UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. BRISTOL-MYERS COMPANY BEECHAM GROUP LIMITED, and BEECHAM INC., Defendants.	Civil No. 822-70 Filed: October 25, 1978 Entered: May 21, 1979

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on March 19, 1970, and defendant Beecham Group Limited having been served pursuant to 35 U.S.C. Section 293 and having consented to the personal jurisdiction of the Court for purposes of this action only, the defendants Beecham Group Limited and Beecham Inc. having appeared by their attorneys and having each filed an answer to such complaint, and the plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment:

NOW, THEREFORE, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, without this Final Judgment constituting any evidence against or admission by any party or estoppel in any other action with respect to any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of all parties hereto. The complaint states a claim for relief against Beecham Group Limited and Beecham Inc. under Sections 1 and 2 of the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Beecham" means defendant Beecham Group Limited, with its principal office at Beecham House, Great West Road, Brentford, Middlesex, England; and defendant Beecham Inc., with its principal office at 65 Industrial South, Clifton, New Jersey 07012.

(B) "Bristol" means defendant Bristol-Myers Company, with its principal office at 345 Park Avenue, New York, New York 10022.

(C) "Ethical pharmaceutical" means any product containing or consisting of any drug (as that term is defined in 21 U.S.C. 321(g)(1)) which, on the effective date of this Final Judgment or when marketed commercially, may be dispensed or sold at retail to an individual consumer only if prescribed by a doctor.

(D) "Dosage form" means any form in which ethical pharmaceuticals are packaged or formulated for use by or administration to their ultimate individual human or animal consumer, and includes, among other things, pills, tablets,

capsules, elixirs, syrups, vials, and ampules.

(E) "Bulk form" means the form in which ethical pharmaceuticals are manufactured, prior to their formulation or packaging into dosage form.

(F) "Sterile bulk form" means the bulk form which is suitable for the manufacture of parenteral products.

(G) "Ampicillin" means D-(-)alpha-aminobenzylpenicillin in any form (including the anhydrous forms and trihydrate form), and its salts and esters.

(H) "Semisynthetic penicillin" means any penicillin that is produced from 6-aminopenicillanic acid ("6-APA") by acylating the 6-amino group or that is produced other than entirely by fermentation processes (with or without precursors), and includes, among other things, ampicillin, ancillin, azidocillin, carbenicillin, cloxacillin, dicloxacillin, flucloxacillin, hetacillin, methicillin, nafcillin, oxacillin, phenbenicillin, phenethicillin, propicillin and talampicillin, and salts thereof.

(I) "Technical data" means know-how, trade secrets, technology, production manuals, drawings, and other information that relates to the manufacture, use, processing, or securing of FDA approval for the marketing of any product, including (but not limited to) the best mode, method, procedure, and technique thereof known to or used by a defendant.

(J) "Patent" means United States patent, and includes any reissue and any correction of such patent.

(K) "Date of this Final Judgment" means the date

of entry of this Final Judgement.

(L) "Semisynthetic pencillin patent" means:

(1) any patent or application for a patent

(a) that claims any one or more of the following: (i) a semisynthetic penicillin, (ii) a process or method of making a semisynthetic penicillin (or pharmaceutical composition containing it in combination with any other product), (iii) an intermediate (such as 6-APA) or any starting material from which a semisynthetic penicillin is made, (iv) a process or method for making an intermediate (or a starting material) from which a semisynthetic penicillin is made, (v) a method of use for (or treatment employing) a semisynthetic penicillin, or (vi) a pharmaceutical composition containing a semisynthetic penicillin in combination with any other product; and

(b) that prior to the date of this Final Judgment Beecham assigned or licensed to Bristol, or Bristol assigned or licensed to Beecham, including (but not limited to) each patent and application for a patent that a defendant assigned or licensed to another defendant pursuant

to their agreements of April 2, 1959, August 1, 1960, or January 1, 1967; and

(2) any other patent

(a) that as of September 26, 1978, was owned by or assigned or licensed to Beecham; and

(b) that claims any one or more of the things enumerated in Paragraph (L)(1)(a)(i)-(vi) of this Section II.

The term "semisynthetic penicillin patent" does not include:

(1) United States Patents Nos. 3,192,198, 3,674,776, and Re. 28,744 (all relating to amoxicillin), unless it is agreed by Beecham and Bristol, or finally established in any suit or other proceeding (whether or not Bristol is a party thereto), that such patents are licensed by Beecham to Bristol under their agreement of April 2, 1959, in which case such patents shall be treated in all respects under this Final Judgment as if they were included in the definition of a "semisynthetic penicillin patent" under this Paragraph II(L); or

(2) United States Patents Nos. 3,282,926 and 3,881,013 (both relating to ticarcillin) and United States Patent No. 3,853,849 (relating to carfecillin), unless one or more of such patents is assigned or licensed by Beecham to Bristol at any time during a period of ten (10) years after

the date of this Final Judgment; in which case each patent so licensed or assigned shall be treated in all respects under this Final Judgment as if it were included in the definition of "semisynthetic penicillin patent" under this Paragraph II(L).

