camvir.eq>
Sent: 4 May 2020, 6:09 a.m.
To: Paul Metschnikow <p.metschnikow@respivac.me>
Re: License to Ross

Dear Paul,

There is no need to worry about that alleged dispute. I can assure you that Ross Pharma has never received an exclusive license for the use of the GorAdCam vector for any research or application in respiratory diseases.

The license given to Ross Pharma by VectorVir in 2014 was clearly limited to the use of the GorAdCam vector for malaria research. I have confirmed this once more over the weekend with my colleagues from VectorVir and Roctis AG.

Your CFO, Rosaly Hübner, should be able to confirm that. According to the information I received from VectorVir she had been part of the negotiation team on the side of Ross Pharma at the time.

My colleague César Milstein from Roctis has told me that Ross Pharma was trying to use that interpretation to get a better deal for a non-exclusive license for the use of the GorAdCam vector for their research into a COVID-19 vaccine.

Before Ross Pharma stopped the production of their malaria vaccine for economic reasons, they had already set up the production facilities for producing the HEK-294-cells required for the amplification of the GorAdCam viral vectors. Thus, they did not want to purchase any quantity of those HEK-294-cells including the cell culture medium from CamVir. While we would not have insisted on such a purchase to solve the dispute, Ross Pharma was also not willing to pay the requested full license fees.

I hope that clarifies the situation and dispels your concerns.

Best,

Alexandra Flemming

Chief Executive Officer

CamVir Ltd

112 Rue L. Pasteur

Oceanside

Equatoriana

T: (0)214 6698053

Email: alexandra.flemming@camvir.eq




Witness Statement of Rosaly Hübner

Born: 7 June 1967

1. I have a degree in economics.
2. Since March 2019 I am the Chief Financial Officer of RespiVac. Before joining RespiVac I worked *inter alia* for Ross Pharmaceuticals as a Senior Financial Advisor in its Contract Division which was responsible for negotiating contracts with third parties.
3. In that function I was part of the team which negotiated the exclusive Collaboration and License Agreement with VectorVir Ltd (VectorVir) in 2014.
4. We had been informed by the head of our malaria-vaccine team that the GorAdCam viral vector, developed by VectorVir, had great potential for being used as a vector for a malaria vaccine. At the time VectorVir had a second patent for another viral vector based on the chimpanzee adenovirus which, while probably non-suitable for a malaria vaccine, could have been promising for other applications. As a consequence, Ross Pharmaceuticals originally wanted to acquire VectorVir to obtain both patents as well as the know-how associated with it for its own further research.
5. The owners of VectorVir were, however, not interested in selling the company. Their focus was more on the second virus for which they were setting up a pre-clinical trial at the time. Thus, we could at least convince VectorVir to grant us an exclusive license for the GorAdCam viral vector for our malaria research. I remember that very well because the exclusivity had been one of the contentious points at the time. VectorVir's representatives were only willing to agree to an exclusivity against an increase of the license fee for any malaria vaccine.
6. During the negotiation the focus was clearly upon the use of the GorAdCam for the malaria vaccine. I am not a lawyer and have neither a detailed recollection of the wording of the agreement nor access to it. Thus, I cannot make any firm statements as to whether the exclusive license is limited to the use in a malaria vaccine or extends also to other usage. The latter seems to be the position adopted by Ross Pharmaceuticals according to the recent reports in Biopharma Science. My former colleagues at Ross Pharmaceuticals have been reported to have confirmed that they are still in negotiations with Roctis AG the parent company of both Respondents.
7. In my time working at Ross Pharmaceuticals the company had a policy of vigorously enforcing all its IP-rights against potential offenders. There is a whole business unit which does nothing else but monitoring the relevant publications for possible infringements.

Mediterraneo, 9 June 2020


Rosaly Hübner

Email**Mr Joseph Langweiler**

ADVOCATE AT THE COURT
75 Court Street
Capital City
Mediterraneo
langweiler@lawyer.me

Courier Service/Email**CamVir Ltd**

112 Rue L. Pasteur
Oceanside
Equatoriana

Courier Service/Email**VectorVir Ltd**

67 Wallace Rowe Drive
Oceanside
Equatoriana

Geneva, 17 July 2020

Case no 300610-2020**Re: *RespiVac plc (Claimant) vs CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)***

Dear Madam/Sir,

We acknowledge receipt with thanks of the Notice of Arbitration and Exhibits filed via email on 15 July 2020 and by courier in 6 original copies on 16 July 2020 by RespiVac plc against CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2), as well as of the payment of the non-refundable Registration Fee in the amount of CHF 6000.- that was received on 14 July 2020.

The Respondents will find herewith the Notice of Arbitration and Exhibits, in original version.

This matter has been filed under reference **case number 300610-2020** and we would be grateful if the Parties could state the complete reference in all future correspondence. The Parties will find enclosed a copy of the Swiss Rules of International Arbitration ("**Swiss Rules**").

The Respondents are invited to file **the Answer to the Notice of Arbitration within thirty days from the date of receipt of the present letter by the Respondents**, which has to comply with Article 3(7) to 3(10) of the Swiss Rules.

Swiss Chambers' Arbitration Institution

c/o Geneva Chamber of Commerce, Industry and Services

4, boulevard du Théâtre - P.O. Box 5039 - 1211 Geneva 11 - Switzerland

Tel: +41 (0)22 819 91 57 - Fax: +41 (0)22 819 91 36 - E-mail: geneva@swissarbitration.org - www.swissarbitration.org



The arbitration clause to which reference has been made provides that the case be referred to a three-member Arbitral Tribunal and that all arbitrators are to be appointed by the Institution. We hereby inform the Parties that the Arbitrators will be appointed upon receipt of the Answer to the Notice of Arbitration.

While maintaining strict neutrality between the Parties, we are available for any information as may be required regarding the Swiss Rules.

Yours faithfully,

Maxi Efficient
Secretariat of the Arbitration Court

Encl.: - Notice of Arbitration and Exhibits, for the Respondents (not reproduced)
- Swiss Rules of International Arbitration (not reproduced)

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

By email and courier

Maxi Efficient
Swiss Chambers' Arbitration Institution
c/o Geneva Chamber of Commerce, Industry and Services
4, boulevard du Théâtre - P.O. Box 5039
CH-1211 Geneva 11
geneva@swissarbitration.org

14 August 2020

Case no 300610-2020

RespiVac plc v. 1) CamVir Ltd. 2) VectorVir Ltd

Dear Ms Efficient,

I hereby indicate that I represent both Respondents in the above referenced arbitral proceedings.
The powers of attorney are attached.

Please find enclosed Respondents' joint Answer to the Notice of Arbitration, a copy of which has been sent directly to Claimant.

Respondents agree to communicate by email only. Emails may be sent to fasttrack@host.eq.

I would like to inform you that in the context of our Answer to the Notice of Arbitration we have submitted a request for a joinder of Ross Pharmaceuticals pursuant to Article 4 (2) Swiss Rules. We have already informed Ross Pharmaceuticals about our request for joinder and have asked them to declare their willingness to join. Notwithstanding our ongoing discussions with Ross Pharmaceuticals, they have indicated that they are not willing to participate in this arbitration.

Could you please take the necessary steps?

Kind regards,



Julia Clara Fasttrack

Attachments:

Answer to the Notice of Arbitration with Exhibits
Powers of Attorney (not reproduced)

cc. Joseph Langweiler



JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

Answer to the Notice of Arbitration
(pursuant to Article 3(7) to 3(10) of the Swiss Rules)

in the Arbitral Proceedings

Case no 300610-2020

**RespiVac plc (Claimant) v.
CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)**

14 August 2020

Introduction

1. The COVID-19 pandemic has led to a race for the development of a new vaccine. Several of the most promising candidate vaccines are based on the use of viral vectors. The market for such vaccines is enormous and any successful vaccine has the potential of becoming a blockbuster. That also applies to the vaccine which Claimant is developing on the basis of the GorAdCam viral vector received under the Collaboration and License Agreement from Respondent No. 1.
2. It is exactly this potential which made Claimant so attractive to investors and led to its acquisition in April 2020 by Khorana Lifescience. Thus, while Claimant may still be a “start-up biopharmaceutical company”, it has now a parent company which is one of the leading life science companies in Danubia (**Respondent Exhibit R 1**). Unlike Claimant, Khorana Lifescience has the know-how, the equipment and the financial means to produce the GorAdCam viral vector in its original as well as modified version (with the gene of interest) as the base product for any vaccine developed by Claimant.
3. Claimant’s research for a vaccine against the SARS-CoV-2 seems to be very promising looking at the results of the Phase II study announced last week. That has increased the chances of a future vaccine for which the viral vectors or at least the HEK-294 cells would have to be obtained from Respondent No. 1. With the technical and financial help of Khorana Lifescience Claimant would, however, now be able to produce the viral vectors and the HEK-294 cells itself at costs which could be considerably lower than the payments due under the Collaboration and License Agreement. This is the background against which the present arbitration proceedings initiated by Claimant have to be seen. They are a thinly concealed effort to prepare for the termination or renegotiation of a contract which no longer appears to be favorable in light of the most recent developments.

Facts

4. Respondent No. 2 was founded in 2012 by the three leaders of a governmental funded research project into the possible use of viral vectors for the development of vaccines. In the context of



the project several patents were granted. One concerned a genetically modified adenovirus from chimpanzees, i.e. the ChAdCam vector, the other a genetically modified adenovirus from gorillas, i.e. the GorAdCam vector. As correctly reported by Claimant, Respondent No. 2 took a strategic decision to concentrate its further research activities on respiratory diseases for which the ChAdCam vector appeared to have the higher potential. At the time, the primary potential application of the GorAdCam vector was considered to be a malaria vaccine.

