claim regardless of the Bayh-Dole Act. Accordingly, this raises a serious question as to whether the Bayh-Dole Act holding is a "controlling question of law" as required for interlocutory appeal.

Turning to the merits, Roche disputes this court's interpretation of the Bayh-Dole Act. The court held that, under the Bayh-Dole Act, title in government-funded patents vests in the United States unless the non-profit entity (here, Stanford) elects to retain title. Stanford, 2007 WL 608009 at *15. The court further held that the individual inventor does not obtain title unless both the non-profit entity and the government decline to assert ownership of the patent. Id. The court therefore held that Holodniy could not have assigned his interest as a named inventor on the patent to Cetus because, by operation of the Bayh-Dole Act, his interest ultimately vested in Stanford rather than in Holodniy as an individual.

In the first instance, it appears that this court's earlier holding that "under the Bayh-Dole Act, title vests *automatically* in the government, not the inventor," id. at *15 (emphasis added), was incorrect insofar as it used the word "automatically." While this specific wording was inaccurate, however, a proper application of the Bayh-Dole Act nonetheless compels the same result. The court will issue an amended Summary Judgment Order containing a revised analysis of the parties' Bayh-Dole Act arguments, including those raised in connection with this motion. For the reasons set forth in that amended order, the court finds that Roche has not shown substantial grounds for disagreement as to whether the Bayh-Dole Act barred Holodniy's purported assignment of his rights in the patents-in-suit to Cetus.

3. Standing

Roche seeks to appeal this court's rejection of its claim that Stanford has no standing to bring the instant action based on its failure to demonstrate ownership. Roche claims that this court improperly shifted the burden regarding standing to Roche, when the burden of proving standing properly rests with the plaintiff. The court did not shift the ultimate burden, but merely held that Stanford had satisfied its burden by virtue of the fact that, as the named assignee, Stanford presumptively has standing to sue for patent infringement. See Rite-Hite Corp. v. Kelley Co., Inc.,