

## Memorandum

Date 3 July 1985

From Mr. Ferris

Subject GALLO et al, "Serological Detection of Antibodies of HTLV-III Sera of Patients with AIDS and Pre-AIDS Conditions", Case No. E-317-85. U.S. Patent No. 4,520,113.  
The File

Mr. Bert Rowland called today regarding the subject patent. He stated that he represents a company who is a licensee of the French investigators who have been working on HTLV-III in collaboration with Dr. Gallo and his group and who have an application pending before the FDA for a license to market an AIDS test. Mr. Rowland stated that he has reviewed the French documentation and feels that there is conclusive evidence that the French are the first inventors of the subject invention and that an Interference should have been declared while Patent Application Serial No. 602,945, the application on which the subject invention issued, was still pending. Apparently the application was assigned to a group that had a small docket so that the case was picked up for examination quickly and prosecution proceeded rapidly. The examiner apparently did not do an infringement search or missed the French application when he did the infringement search. Mr. Rowland had expected that an Interference would be declared and that

all of the information as to who did what when would come out during the Interference. Instead the subject patent issued and he is now faced with the problem of how to best protect his client's interests. He would like to accomplish this without the time and expense of an Interference proceeding or a law suit. He suggested that the simplest and easiest way to resolve this matter is to amend the issued patent to add the French collaborators as coinventors even though he feels that a strong case can be made that the French made the invention before Gallo et al. He would like to set up a meeting with high level Department officials to go over correspondence and other documentation which supports his position. I suggested Dr. Fischinger, but he said he would prefer someone outside of the NCI who would be less apt to be biased. Because of the importance of this technology and its policy implications I then suggested that Dr. Harmison would be the appropriate person to contact. Mr. Rowland stated that he would call Dr. Harmison today.

Encl: Copy of Patent No. 4,520,113

cc: Dr. Peter Fischinger, NCI  
Dr. Itzhak Jacoby, OD/NIH  
Mr. Darrel Grinstead, OGC  
Dr. Lowell Harmison, OASH