5. In 2014, Respondent No. 2 was approached by Ross Pharmaceuticals which wanted to acquire Respondent No. 2 and its patents. At the time, the major shareholders of Respondent No. 2 were, however, not interested in selling the company. They were concerned that Ross Pharmaceuticals was only interested in the patents and would not seriously continue the research on respiratory diseases. Though not explicitly stated, it was obvious that Ross Pharmaceuticals was interested primarily in the use of the GorAdCam viral vector for a possible malaria vaccine. As Respondent No. 2, by contrast, did not intend to pursue any research into a vaccine against malaria and was actually looking to monetize its know-how in that field, the parties started negotiations about the grant of an exclusive license to Ross Pharmaceuticals for that indication (**Respondent Exhibit R 2**).
6. In the end, a Collaboration and License Agreement was concluded with Ross Pharmaceuticals (**Respondent Exhibit R 3**; in the following referred to as “**Ross Agreement**”). Ross Pharmaceuticals paid the license fee and made the first three milestone payments. After a successful Phase III trial the work on the malaria vaccine was abandoned for economic reasons in summer 2018.
7. Around the same time Ross Pharmaceuticals approached Respondent No. 2 again and made another purchase offer. That offer was obviously driven by the increased interest of Ross Pharmaceuticals in respiratory diseases. During the finally abandoned malaria project the relevant researchers had apparently realized the potential of the GorAdCam as a viral vector for vaccines against respiratory diseases. Furthermore, they had built up a production of HEK-294 cells needed to replicate and amplify the virus in its final form with the therapeutic insert. At the time, Respondent No. 2 was, however, already in exclusive negotiations with Roctis AG which then led to the acquisition by Roctis AG on 25 August 2018.
8. On 10 September 2018, Respondent No. 2 granted Respondent No. 1 an exclusive license for the use of the GorAdCam viral vector for all applications relating to respiratory diseases. Respondent No. 1 immediately started to install the necessary equipment for the larger scale production of the GorAdCam viral vector which is technically more complex than the production of other viral vectors. At the same time, Respondent No. 1 increased its production capacities for the HEK-294 cells as well the cell culture medium needed for the amplification of the vectors.
9. In parallel, Respondent No. 1 started to contact companies which might have an interest in using the GorAdCam vector for their research and vaccine projects. The production started officially around 1 December 2018 (**Claimant Exhibit C 2**). Negotiations with Claimant began shortly thereafter. They were conducted on Respondent No. 1’s side primarily by Mr. Peter Doherty who was at the time still working as Director Legal for Respondent No. 2 but was about to move to Respondent No. 1 as head of contracting.
10. At the time the contracting department of Respondent No. 1 had not yet developed a suitable model for its Collaboration and License Agreements concerning licenses for the GorAdCam

vector and the associated base materials. Instead Mr. Doherty's predecessor had started the negotiations with Claimant on the basis of the template used for contract manufacturing. That had been rejected by Claimant. As a consequence, Mr. Doherty when he took over the negotiation in December 2018 on short notice to replace his sick predecessor, decided to use the old template of Respondent No. 2 as the basis for further discussion. He just added the conditional purchase obligation in clause 16.

11. On 6 December 2019, Mr. Doherty was contacted via email by Ms. Bordet the Head of Contract and IP of Ross Pharmaceuticals. She had been Mr. Doherty's counterpart on the side of Ross Pharmaceuticals in the various negotiations conducted in the context of the failed efforts to acquire Respondent No. 2 and for the Ross Agreement. Ms. Bordet expressed her deep regret that Respondent No. 2 had not accepted the acquisition offer of Ross Pharmaceuticals and then came back to the alleged uncertainty concerning the scope of the exclusive license for malaria research granted to Ross Pharmaceuticals in 2014 (**Respondent Exhibit R 4**).
12. The issue had already been shortly raised by Ross Pharmaceuticals during the failed negotiations in summer 2018 as an argument in favor of the proposed acquisition by Ross Pharmaceuticals. Already then, in light of the clear wording of the Ross Agreement and its drafting history the coverage of respiratory diseases by the license had been a non-issue for Respondent No. 2.
13. The offer to settle the issue against the grant of a non-exclusive, not-fee-bearing license showed the real intention of Ross Pharmaceuticals: to use a minor ambiguity in the Collaboration and License Agreement for malaria diseases to bargain for a free license for respiratory applications. Ross Pharmaceuticals is known for the strict enforcement of their rights and would have never made such an offer if they had truly believed in the existence of an IP-right in their favor.
14. In light of that Respondent No. 1 saw no reason to stop the production of the GorAdCam virus nor its negotiations with potential licensees for the use of the GorAdCam vector in the context of respiratory diseases. In a subsequent meeting in January 2019, Mr. Doherty made his view one more time clear to Ms. Bordet. At the same time, he expressed the willingness of Respondent No. 1 to conclude a new License Agreement with Ross Pharmaceuticals for the use of the GorAdCam vector in their research into respiratory diseases. The discussion continued sporadically over the rest of 2019 and Respondents had the impression that Ross Pharmaceuticals had realized the limited success of its negotiation tactics (**Respondent Exhibit R 4**).
15. Consequently, Respondents were very surprised to hear during the last days of 2019 that Ross Pharmaceuticals had apparently started research into vaccines against several infectious respiratory diseases including that caused by the MERS-coronavirus using the GorAdCam vector.
16. To solve that situation once and forever Mr. César Milstein, the Chief Operating Officer, from the Roctis AG contacted Ms. Bordet via email on 13 January 2020. The purpose of the email was to reiterate that Respondent No. 2 had a different understanding of the scope of the Ross-License and would also be willing to defend its position in courts. At the same time, Mr. Milstein offered a license largely on terms that would be considered to be FRAND terms in other areas of licensing (**Respondent Exhibit R 5**).

Legal Considerations

Jurisdiction

17. In the interest of speeding up the proceedings and to solve the dispute comprehensively Respondent No. 2, which is clearly not a party to the RespiVac Collaboration and License Agreement refrains from contesting the jurisdiction of the arbitration tribunal.

Substance

18. On the basis of the aforementioned facts, Claimant is obviously not entitled to the requested declaration. Thus, the case should be dismissed outright.
19. The Collaboration and License Agreement falls outside the scope of application of the CISG as defined by Article 1 – 6. It is no contract of sales but - despite its misleading name “Purchase, Collaboration and Licensing Agreement” - a license agreement as the transfer of know-how is by far the most important obligation for Respondent No. 1.
20. Even if the CISG were applicable, which it is not, Respondent would not have breached its contractual duty to deliver goods which are free from any right or claim of a third party based on industrial property. There is clearly no IP-right of Ross Pharmaceuticals nor has such a right ever formed the basis of a claim raised against Claimant.

Request for Joinder pursuant to Article 4(2) Swiss Rules

21. Claimant’s case depends solely on fictitious claims which could eventually be raised by Ross Pharmaceuticals.
22. To rebut that claim and to deal with the issue conclusively, in particular to exclude comparable allegations by other parties as well as putting an end to the discussion with Ross Pharmaceuticals, Respondents request to join Ross Pharmaceuticals to determine conclusively the scope of the exclusive license granted. Not only are the arbitration agreements in the two Collaboration and License Agreement identical but all parties concerned agreed to the Swiss Rules including its joinder provisions knowing that in light of the content of the Agreements they could be joined in proceedings with other parties alleging conflicting rights.

Requests for Relief

23. In light of the above, Respondents request the Arbitral Tribunal to make the following orders:
- To join Ross Pharmaceuticals to these arbitration proceedings;
 - To order Ross Pharmaceuticals to refrain from making any further allegations that it holds an exclusive license for the use of the GorAdCam virus in relation to any research into vaccines for respiratory diseases;
 - To reject Claimant’s claim for a declaratory relief that the Respondents breached their contractual obligation to provide GorAdCam viruses which are free of any third party rights or claims;
 - To order Claimant to bear the costs of this arbitration.


Julia Clara Fasttrack

Biopharma Science

| News | Business | Science |

21 April 2020

News from the Lab

Danubia • Yesterday Prof. S. E. Luria, the CEO of Khorana Lifescience, announced at a press conference the acquisition of RespiVac a small biopharmaceutical start-up with an excellent reputation. RespiVac generated public interest last week with its announcement that it just had successfully completed a Phase I trial of a vaccine candidate against COVID-19. According to the information provided that vaccine is based on the viral vector technology. Unlike many other vaccine candidates, the product by RespiVac does not rely on modified chimpanzee adenoviruses. Instead, it uses GorAdCam, a modified gorilla adenovirus, originally developed and patented by VectorVir.

RespiVac has received a first batch of the virus under a Purchase, Collaboration and License Agreement from CamVir which now produces them under an exclusive license from VectorVir.

Prof. Luria said that with the logistical and financial help of Khorana Lifescience the outstanding Phase II and Phase III trials could be sped up considerably. Furthermore, the production of larger quantities of the vaccine within a short period of time would no longer be a major problem. Khorana Lifescience has just acquired and installed several bioreactors of the latest generation and has considerable experiences in scaling up and industrializing newly developed products as well as in GMP-compliant production. This new equipment also allows the production of the HEK-294 cells required for vaccine production at a cost well below the market price. That is due to the new cell culture medium developed in February 2020. It makes Khorana Lifescience one of the few companies able to produce the GorAdCam vectors independently without reliance on deliveries of HEK-294 cells or cell culture media by other companies.