(M) "Semisynthetic penicillin technical data" means technical data in the possession, custody, or control of Beecham that it has the right to license at the time of any request therefor made pursuant to this Final Judgment, and that is reasonably necessary or commercially requisite to make, use, process, or secure FDA approval to market any semisynthetic penicillin (or any product containing a semisynthetic pencillin in combination with any other product). The term "semisynthetic penicillin technical data" includes (but is not limited to):

(1) all such technical data that was submitted to the FDA (including, but not limited to, that which relates to securing FDA approval to market any semisynthetic penicillin) by or on behalf of Beecham at or before the time of any request for such data; and

(2) all such technical data that relates to using or processing any semisynthetic penicillin, and was known to or used by Beecham at or before the time of any request for such data.

Such term does not include any technical data that relates to --

(1) the manufacture of semisynthetic

penicillins (and that was first known to or discovered or developed by Beecham after the date of this Final Judgment);

(2) the fermentation of penicillin;

(3) the manufacture of 6-APA; or

(4) the manufacture of any other starting material or starting chemical that (at the time of the request) is reasonably available commercially from a source other than Beecham or Bristol.

(N) "Person" means any individual, corporation, association, partnership, or other business or legal entity. Business or legal entities under common ownership or control, or related as parent or subsidiary, shall be treated as a single person.

(O) "United States sale" means any sale or resale made in the United States.

(P) "Designation" means any United States trademark, trade name, or label, except a trademark, trade name, or label owned by Beecham. The term includes generic labels and established or official names (as those terms are used in 21 U.S.C. Sections 352(e)(2) and 358).

III

(A) The provisions of this Final Judgment shall apply to Beecham; to each of its subsidiaries, successors, and assignees; to their directors, officers, agents, and employees; and to all persons in active concert or

participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

(B) This Final Judgment shall not apply to activities that occur outside the United States and do not affect the interstate or foreign commerce of the United States. Nothing in this Final Judgment shall constitute or require a grant of any right or rights by Beecham in any foreign jurisdiction or under any foreign patent or trademark or prohibit the enforcement or implementation of any such foreign right or rights.

IV

(A) Beecham is enjoined and restrained from entering into, adhering to, maintaining, or claiming any rights under any agreement or understanding, whether or not in the form of a license, that:

(1) restricts, limits, prevents, or prohibits any other party to such agreement or understanding from making any United States sale of an ethical pharmaceutical in any manner or form, under any designation, or to any person of the party's free choice;

(2) authorizes any other party to such agreement or understanding to make any United States sale of an ethical parmaceutical in some particular manner or form, under some particular designation, or to some particular person, unless it also permits such party to make such sale in any other manner or form,

under any and all other designations, or to any other person of the party's free choice; or

(3) contains royalty or other fee provisions having the purpose or effect of restricting or limiting any other party to such agreement or understanding from making any United States sale of an ethical pharmaceutical in any manner or form, under any designation, or to any person of the party's free choice.

(B)(1) The injunctions contained in Section IV(A) shall not be construed to prevent Beecham from complying with 21 U.S.C., Ch. 13, and regulations issued pursuant thereto relating to "controlled substances."

(2) Nothing in Section IV(A) shall prevent Beecham from entering into or maintaining any agreement in settlement of a bona fide trademark infringement (or other similar) dispute relating to confusion as to the source or origin of an ethical pharmaceutical product, pursuant to which agreement any party thereto (a) agrees not to use, or agrees to limit the use of, any United States trademark involved in the dispute, or (b) agrees to refrain from the practices allegedly giving rise to such confusion. The United States is free to challenge and Beecham is free to defend the lawfulness of any such agreement under the antitrust laws.

(3) Nothing in Section IV(A) shall prevent Beecham from granting or receiving an exclusive distributorship or

an exclusive license under any patent, trademark, trade name, or technical data, unless such distributorship or license has the purpose or effect of otherwise restricting or limiting the other party thereto in any way prohibited by Section IV(A) of this Final Judgment.

(C) Beecham shall have 120 days from the date of this Final Judgment within which to bring all existing agreements, understandings, and licenses into compliance with this Section IV. Beecham shall within 30 days thereafter file with this Court an affidavit of such compliance.

V

(A) Beecham is ordered to sell in bulk form to each person, other than Bristol or a person who is a semisynthetic pencillin bulk-customer or licensee of Beecham or Bristol as of the date of this Final Judgment, making a written request therefor for delivery in (or to) the United States, on non-discriminatory terms and prices, in quantities sufficient to meet such person's bona fide stated requirements for his sale in the United States:

(1) ampicillin, if Beecham is selling it in the United States at the time of such request and if Beecham has, at the time of such request, the right to sell it in bulk form in the United States; and

(2) any other semisynthetic penicillin --

(a) that, at the time of such request, Beecham is selling in the United

States;

(b) that is claimed in any unexpired semisynthetic penicillin patent; and

(c) that, at the time of such request, Beecham has the right to sell in bulk form in the United States.

