SOTOMAYOR, J., concurring

## SUPREME COURT OF THE UNITED STATES

No. 09-1159

BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, PETITIONER v. ROCHE MOLECULAR SYSTEMS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[June 6, 2011]

JUSTICE SOTOMAYOR, concurring.

I agree with the Court's resolution of this case and with its reasoning. I write separately to note that I share JUSTICE BREYER's concerns as to the principles adopted by the Court of Appeals for the Federal Circuit in *FilmTec Corp.* v. *Allied-Signal, Inc.*, 939 F. 2d 1568 (1991), and the application of those principles to agreements that implicate the Bayh-Dole Act. See *post*, at 6–10 (dissenting opinion). Because Stanford failed to challenge the decision below on these grounds, I agree that the appropriate disposition is to affirm. Like the dissent, however, I understand the majority opinion to permit consideration of these arguments in a future case. See *ante*, at 5, n. 2.