Witness Statement of Peter Doherty

1. I was born on 9 June 1961 and I have a degree in law. Since 1 January 2019, I am the head of the contracting department at Respondent No. 1. Until that time, I have worked as Director Legal for Respondent No. 2, where myself and one further colleague with a law background were responsible for all legal questions which arose. They stretched from labor law and company law, over capital markets law to IP-law and general contract law. When starting at Respondent No. 2 in 2011 my main focus had been labor law and company law. Thus, in the day-to-day work at Respondent No. 2, I concentrated primarily on those questions while all work related to IP was done by my colleague, who was an IP-lawyer by training.
2. In April 2014, we were approached by Ross Pharma which wanted to acquire VectorVir. Ross Pharma was particularly interested in our GorAdCam virus and the associated IP-rights. They were looking for a suitable viral vector for a malaria vaccine. At the time, the three original founders of VectorVir still held the majority of the shares in VectorVir and had no interest in selling them nor in selling the patent to the GorAdCam viral vector.
3. It was finally agreed that we would give Ross Pharma an exclusive license for the use of the GorAdCam vector for their malaria research. There had been a strategic decision within Respondent No. 2 to focus all research on respiratory diseases for which any additional funds were more than welcome. As the research focused at the time on the ChAdCam vector we saw no problem in giving Ross Pharmaceuticals an exclusive license to the GorAdCam vector for their malaria research.
4. The draft of the Collaboration and Licensing Agreement which had been submitted by the lawyers of Ross Pharma had been completely unacceptable to us, both in relation to the substantive provisions but also in relation to the dispute resolution clause. It gave Ross Pharmaceuticals a choice to bring actions either in court or in arbitration proceedings while Respondent No. 2 would have been obligated to bring its claims in front of the courts of Danubia.
5. As a consequence, I sat down and prepared my own draft for a Collaboration and Licensing Agreement for Respondent No. 2. Apart from very few amendments, that draft is the basis of the Collaboration and License Agreement finally concluded with Ross Pharmaceuticals. One of the contentious points was that the original draft limited the license to malaria only which Ross Pharmaceuticals considered to be too narrow. In the end, we agreed on the formula “malaria and related infectious diseases”. While Ross Pharmaceuticals was willing to pay an additional EUR 600.000 for that extension it was always clear to us that it would not involve the use of the GorAdCam vector for research into respiratory diseases such as COVID-19.
6. In light of that clear understanding, it is irrelevant that in our press release about the Agreement with Ross Pharmaceuticals (Claimant Exhibit C 1) the description of the scope of the Agreement seems to be wider due to a missing “related”.
7. The draft prepared by me also formed the basis of our agreement with RespiVac. Originally, my predecessor who fell sick during the negotiations had submitted the standard model contract which Respondent No. 1 used for its customers for contract manufacturing. RespiVac had, however, serious objections against some of the provisions and was in particular of the view that the model would not sufficiently take into account the IP-element involved.

8. As a consequence, when I replaced my predecessor in December 2018 we based our further negotiations on the template which I had prepared for Respondent No. 2. We merely made the necessary additions, which were required due to the conditional purchase obligation for the HEK-294 cells and the cell culture medium necessary to grow the HEK-294 cells needed for the amplification of the viral vector. As there has not yet been any approval of the vaccine the condition has not been met and the provision is irrelevant for the present arbitration.
9. As a Contract Manufacturing Organisation which is part of a major pharmaceutical company Respondent No. 1 had difficulties to attract sufficient manufacturing contracts from outside the Roctis Group to ensure an economic use of its production facilities. To ensure a steady and permanent use of the existing capacities Roctis AG decided in 2018 to invest in the build-up of additional capacities for the manufacturing of vaccines based on viral vectors. In connection with that decision Respondent No. 2 was acquired, a license for the new HEK-294 cell was obtained and a cell culture medium for the growth of such cells was developed.
10. Furthermore, it was decided that Respondent No. 1 should include in all its collaboration and license agreements an obligation for the licensee to purchase at least the necessary HEK-294 cells and the cell culture medium from Respondent No. 2 in case the research with the licensed technology was successful.
11. That would have ensured not only a mark-up on the ordinary royalties but also a better use of the production facilities of Respondent No. 1. The ultimate intention behind that purchase obligation was to induce the licensees to request Respondent No. 1 to manufacture the vaccine for it, instead of merely buying the base materials and then producing the vaccine themselves.
12. The 2,000l batch of HEK-294 cells and the cell culture medium would have been sufficient to produce around 10,000,000 doses of vaccine. At the time we were expecting a price for the vaccine of 20 – 40 EUR per dose.
13. At the time of contracting at the end of 2018, Claimant had no major objection against this conditional purchase obligation. It saved it any further investment into the technical equipment to reproduce the GorAdCam virus itself.
14. Claimant is correct in its allegation that the overall financial compensation which Respondent No. 1 would receive from the Agreement through the combination of the license fee and the payments for the HEK-294 cells and the cell culture medium to be delivered is above the average of the industry. That is, however, not exceptional. It merely reflects the Parties' bargaining power at the time of contract conclusion, the considerable investments made by the Roctis Group and the additional delivery obligations by Respondent No. 1.

Oceanside, 10 August 2020


Peter Doherty

COLLABORATION AND LICENSE AGREEMENT

This COLLABORATION AND LICENSE AGREEMENT (the "**Agreement**") is effective as of 15 June 2014 (the "**Effective Date**") and is entered into by and between *Ross Pharmaceuticals*, a corporation organized and existing under the laws of Danubia, having a business address at Alphonse Laveran Street 156, Brigantium ("**Licensee**"), and, *VectorVir*, a corporation organized and existing under the laws of the Equatoriana, having a business address at 67 Wallace Rowe Drive, Oceanside Equatoriana ("**Licensor**"). Licensee and **Licensor** are referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Licensor is the holder of several patents for viral vectors including a patent for the GorAdCam vector;

WHEREAS, Licensee is engaged in the research of innovative immune therapy for malaria and other infectious and non-infectious diseases;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for good and sufficient consideration, the sufficiency of which is acknowledged by both Parties, the Parties hereby agree as follows:

1. DEFINITIONS

Unless specifically set forth to the contrary under this Agreement, the following terms, whether used in singular or plural form, shall have the respective meanings set forth below

1.1 [...]

1.2 "**Compound**" shall mean (a) GorAdCam vector owned or controlled by Licensor on the Effective Date, (b) any new forms of GorAdCam vector derived during the term of the Agreement by either Party (alone or in collaboration with the other Party) of any GorAdCam vector included in (a) above, and (c) any other GorAdCam vectors generated by the Parties (alone or in collaboration with the other Party) in the conduct of the Research Plan.

1.3 "**Field**" means the use of a Product for the diagnosis, treatment, palliation or prevention of a disease or medical condition in humans or animals relating to malaria and related infectious diseases.

1.4 [...]

2. SCOPE

Scope. This Agreement governs the terms and conditions of the collaborative activities with respect to GorAdCam vectors for the indication of malaria and related infectious diseases such as, *inter alia*, the responsibilities and activities to be performed by each

Party under the Research Plan, the duration and scope of rights granted, the exclusive license to the Licensed Technology, the ownership of Intellectual Property related to and generated in the course of the research and development activities under this Agreement, and the consideration payments by Licensee to Licensor as well as potential further purchases.

3. RESEARCH COLLABORATION

- 3.1 **Research Plan.** The Parties agree to the Research Plan outlining the activities and contributions of both Parties (including relevant technology to be used and materials to be provided) as well as the respective deliverables and timelines required for the specific work packages under the Research Plan.
- 3.2 **Research Term / Conduct of Research Plan.** [...]

4. DEVELOPMENT AND COMMERCIALIZATION, DILLIGENCE

[...]

5. LICENSE GRANT

- 5.1 **Background IP License.** Licensee shall grant and hereby grants to Licensor a worldwide, royalty-free, fully paid-up, cost-free, non-exclusive license to use its Background IP solely for the purpose of carrying out the activities under the Research Plan. Licensor may allow only permitted subcontractors to use Licensee's Background IP for the purposes stated within this Section 5.1.
- 5.2 **Licensed Technology.** Licensor grants to Licensee an exclusive, royalty-bearing, worldwide, perpetual (except in case of termination pursuant to Section 13), transferrable as set forth in Section 15.1, sublicensable (in accordance with Section 5.3) license under the Licensed Technology to research, develop, have developed, manufacture, have manufactured, use, have used, register, have registered, sell, have sold, offer to sell, have offered for sale, distribute, have distributed, import, have imported, export and have exported products using GorAdCam vectors in the field of malaria and related infectious diseases.
- 5.3 **No Implied Licenses / Sublicensing.** [...]
- [...]

14. DISPUTE RESOLUTION

- 14.1 Any dispute, controversy, or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be three. All arbitrators are to be appointed by the Institution and should have good knowledge in the field of intellectual property and the developments of vaccines.

The seat of the arbitration shall be in Vindobona, Danubia. Hearings shall be held, at the Arbitral Tribunal's discretion, either in Vindobona or in the city where the Respondent has its place of business.

The arbitral proceedings shall be conducted in English.

15. MISCELLANEOUS

- 15.1 **Good faith.** This Agreement shall be executed by the Parties in good faith. They shall co-operate in all matters concerning the Compound Products and the IP-rights involved.
- 15.2 **Governing Law.** This Agreement shall be construed in accordance with and governed exclusively by the laws of Danubia.
- 15.3 **Entire Agreement; Amendments.** This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral, regarding the subject matter of this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties.

Signatures



Peter Doherty (VectorVir)



Julia Bordet (Ross Pharmaceuticals)

From: Julia Bordet <Julia.bordet@ross-pharma.da>
Sent: 6 December 2018, 10:25 a.m.
To: <pete.doherty@vectorvir.eq>
Re: License for GorAdCam

Dear Mr. Doherty,

Congratulations to your new position at CamVir which you will start in January. We still very much regret that VectorVir has finally accepted the offer by Roctis AG. We still believe that VectorVir and Ross Pharmaceuticals would have been a better match given our experience with the GorAdCam virus. In particular, that acquisition would have avoided the present IP-issue.

Following up on my recent discussion with your colleagues we are still of the view that the entitlement to use the GorAdCam virus in the context of respiratory diseases is everything but clear. We have paid a considerable amount of money, i.e. EUR 600.000, to VectorVir to extend the exclusive license beyond malaria-vaccination related applications to "comparable infectious diseases". In our view, those would also cover infectious respiratory diseases. We understand that you are of a different view.

In my view, it is in the interest of both parties to solve that divergence in interpretation in an amicable way outside of the courts. You want to start production of the GorAdCam virus in your new bioreactors while we want certainty for our research into respiratory diseases.

As a sign of good will, we would be willing to accept your interpretation of the Collaboration and License Agreement against the grant of a non-exclusive no-royalty bearing license for the use of the GorAdCam virus for respiratory diseases. That offer should not be interpreted as an acknowledgement of your position but constitutes merely an effort to find a commercially acceptable solution to a potentially longer dispute. We would also be amenable to a mediation on the problem.

Kind regards

Julia Bordet

Head of Contract and IP
Ross Pharmaceuticals

Alphonse Laveran Street 156
Brigantium
T: (0)146 9346355
Email: Julia.bordet@ross-pharma.da



From: César Milstein <cesar.milstein@roctis.da>
Sent: 13 January 2020, 11:38 a.m.
To: Julia Bordet <julia.bordet@ross-pharma.da>
Re: License

Dear Ms Bordet,

I would like to follow up on the discussion with my colleagues from CamVir and VectorVir and the announcement of your CEO that Ross Pharmaceuticals is about to start research on a vaccine against the newly discovered virus 2019-nCoV.

We had our IP-lawyers looking into the matter once more and they are convinced that your claim as to the interpretation of the exclusive license granted to you by VectorVir is completely baseless. The intention of the Parties at the time was to give you an exclusive license for malaria related research and products. There was, however, never any intention to give you a license relating to respiratory diseases.

As CamVir now holds an exclusive license for the use of GorAdCam virus for these applications any research done by you using the GorAdCam virus is a clear violation of CamVir's rights. I can assure you that CamVir will enforce its rights if need be in court.

To avoid such a scenario, I am happy to meet with you and discuss details about the grant of a license by CamVir to Ross Pharmaceuticals. The threat of a pandemic in our view requires the collaboration of as many companies as possible for the development and the production of vaccines. Thus, we would not insist on the purchase obligation in case of vaccine production which we have included in all our other licenses. That offer should not be understood as an acceptance of your position. We will, however, not reduce the amount of royalties to be paid.

I remain at your disposal for further negotiation.

Sincerely,

César Milstein
Chief Operating Officer
Roctis AG
Turicum Street 2004
Iuvavum
Danubia
T: (0)214 6698053
Email: cesar.milstein@roctis.da

Email**Mr Joseph Langweiler**

ADVOCATE AT THE COURT
75 Court Street
Capital City
Mediterraneo
langweiler@lawyer.me

Email**Ms Julia Clara Fasttrack**

ADVOCATE AT THE COURT
14 Capital Boulevard
Oceanside
Equatoriana
fasttrack@host.eq

Geneva, 17 August 2020

Case no 300610-2020***Re: RespiVac plc (Claimant) vs CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)***

Dear Madam, Dear Sir,

We acknowledge receipt of the Answer to the Notice of Arbitration and the Exhibits attached thereto filed by CamVir Ltd and VectorVir Ltd, received by email on 14 August 2020 and in 4 original copies by courier on 17 August 2020.

We note that the Respondents are represented by Ms Julia Clara Fasttrack, Advocate at the Court, 14 Capital Boulevard in Equatoriana and that an original copy of the Answer to the Notice of Arbitration with exhibits has been sent directly to the Claimant.

We take note that, in the Answer to the Notice of Arbitration, the Respondents have submitted a request for a joinder of Ross Pharmaceuticals pursuant to Article 4(2) of the Swiss Rules. In this regard, we note that Ross Pharmaceuticals was already provided a copy of the request for joinder and that Ross Pharmaceuticals is not willing to participate in this arbitration. The Parties are advised that the Arbitral Tribunal will address the Respondents' request for joinder.

The Court will now proceed to the constitution of the Arbitral Tribunal and inform you in due course.

Yours faithfully,

Maxi Efficient
Secretariat of the Arbitration Court

Swiss Chambers' Arbitration Institution

c/o Geneva Chamber of Commerce, Industry and Services

4, boulevard du Théâtre - P.O. Box 5039 - 1211 Geneva 11 - Switzerland

Tel: +41 (0)22 819 91 57 - Fax: +41 (0)22 819 91 36 - E-mail: geneva@swissarbitration.org - www.swissarbitration.org

Email

Prof. Françoise Sinoussi
Paul Karrer Weg 9
1011 Vindobona
Danubia

Geneva, 17 August 2020

Case no: 300610-2020

***Re: RespiVac plc (Claimant) vs CamVir Ltd (Respondent No. 1) and
VectorVir Ltd (Respondent No. 2)***

Dear Madam,

We are pleased to inform you that the Court is considering to appoint you as Presiding Arbitrator in the above-referenced case.

This matter has been filed under case no 300610-2020 and we would be grateful if you could state the complete reference in all future correspondence.

The arbitration will be conducted under the Swiss Rules of International Arbitration ("**Swiss Rules**"), a copy of which is enclosed together with the Guidelines for Arbitrators.

We also enclose the Case Summary, which contains the information you may require at this stage.

We kindly bring to your attention that the fees and expenses of the Arbitral Tribunal shall be calculated pursuant to Appendix B of the Swiss Rules, as provided under Article 39(2) of the Swiss Rules.

We invite you to advise us soonest whether you are willing and able to accept your designation. For this purpose, please complete and return the attached Consent to Appointment and Statement of Independence, together with your *curriculum vitae*, **within five days from receipt of this letter by email.**

Please note that your appointment only becomes effective if and when you are so notified. Meanwhile, we kindly ask you not to take any action in this arbitration until such notification occurs and the file for the arbitration is transmitted to you.

Please do not hesitate to contact us should you have any questions.

Yours faithfully,

Maxi Efficient
Secretariat of the Arbitration Court

Encl.: - Swiss Rules of International Arbitration (not reproduced)
- Guidelines for Arbitrators (not reproduced)
- Case Summary (not reproduced)
- Consent to Appointment and Statement of Independence

Cc.: - Co-arbitrators
- Parties



Arbitration No:

CONSENT TO APPOINTMENT

and

STATEMENT OF IMPARTIALITY AND INDEPENDENCE BY THE PRESIDING ARBITRATOR

Surname: First name:

Nationality/ies:

Address:

City/Country:

Telephone:

Fax:

Email:

(Please fill in the address you wish to be used for correspondence)

Please select all relevant boxes:

ACCEPTANCE

I consent to my appointment as Presiding Arbitrator in this arbitration and I undertake to act in accordance with the Swiss Rules of International Arbitration ("Swiss Rules") and the Guidelines for Arbitrators issued by the Arbitration Court (Appendix B, Section 3, Swiss Rules).

NON-ACCEPTANCE

I decline to serve as Presiding Arbitrator.
(If you select this box, please simply date and sign the form without completing any other sections)

AVAILABILITY

I confirm that I have taken note of Article 15(7) of the Swiss Rules. I confirm that I have the necessary availability and will conduct this arbitration diligently, efficiently and in accordance with the Swiss Rules.

Swiss Chambers' Arbitration Institution

c/o Geneva Chamber of Commerce, Industry and Services

4, boulevard du Théâtre - P.O. Box 5039 - 1211 Geneva 11 - Switzerland

Tel: +41 (0)22 819 91 57 - Fax: +41 (0)22 819 91 36 - E-mail: geneva@swissarbitration.org - www.swissarbitration.org





IMPARTIALITY AND INDEPENDENCE

Nothing to disclose: I declare that I am, and shall remain, impartial and independent. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence.

Acceptance with disclosure: I declare that I am, and shall remain, impartial and independent. However, in accordance with Article 9(2) of the Swiss Rules, I wish to disclose to the Swiss Chambers' Arbitration Institution, to the other members of the Arbitral Tribunal and to the Parties, the matters **on the attached separate sheet**. To the best of my belief, these circumstances do not impair my impartiality or independence.

I will declare forthwith to the Court, the other members of the Arbitral Tribunal and the Parties, any future fact that could give rise to justifiable doubts as to my impartiality or independence.

FURTHER INFORMATION

PRINCIPAL PROFESSIONAL ACTIVITY:

.....

LANGUAGE SKILLS:

List all languages, including your native language, in which you consider yourself able, without the assistance of an interpreter or translator, to:

Language(s)	conduct a hearing and draft an award	follow and understand oral arguments and testimonies	read and understand documents
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>





COMMENTS

DATE:

SIGNATURE:

The information requested in this form will be considered by the Arbitration Court and its Secretariat solely for the purpose of your appointment or confirmation as arbitrator in the Swiss Rules proceedings. The information will remain confidential and will be stored in a case management database system. However, it may be disclosed, solely to the Parties and their counsel and any confirmed arbitrator in the above referenced arbitration, for the purpose of said proceedings.

Swiss Chambers' Arbitration Institution

c/o Geneva Chamber of Commerce, Industry and Services

4, boulevard du Théâtre - P.O. Box 5039 - 1211 Geneva 11 - Switzerland

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Email

Mr Joseph Langweiler

ADVOCATE AT THE COURT
75 Court Street
Capital City
Mediterraneo
langweiler@lawyer.me

Email

Ms Julia Clara Fasttrack

ADVOCATE AT THE COURT
14 Capital Boulevard
Oceanside
Equatoriana
fasttrack@host.eq

Geneva, 1 September 2020

Case no 300610-2020

***Re: RespiVac plc (Claimant) vs CamVir Ltd (Respondent No. 1) and
VectorVir Ltd (Respondent No. 2)***

Dear Madam, Dear Sir,

We have the pleasure of informing the Parties that the Court has appointed Prof. Françoise Sinoussi as Presiding Arbitrator and Mr Ilja Ehrlich and Dr Youtu You as Co-Arbitrators.

Please find enclosed our correspondence of today to the Arbitral Tribunal as well as copy of the arbitrators' Consents to Appointment and Statements of Independence and CVs.

Yours faithfully,

Maxi Efficient
Secretariat of the Arbitration Court

Encl.:

- Copy of the Court's letter of today to the Arbitrators
- Copy of the Consent to Appointment and Statement of Independence, as well as the CV, received from Prof. Françoise Sinoussi (not reproduced)
- Copy of the Consent... (not reproduced)

Swiss Chambers' Arbitration Institution
c/o Geneva Chamber of Commerce, Industry and Services
4, boulevard du Théâtre - P.O. Box 5039 - 1211 Geneva 11 - Switzerland
Tel: +41 (0)22 819 91 57 - Fax: +41 (0)22 819 91 36 - E-mail: geneva@swissarbitration.org - www.swissarbitration.org



**Email and Courier Service****Prof. Francoise Sinoussi**

Paul Karrer Weg 9
1011 Vindobona
Danubia

Email and Courier Service**Mr Ilja Ehrlich**

2 Francis Watson Road
Capital City
Mediterraneo

Email and Courier Service**Dr Youtou You**

258 James Crick Crossing
Oceanside
Equatoria

Geneva, 1 September 2020

Case no: 300610-2020

***Re: RespiVac plc (Claimant) vs CamVir Ltd (Respondent No. 1) and
VectorVir Ltd (Respondent No. 2)***

Dear Mesdames,
Dear Sir,

We have the pleasure to inform you that the Court has appointed Prof. Francoise Sinoussi as Presiding Arbitrator and Mr Ilja Ehrlich and Dr Youtou You as Co-Arbitrators in this arbitration. You will find enclosed the relevant case file (the "**File**"). The Arbitral Tribunal is now entitled to proceed with the arbitration and is invited to communicate directly with the Parties.

We would be grateful if you could provide us in due course with the following:

- **The provisional timetable for the arbitral proceedings** (Article 15(3) of the Swiss Rules) and any modification thereof. The provisional timetable should, to the extent possible, contain each step of the proceedings, i.e. the time limits for the filing of written submissions and evidence, the date of the hearing(s), as well as an estimate of the date for the rendering of any interim award(s) and the final award.

- **The request for the Parties' deposit of costs** (Article 41(1) of the Swiss Rules), and any request for supplementary deposits by the Parties (Article 41(3) of the Swiss Rules).

Please note that pursuant to Article 41 of the Swiss Rules it is **the task of the Arbitral Tribunal** to request the payment of the Advance on Costs from the Parties, after consultation with the Court. Please also note such request shall include the Administrative Costs as referred to in Article 38(f) and Appendix B of the Swiss Rules.

- **Your decision on the joinder request.**
- **Any counterclaim or set-off defence** filed during the proceedings unless a copy has been sent to us. Upon receipt of a counterclaim, you should proceed **only after having received confirmation** by us of the payment of the related Registration Fee by the Respondent (Section 1.5, Appendix B of the Swiss Rules). In case a counterclaim or a set-off defence has been submitted, please note that the Administrative Costs may be reviewed by the Secretariat in accordance with Section 2.4, Appendix B of the Swiss Rules.
- **The draft of any award or termination order** for the Court's approval or adjustment of the determination on costs, which is binding upon the Arbitral Tribunal (Article 40(4) of the Swiss Rules).
- **The original of any award** (Article 32(6) of the Swiss Rules).
- **A copy of all your decisions and orders in electronic format.** The Secretariat does not otherwise require to be copied on each correspondence between you and the Parties throughout the course of the arbitral proceedings. As indicated in our letter of today to the Parties, a copy of which is enclosed in the File, the Parties may now communicate directly with you. Please note that when the Parties and the Arbitral Tribunal copy the Secretariat, correspondence, written submissions and evidence should be transmitted to the Secretariat in electronic format only.

Yours faithfully,

Maxi Efficient
Secretariat of the Arbitration Court

Encl.: (not reproduced)

-

Prof. Francoise Sinoussi
Paul Karrer Weg 9
1011 Vindobona
Danubia

By email and courier
Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana

cc. Swiss Chambers' Arbitration Institution

Arbitral Proceedings
Case no 300610-2020

RespiVac plc (Claimant) v.
CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)

4 September 2020

Dear Colleagues,

After having been duly appointed by the Swiss Chambers' Arbitration Institution (SCAI), the Arbitral Tribunal has familiarized itself with the case.

Claimant on the one side and Respondents on the other side are invited to pay a deposit of CHF 125,000.- on the following SCAI bank account until 4 October 2020:

Bank : UBS Switzerland AG
Beneficiary/Account Holder : Swiss Chambers' Arbitration Institution
IBAN : CH1234567890
Account number : 4567890

Claimant is requested to reply to Respondents' request to join Ross Pharmaceuticals until 4 October 2020.

Parties may find enclosed Ross Pharmaceuticals' communication to the Arbitral Tribunal by which it has confirmed to the Arbitral Tribunal that it is objecting to any joinder and does not see any basis for it. Irrespective of that it wants to be informed about the progress of the proceedings.

Taking into account that submission, the Arbitral Tribunal would like to discuss with you in a TelCo on 8 October 2020 the further conduct of the proceedings. In light of the uncertain development of the COVID-19 pandemic, which may make a hearing in person impossible or at least difficult,



the Arbitral Tribunal wants in particular to know, whether the Parties have any objections to conduct the oral hearing as a remote hearing instead of in person hearings, if necessary.

Both Parties are kindly requested, to inform the Arbitral Tribunal about their position concerning the conduct of remote hearings.

The Arbitral Tribunal is aware that there is a time difference between Mediterraneo and Danubia of 3 hours and a further time difference of 8 hours between Danubia and Equatoriana, which in case of a remote hearings would have to be addressed in the planning.

Kind regards,

For the Arbitral Tribunal



Françoise Sinoussi, Presiding Arbitrator

Encl.:

Ross Pharmaceuticals Letter to the Arbitral Tribunal, dated 25 August 2020 (not reproduced)

Joseph Langweiler

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
langweiler@lawyer.me

By email

Julia Fasttrack
Francoise Sinoussi
Ilja Ehrlich
Youtu You

cc. Swiss Chambers' Arbitration Institution

**Arbitral Proceedings
Case no 300610-2020**

**RespiVac plc (Claimant) v.
CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)**

2 October 2020

Dear Members of the Arbitral Tribunal,

Claimant strongly objects to the joinder of Ross Pharmaceuticals. Claimant has no direct contractual relationship with Ross Pharmaceuticals and never signed any arbitration agreement with it. Thus, there is no basis for the jurisdiction of the Arbitral Tribunal.

Claimant has no objections against a virtual hearing, should it become necessary. In its view, the dispute is a fairly straight forward case involving primarily legal questions without the need to hear any witnesses or experts on the largely uncontested facts.

The Arbitral Tribunal has the necessary powers under the Swiss Rules and all Parties are obliged under Article 15(7) Swiss Rules to “avoid unnecessary costs and delays”.

There are no doubts that the technical means for a remote hearing can be organized for all Parties involved including the Arbitral Tribunal.

Sincerely yours,



Joseph Langweiler

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

By email

Francoise Sinoussi / Ilja Ehrlich / Youtu You
Joseph Langweiler

cc. Swiss Chambers' Arbitration Institution

2 October 2020

**Arbitral Proceedings
Case no 300610-2020**

**RespiVac plc (Claimant) v.
CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)**

Dear Members of the Arbitral Tribunal,

Respondents strongly object to holding any hearings remotely, in particular, if they involve the taking of evidence.

Notwithstanding any discretion of the Arbitral Tribunal concerning procedural issues, the Swiss Rules are based on the assumption that a hearing in person will be held as it is evidenced by Article 25 Swiss Rules. Furthermore, pursuant to Article 24 of the Danubian Arbitration Law, in cases like the present, where the Parties have not agreed upon a documents-only arbitration, the "arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party".

The largely identical arbitration clauses contained in the Collaboration and License Agreements concluded with Claimant, as well as in the one concluded with Ross Pharmaceuticals provide for a hearing in person. It is one of the few modifications which was added to the model arbitration clause of the Swiss Chambers' Arbitration Institution.

Respondents are therefore requesting an in-person hearing at least for the examination of the witnesses presented and the experts which might be nominated to prove that the exclusive license to Ross Pharmaceuticals does not extend to the use of GorAdCam viral vector for respiratory diseases. Should Ross Pharmaceuticals continue to allege an entitlement to a broad exclusive license for the GorAdCam vector in the proceedings, despite the obvious lack of justification of its position, Respondents will have to present witness and expert testimony proving the incorrectness of this position. That may entail difficult explanations as to the operating mode of viral vectors, their ways of production and the differences between the various application of the virus.

Kind regards,



Julia Clara Fasttrack



Prof. Francoise Sinoussi
Paul Karrer Weg 9
1011 Vindobona
Danubia

By email

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo
langweiler@lawyer.me

Julia Clara Fasttrack
Advocate at the Court
14 Capital Boulevard
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cc. Swiss Chambers' Arbitration Institution

Arbitral Proceedings
Case no 300610-2020

RespiVac plc (Claimant) v.
CamVir Ltd (Respondent No. 1) and VectorVir Ltd (Respondent No. 2)

9 October 2020

Dear Colleagues,

The Arbitral Tribunal appreciates your cooperation during yesterday's TelCo.

Please find attached Procedural Order No. 1 which is based on the discussion during the TelCo.

Kind regards,

For the Arbitral Tribunal



Francoise Sinoussi, Presiding Arbitrator

PROCEDURAL ORDER NO. 1

of 9 October 2020

**in the Arbitral Proceedings Case no 300610-2020
RespiVac plc v. 1) CamVir Ltd., 2) VectorVir Ltd**

- I. Following the receipt of the file from the Swiss Chambers' Arbitration Institution and the Parties' additional submissions of 2 October 2020, the Arbitral Tribunal held a telephone conference with both Parties on 8 October 2020 discussing the further conduct of the proceedings.
- II. The Arbitral Tribunal takes note of the fact that in the telephone conference of 8 October 2020 both Parties agreed:
- to conduct the proceedings on the basis of the 2012 Swiss Rules of International Arbitration;
 - that, to facilitate planning and to discuss the procedural questions raised, i.e. whether Ross Pharmaceuticals should be joined and evidence may be taken remotely, a Virtual Hearing is scheduled for the time between 27 March 2021 to 30 March 2021 – with 31 March and 1 April as reserve days if need be (14 March to 20 March 2020 for Hong Kong);
 - that the Virtual Hearing will be limited to the legal questions listed below;
 - that the examination of any witnesses or experts, in case it is considered to be necessary for deciding the case, will take place in a separate hearing scheduled for 3 to 7 May 2021;
 - that the hearing scheduled for May is in principle to take place in person, unless the Arbitral Tribunal decides differently;
 - that, in case a hearing in person will not be possible, depending on the decision of the Arbitral Tribunal, the hearing will either take place remotely or will be postponed to a date to be fixed later.
- III. In light of these agreements and considerations, the Arbitral Tribunal hereby makes the following orders:
1. In their next submissions and at the Virtual Hearing the Parties are required to address the following issues:
 - a. Should Ross Pharmaceuticals be joined to the Arbitration Proceedings?
 - b. Should the examination of witnesses and experts in the 2nd Hearing of 3 to 7 May 2021, be conducted remotely if a hearing in person is not possible or considered by the Arbitral Tribunal to be inappropriate?
 - c. Is the CISG applicable to the “Purchase, Collaboration and License Agreement” concluded between Claimant and Respondent No. 1?
 - d. Has Respondent No. 1 breached its contractual obligations to deliver conforming goods existing pursuant to Article 42 CISG by providing Claimant with the batches of GorAdCam viruses?

The Parties are free to decide in which order they address the various issues. **No further** questions going to the merits of the claims should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.

2. The submissions are to be made in accordance with the Rules of the Moot agreed upon at the telephone conference. For their submissions the following Procedural Timetable applies:
 - a. Claimant's Submission: no later than 11 December 2020;
 - b. Respondents' Submission: no later than 29 January 2021.
3. It is undisputed between the Parties that Equatoriana, Mediterraneo and Danubia are Contracting States of the CISG and Member States of the New York Convention. The general contract law of all three countries is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments (Article 7 – Option 1).
4. There is consistent jurisprudence in all the countries concerned that in sales contracts governed by the CISG, the latter also applies to the conclusion and interpretation of the arbitration clause contained in such contracts, in so far as the applicable arbitration law does not contain any conflicting provisions.
5. In the event, Parties need further information, Requests for Clarification must be made in accordance with para. 29 of the Rules of Moot no later than 30 October 2020 via their online party (team) account. No team is allowed to submit more than ten questions. Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the Parties involved and their business.
- (2) Questions relating to the scientific background.
- (3) Questions relating to the commercial side of the agreements.
- (4) Questions relating to negotiation, drafting and conclusion of the scope of the agreements.
- (5) Questions relating to the negotiation, drafting and conclusion of the arbitration clause and the joinder request.
- (6) Questions relating to the negotiation, drafting and conclusion of the remainder of the contract.
- (7) Questions concerning the virtual hearing.
- (8) Questions concerning the applicable laws and rules.
- (9) Other questions.

IV. Both Parties are invited to attend the Virtual Hearing scheduled for 27 March to 1 April 2021, Vindobona, Danubia (14 to 20 March, 2021 in Hong Kong). The details concerning the timing and the software to be used will be provided in due course.

Vindobona, 9 October 2020


Françoise Sinoussi, Presiding Arbitrator



PROCEDURAL ORDER NO. 2

of 7 November 2020

**in the Arbitral Proceedings Case no 300610-2020
RespiVac plc v. 1) CamVir Ltd, 2) VectorVir Ltd**

- 1. When did Respondent No. 1 become a subsidiary of Roctis AG and to what extent is Roctis AG involved in the business of Respondent No. 1?** Roctis AG acquired Respondent No. 1 in 2009. While Respondent No. 1 is legally independent and takes all decisions relating to its day-to-day business without any involvement of Roctis AG, strategic decisions, such as the acquisition of Respondent No. 2 including its IP rights and the “transfer” of those rights to Respondent No. 1, are taken at a group level. Respondent No. 1 knew that the Ross Agreement was the reason that the malaria application was excluded from the exclusive license granted to it. However, Respondent No. 1 was neither involved in the discussions concerning the scope of the Ross Agreement nor positively knew about them. These were conducted first by Respondent No. 2 and then taken over by Roctis AG.
- 2. Who granted Respondent No. 1 the non-exclusive license on HEK-294 cells?** The patent to the HEK-294 cells is owned by VisOrg. Before the end of 2018, VisOrg had granted two non-exclusive licenses, one to Respondent No. 1 and one to Ross Pharmaceuticals, both of which had developed their own cell growth medium. A further non-exclusive license was granted in 2019 to Khorana Lifescience which also developed its own growth medium in February 2020.
- 3. What kind of equipment and financial support could Khorana Lifescience provide for Claimant?** Khorana Lifescience could provide Claimant with the HEK-294 cells and the growth medium at costs price (variable costs) which would have been around 50 % lower than the price to be paid to Respondent No. 1. It could eventually also produce the vaccine in its production facilities or provide financing to Claimant for building own facilities. Khorana Lifescience does not own licenses for the use of the GorAdCam viral vector.
- 4. Can Claimant produce the GorAdCam viral vectors by itself, without the delivery of the first batch of GorAdCam viral vectors?** No. All further viral vectors are “produced” from the first batch. This first batch contains sufficient viral vectors for Claimant to conduct all research for the development of a vaccine including the necessary clinical tests. The batch should also contain sufficient viral vectors to serve as the basis for an amplification for the production of a vaccine, should the research be successful and no further modification of the viral vector be required for the production of the vaccine. For the amplification of the viral vectors Claimant would then need the HEK-294 cells and the growth medium which it had to purchase from Respondent No. 1 pursuant to Section 16.1 PCLA.
- 5. How many batches of HEK-294 cells and growth medium will Claimant expectedly require in the event of a commercialization of a vaccine?** Should the vaccine be developed Claimant will require at least 100 batches of the growth medium for the HEK-294 cells, which is 5 times the annual production available from Respondent No. 1 on the existing production line. The installation of each new additional production line for an annual production of another 20 of the 2,000l batches to meet further demands would cost between EUR 80 and 100 million. The master cell bank of the HEK-294 “parent cells” will only be transferred at the beginning and whenever new “parent cells” are required for a replication. Should Claimant opt to have the entire vaccine produced by Respondent No. 1 under Section 16.2 instead of merely buying the HEK-294 cells with the cell culture medium no additional investment costs would arise for Claimant.
- 6. What would be the expected Annual Net Sales of the Claimant until the end of the Royalty Term?** If a successful vaccine can be developed, Claimant is certain to be able to sell at least 100 million dosages per year at a price between 20 – 40 EUR in each year of the 10 years

Royalty Term. That would, however, require that Respondent No. 1 either waives the obligations under Section 16.1 PCLA or increases its production facilities for the growth medium for the HEK-294 cells. Irrespective of whether Claimant merely purchases the HEK-294 cells and the cell culture medium in line with Section 16.1 or whether it entrusts the entire production of the vaccine to Respondent No. 1 pursuant to Section 16.2, the amount of HEK-294 cells and thereby growth medium required is 5 times the present output of the existing production facilities.

7. **Is there any information available about the costs incurred by Respondent No. 1 for the production of the GorAdCam viral vectors, the HEK-294 cells and the growth medium?** Yes (Appendix 1)
8. **Was Claimant aware of the discussions reported in Biopharma Science on 14 December 2018?** No. While the journal is very popular with investors in the bioscience start-up market in Danubia, Equatoriana and Mediterraneo, Claimant's CEO had terminated its subscription in January 2018 to reduce costs. The article mentioned that the differences concerned "the scope of an exclusive license granted to Ross Pharmaceuticals in relation to malaria and comparable infectious diseases" but provided no further details.
9. **Are "Biopharma Science" and "Lifescience Today" credible sources of information?** Yes.
10. **Are there any territorial limitations to the patent on the GorAdCam viral vectors held by Respondent No. 2?** There are no territorial limitations and the patent is recognized and protected in all the jurisdictions concerned. The same applies to the exclusive license granted to Ross Pharmaceuticals.
11. **Who is the friend who gave the article of Biopharma Science (reproduced as Claimant Exhibit C 4) to Paul Metschnikow?** It is the CFO of Khorana Lifescience who gave the article to him following a discussion about a closer involvement of Khorana in the future production of a vaccine, should the research be successful. Mr. Metschnikow then made further investigations and found out that Ross Pharmaceuticals was actually doing research for a vaccine for COVID-19 using GorAdCam viral vectors.
12. **Was Rosaly Hübner part of the negotiations with Respondent No. 1?** No. She got hired in March but only started to work for Claimant in June 2019, i.e. after the PCLA had been concluded.
13. **Has Ross Pharmaceuticals ever had any dealings or business relationship with Claimant?** No. Ross Pharmaceuticals has, however, been a competitor of Khorana Lifescience on the market for vaccines and drugs for the treatment of influenza since 2010.
14. **Is Ross Pharmaceuticals doing research for a vaccine both for MERS and COVID-19?** Yes. They started their research into MERS in 2015, originally relying on a different technique. During their work with the GorAdCam viral vector in relation to the finally abandoned malaria project the research team at Ross Pharmaceuticals discovered that the viral vector could have a great potential for vaccines against the MERS-coronavirus. That was the reason for the renewed efforts by Ross Pharmaceuticals to acquire Respondent No. 2 in 2018 and the subsequent discussions. After the decision to terminate the malaria project, the research teams and its know-how was transferred to the MERS-project. At the beginning of 2020, part of that team which had considerable expertise in using the GorAdCam viral vector formed the nucleus of Ross Pharmaceuticals new team to develop a vaccine against COVID-19.
15. **Does Ross Pharmaceuticals still have the policy to vigorously enforce its IP rights?** Yes. They are presently involved in two IP-litigations and one arbitration against third-parties allegedly infringing their rights. None of these disputes involves the arbitrators nor are there any other connections between Ross Pharmaceuticals and the arbitrators.

16. **Are Claimant and Ross Pharmaceuticals still conducting research on a vaccine against COVID-19 despite the discussions about the licenses?** Yes. Claimant announced the start of a Phase-III-trial for mid-December 2020. Ross Pharmaceuticals is still in the pre-clinical phase.
17. **Has Respondent No. 1 contributed to Claimant's research in any ways other than delivering the GorAdCam viral vectors according to Claimant's specifications?** No. For the production of the vaccine, however, there would be a transfer of know-how about the best procedures to amplify the viral vector by using the HEK-294 cells and the growth medium.
18. **How many other parties have similar non-exclusive licenses with Respondent No. 1 for the GorAdCam viral vector?** There are now two other parties which have been granted similar non-exclusive licenses by Respondent No. 1. Neither of them has so far claimed for a breach of contract.
19. **Is it possible to grow GorAdCam in cells other than HEK-294 cells, and the cells themselves in an aggregate other than the cell culture growth medium?** In principle yes, but it does not make any commercial or scientific sense, since it takes much longer (5 times as long) and the reproduction and success rate is much lower (10 times higher with HEK-294). At the same time, HEK-294 cells as well as the growth medium are so far only used on a commercial scale to grow the GorAdCam viral vectors. There is, however, research going on for further uses.
20. **What was the intention of the parties to the Ross Agreement when they included the notion "related infectious diseases"?** The GorAdCam viral vector was developed in the context of a research project related to malaria in developing countries. Consequently, at the time of contracting its primary potential field of application was seen to be in the field of a vaccine against malaria. Respondent No. 2 originally wanted to limit the exclusive license to that field. Ross Pharmaceuticals considered that to be too narrow. In its view it would unnecessarily restrict the subsequent use of any knowledge acquired during the research in other related fields in particular as far as infectious diseases in developing countries were concerned. At the time Ross Pharmaceuticals had no specific field in mind and was not engaged in any particular research for which it planned to use the viral vector. Thus, Ross Pharmaceuticals drafted its proposal for the clause as broad as possible and merely mentioned cholera as one example of an infectious disease in the research plan, as it was planning activities in that field. Against a payment of EUR 600,000.00 Respondent No. 2 was finally willing to accept such an extension.
21. **Which activities were mentioned in the Research Plan in Appendix 1.10 of the Ross Agreement?** The Research Plan was describing very generically that both parties were obliged to take the necessary steps agreed upon in detail by the joint Research Committee to develop vaccines for "malaria and related infectious diseases (in particular cholera)". Furthermore, the Research Plan required VectorVir to have its two leading researchers attend weekly research meetings for the first year to transfer know-how acquired in developing the GorAdCam viral vectors to Ross Pharmaceuticals.
22. **Are the various references to "comparable infectious diseases" in the articles and the communications merely mis-quotes of the language used in the Ross Agreement referring to "related infectious diseases"?** Yes.
23. **Is COVID-19 defined as a respiratory disease or an infectious disease?** COVID-19 classifies as an infectious, respiratory disease, i.e. it falls into both categories.
24. **Why did Mr. Doherty get involved in the contract negotiations between the Parties in December 2018?** Originally, it was planned that Mr. Doherty's predecessor at Respondent No. 1, Mr. Smith, would conduct the negotiations on Respondent No. 1's side jointly with Ms. Jones, the relevant manager of the production line for the GorAdCam viral vectors and the HEK-294 cells. On the day before the scheduled meeting Mr. Smith had to be hospitalized. As

he could not be replaced on such a short notice, Ms. Jones, who is a biological engineer by training, conducted the first day of negotiation without any support by a lawyer. The discussion focused primarily on the basic commercial and research framework of the transaction and not on the particular legal terms. At the end of the meeting, Ms. Jones provided Claimant with a template of the standard model contract which Respondent No. 1 used for contract manufacturing. She had only been informed shortly before the negotiations that neither Mr. Smith nor anyone else from the legal department would attend the meeting. To have a starting point for the discussion she took the model used for a standard contract manufacturing transaction, not being aware that this may not be suitable for the particular transaction which was exceptional and not comparable to the normal contract manufacturing cases. Following a closer examination of the suggested agreement after the first day of negotiations, Claimant complained about the non-suitability of the contract model and suggested numerous amendments. When it turned out that Mr. Smith would have to stay in hospital for longer, Mr. Doherty was asked by the CEOs of both Respondents to take over the negotiation. Mr. Doherty realized that the model originally provided was not suitable. Instead of addressing the changes requested by Claimant one by one he suggested to use his model for the Collaboration and License Agreement and supplemented it by the purchase obligation in Section 16 and altered the contract's heading accordingly.

25. **Were the terms of the template submitted by Mr. Doherty discussed at length and changed considerably?** Beyond the commercial details, there was little discussion about the individual clauses which were as such acceptable to Claimant. Thus, with the exception of Section 16 and the differences directly deductible from the cited excerpts, the agreements in Exhibits C 3 and R 3 are largely identical as to their legal terms. In particular, the payment terms in Sections 9.2 – 9.5 are identical and the same quantity of viral vectors was delivered. The same applies to the confidentiality provisions in Section 10.
26. **What is the rationale of the purchase obligation and was it included in further contracts concluded by Respondent No. 1?** The purchase obligation in Section 16 was added as Respondent No. 1 as a contract manufacturer was interested not only in royalty payments but also in ensuring the use of its production facilities, preferably for the production of the vaccine but at least those for the production of the cell growth medium and the HEK-294 cells. For that reason, all subsequent agreements concluded by Respondent No. 1 concerning the GorAdCam viral vector contained a comparable purchase obligation. Only in relation to Ross Pharmaceuticals, Respondent No. 1 would not have insisted on the purchase obligation in Section 16.1 PCLA, as Ross Pharmaceuticals had produced itself the HEK-294 cells and their own cell growth material since 2018. That is the background of the statement by Mr. Milstein in his email of 13 January 2020 (Respondent Exhibit R 5), to whom the discussions with Ross Pharmaceuticals had been entrusted at the group level.
27. **Did the parties during the negotiations discuss to widen the scope of liability under Section 11 of the Purchase, Collaboration and License Agreement between Claimant and Respondent No. 1 by adding the term “warranties”?** No. The provision was included in the draft which had been presented by Mr. Doherty during the negotiations and was not discussed any further between the Parties during the negotiations.
28. **Have any payments under Section 9.1 – 9.4 of the 'Purchase, Collaboration and License Agreement' been made to Respondent No. 1?** Yes.
29. **When does the Royalty Term provided for in Section 9.5.2 of the Agreement end?** 10 years after the acceptance by a Regulatory Authority of the first filing or the expiry of the last IP-right whichever is earlier.
30. **Can you provide the definition of "Confidential Information" in the PCLA?** “Confidential Information” means all information, data or know-how, whether technical or non-technical, that is disclosed, orally, electronically, visually or in writing, by one Party or its Affiliates (“Disclosing

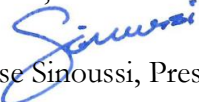
Party") to the other Party or its Affiliates ("Receiving Party") in relation to the Compound or the Licensed Technology".

31. **Did Claimant raise any objections against that dispute resolution clause in the model contract?** No. Claimant had objected to the dispute resolution clause contained in the model submitted by Ms. Jones on the first day of the negotiation which had provided, *inter alia*, for court proceedings in Equatoriana and had contained a unilateral arbitration clause. In its comments to the model, Claimant had suggested arbitration under the rules of a "respected and neutral international arbitration institutions such as UNCITRAL, the ICC, AAA or the Swiss Chambers' Arbitration Institution".
32. **Is anything known about the drafting history as to why the parties designated the two specific hearing places?** After its own draft of the dispute resolution clause had been rejected, Ross Pharmaceuticals had in principle no objections to agreeing to arbitration under the Swiss Rules as suggested by Mr. Doherty. There were, however, discussions about the place of arbitration and the need for an oral hearing. The original draft of Mr. Doherty had provided for documents-only arbitrations in Equatoriana. Ross Pharmaceuticals had insisted on a place of arbitration in Danubia and objected to any form of documents-only arbitrations. As a compromise the present clause was agreed. The relevant part concerning the "Hearing" had been suggested by Ross Pharmaceuticals to accommodate at least in part Mr. Doherty's request that in cases brought by Ross Pharmaceuticals against Respondent No. 2 the hearings should take place in Equatoriana. During the negotiations between the Claimant and Respondent No. 1, Section 14 was not discussed any further but accepted by Claimant as fair. The issue of virtual hearings was not discussed.
33. **What was the reason that Respondent No. 2 did not to object to the jurisdiction of the Arbitral Tribunal?** Respondents wanted to join Ross Pharmaceuticals, to use the arbitration to finally resolve the dispute about the scope of the Ross Agreement.
34. **Does any participant have health issues which may prevent them from travelling to an in-person conference or attending a video conference?** No. Some of the participants do, however, not feel comfortable in travelling if the situation does not change until the hearing and it cannot be excluded that there might be a travel ban at the time of the hearing.
35. **Are the costs of a remote hearing going to be significantly less than those of an in-person hearing?** No. Eventually, they may even be higher depending on the outside provider hired to organize and moderate the hearing and the required safety features. Irrespective of the latter it cannot be excluded with 100 % certainty that no third parties may interfere and get access to the hearing.
36. **What is the exact time zone of Mediterraneo, Danubia and Equatoriana?** The time for Danubia is UTC, while Mediterraneo is UTC-3 and Equatoriana is UTC+8.
37. **How do national courts in Equatoriana, Mediterraneo and Danubia apply their procedural law with regards to the current COVID-19 pandemic?** The procedural codes of Danubia and Mediterraneo both regulate oral hearings in the state courts in some detail. It is clear from the provisions that they are based on the assumption that judges, parties and witnesses are personally present during the hearing. That is particularly obvious in the rules which regulate the situations in which the absence of a witness may be excused. The only exceptions foreseen are that the witness is unable to participate in the hearing for health reasons. In such a case, the examination may be conducted at any place convenient for the witness. When the legislator in Danubia amended the Code of Procedure in 2010 to take into account new developments it allowed the filing of claims via email. A provision to allow for hearings by videoconferencing was discussed but finally not included into the code. In light of the pandemic, the legislator regulated in April 2020 that hearings could be held via videoconference if both parties agree or "if required by public interest". The highest court in Danubia decided on 18 July 2020 that in court proceedings no remote hearing could be conducted beyond those circumstances as an

express empowerment was missing. In Equatoriana, the highest court has rendered a decision in August 2020 that remote hearings are possible in state courts proceedings even if not all parties consent.

38. **What is the Respondents' reason behind objecting to the virtual hearing for the taking of evidence?** The primary concerns are that their presentation of evidence may be less effective and that the data may not be 100% protected. It is more of a general perception than the result of an evaluation based on hard facts. From the technology side, all participants potentially involved in an oral hearing have sufficient bandwidth and equipment to guarantee that a hearing can be held, though the technical equipment is better on Claimant's side.
39. **Do the courts of Danubia consider that "the laws of Danubia" include the CISG?** Yes, and none of the jurisdictions involved has declared a reservation under the CISG.
40. **Do the IP-laws of the countries involved allow the licensee to enforce the IP-rights under an exclusive license and protect the use of the GorAdCam viral vector?** Yes.
41. **Have Equatoriana and Mediterraneo also adopted the UNCITRAL Model Law?** Yes.
42. **The Arbitral Tribunal would like to make the following corrections and clarifications to its Procedural Order 1:**
 - a. Question 1b is limited to the issue whether the Arbitral Tribunal, in case it considers a hearing of experts and witnesses to be necessary and such a hearing can either not be held in person or the Arbitral Tribunal does not consider a hearing in person to be appropriate, has to postpone the hearing to a date when a hearing in person is possible again (at the earliest 4 months time due to conflicting schedules) or can and should order a fully remote hearing, i.e. a hearing in which all participants including witnesses and experts participate from different places.
 - b. The term "GorAdCam viruses" in question 1d is referring to what has been described as "GorAdCam viral vectors".
 - c. Question 1d should be addressed on the assumption that the PCLA is in principle governed by the CISG.
43. **Respondents would like to make the following corrections and clarifications to its submissions:**
 - a. Mr. Doherty's Witness Statement (Respondent Exhibit R 2) contains several typos. First, the date given for his start with Respondent No. 2 should be "2012" instead of "2011" (para. 1). Second, the source of the HEK-294 cells is "Respondent No. 1" and not "Respondent No. 2" (para 10). Third, the 2,000l batch of HEK-294 cells and the cell culture medium are sufficient only to produce around 1,000,000 doses of vaccine and not 10,000,000 doses as stated (para. 12).
 - b. Furthermore, the Witness Statement is not completely accurate in its description of who submitted the original draft for the agreement. It was not Mr. Smith, Mr. Doherty's direct predecessor as the head of the contracting department, but Ms. Jones who replaced him at the first meeting.
 - c. Ms. Bordet sent her email on 6 December 2018 (Respondent Exhibit R 4) and not on "6 December 2019" as stated in the Answer (p. 27, para. 11)

Vindobona, 6 November 2020


Françoise Sinoussi, Presiding Arbitrator

Excerpts from the internal p&l of RespiVac and CamVir

dated 1. January 2019 - verified 10. February 2020

RespiVac - Internal calculation (p/l)

Development of vaccine (R&D)

	in Mio. €
price for one batch of viral vectors	2,50
potential costs for further milestones	3,00
R&D costs (depending on success)	5,00 - 400,00

Production of vaccine

a) own production (Sec. 16.1.)

	Batch 1 in Mio. €	Batch 2-4 in Mio. €	from Batch 5 in Mio. €
revenue generated per batch (1 Mio * 25€)	25,00	25,00	25,00
royalties due to CamVir	-1,50	-1,25	-1,00
Material: Batch HEK 294 und Growth Medium	-2,00	-2,00	-2,00
Production costs (labour)	-1,20	-1,20	-1,20
other materials for production	-0,60	-0,60	-0,60
amortisation of the production line (investment: 100 Mio, 10 years and 20 batches)	-0,50	-0,50	-0,50
other overhead costs (R&D, personal costs, administration)	-8,00	-8,00	-8,00
profit per batch	11,20	11,45	11,70
	1	3	16
max annual profit for 20 batches	232,75		

b) outsourced production to CamVir (Sec. 16.2.)

	Batch 1 in Mio. €	Batch 2-4 in Mio. €	from Batch 5 in Mio. €
revenue generated per batch (1 Mio * 25€)	25,00	25,00	25,00
royalties due to CamVIR	-1,25	-1,00	-0,63
cost of the finished vaccine	-4,00	-4,00	-4,00
other overhead costs (R&D, personal costs, administration)	-8,00	-8,00	-8,00
profit per batch	11,75	12,00	12,38
	1	3	16
max annual profit for 20 batches	245,75		

CamVir - Internal calculation (p/l)

Production of viral vectors

	Batch in Mio. €
price for one batch of viral vectors	2,50
productioncosts HEK 294 + Growthmedium	-0,70
production costs of viral vector (labour)	-0,80
materials for production of viral vector	-0,30
amortisation of the production line (existing fixed assets)	-0,30
profit	0,40
optional milestonepayments	0,50 - 3,00

Production of vaccine

a) production at RespiVac (Sec. 16.1.)

	Batch 1 in Mio. €	Batch 2-4 in Mio. €	from Batch 5 in Mio. €
price for one batch	2,00	2,00	2,00
expected royalties	1,50	1,25	1,00
productioncosts HEK 294 + Growthmedium	-0,70	-0,70	-0,70
transportation and admin costs	-0,30	-0,30	-0,30
other overhead costs	-0,50	-0,50	-0,50
profit per batch	2,00	1,75	1,50
	1	3	16
max annual profit for 20 batches	31,25		

b) production at CamVir (Sec. 16.2.)

	Batch 1 in Mio. €	Batch 2-4 in Mio. €	from Batch 5 in Mio. €
price for one Batch	4,00	4,00	4,00
expected royalties	1,25	1,00	0,63
productioncosts HEK 294 + Growthmedium	-0,70	-0,70	-0,70
other overhead costs	-0,50	-0,50	-0,50
profit per batch	4,05	3,80	3,43
	1	3	16
max annual profit for 20 batches	70,25		