(B) Beecham is required to make such sales of semisynthetic penicillins pursuant to this Section V:

(1) only in the chemical form in which Beecham is selling such semisynthetic penicillin in the United States at the time of the request; and

(2) in bulk form, and in sterile bulk form, only to the extent that the amount of such required sales of such form of such semisynthetic penicillin in any year does not exceed 15% of the amount (measured by weight) of such semisynthetic penicillin (for non-parenteral or parenteral use, respectively) that Beecham sold in the United States to any person other than its own subsidiary (which amount was manufactured by Beecham, or for Beecham pursuant to a manufacturing agreement, anywhere in the world) during the calendar year prior to the year in which the request is made.

(C) Beecham shall not be obligated to sell

any semisynthetic penicillin in bulk form pursuant to Section V of this Final Judgment to any person who does not:

(1) meet reasonable credit requirements;

(2) give Beecham reasonable advance notification of the quantities it wishes to purchase and the delivery dates it requires.

(D) For each semisynthetic penicillin to be sold in bulk form pursuant to this Section V, Beecham shall total all requests therefor made during the first month of each year by all persons, other than Bristol or a person who is a semisynthetic penicillin bulk-customer or licensee of Beecham or Bristol as of the date of this Final Judgment; and, if the total of such requests for any semisynthetic penicillin exceeds the amount Beecham is required to sell pursuant to this Section V, then Beecham shall meet such requests (unless it meets them fully) on a reasonable pro rata allocation basis. Beecham shall fill all requests made after the first month of each year pursuant to this Section V in the order in which they are received until the limits provided by this Section V are reached (unless it meets such requests fully).

(E) Beecham may take reasonable steps consistent with the purposes of this Final Judgment to protect itself from any risk of product liability (or other similar liability) suits or violation of federal or state statutes or regulations.

(F) If for any period 6-APA is temporarily not reasonably available commercially from a source other than Beecham or Bristol, during that time Beecham is ordered to

sell 6-APA in bulk form to each person, other than Bristol or a person who is a 6-APA or semisynthetic penicillin bulk-customer or licensee of Beecham or Bristol as of the date of this Final Judgment, making a written request therefor for delivery in the United States and practicing under a license granted pursuant to Section VI hereof, on nondiscriminatory terms and prices, and in quantities sufficient to meet such person's bona fide stated requirements for his manufacture and sale of semisynthetic penicillin(s) in the United States. The provisions of Paragraphs (B), (C), and (E) of this Section V, applicable to sales of semisynthetic penicillins in bulk form, shall be applicable to sales of 6-APA in bulk form made pursuant to this Paragraph (F), except that the amount of such required sales in any year shall not exceed 15% of the amount (measured by weight) of 6-APA that Beecham used in making semi synthetic penicillin(s) that it sold in the United States to any person other than its own subsidiary (which amount of 6-APA was manufactured by Beecham, or for Beecham pursuant to a manufacturing agreement, anywhere in the world) during the calendar year prior to the period in which 6-APA was not so available.

(G) Beecham is ordered to file a statement with this Court, on the date of this Final Judgment, listing each semisynthetic penicillin:

(1) that is claimed in any unexpired semisynthetic penicillin patent,

(2) that Beecham sold in the United States prior to such date, and

(3) that Beecham has the right to sell in bulk form in the United States on the date of this Final Judgment.

VI

(A) Beecham is ordered to grant, without charge, to each person (other than Bristol), who makes a written request therefor, an irrevocable covenant not to sue (on behalf or for the account of Beecham or anyone else) for any alleged infringement of:

(1) any patent in connection with the manufacture, use, or sale of ampicillin at any time (whether prior or subsequent to the date of this Final Judgment); or

(2) any semisynthetic penicillin patent (including, but not limited to, each patent that issued on any application for a patent) that Beecham assigned or licensed to Bristol pursuant to their agreements of April 2, 1959, and August 1, 1960, in connection with the manufacture, use, or sale of any other semisynthetic penicillin at any time (whether prior or subsequent to the date of this Final Judgment), provided, however, that the obligation of Beecham to grant the covenant, and the duration of any covenant so granted, pursuant to this Section VI(A)(2) shall only run for that period of time in which there shall remain pending the action brought by the United States against Bristol herein.

Beecham may charge for such covenant an amount equal to that which it is legally obligated to pay (as of the date of this Final Judgment) and in fact pays any person, other than Bristol, by reason of the grant of such covenant.

(B) Nothing in Section VI(A) shall prevent Beecham from being joined by any person as an involuntary party in or, pursuant to such joinder and to the extent required by it, participating in any such infringement suit instituted by Bristol, so long as such participation does not result in any recovery for Beecham's account.

(C) Beecham is ordered to grant, to each person (other than Bristol) who makes a written request therefor, an irrevocable license, at a reasonable royalty rate and on reasonable and nondiscriminatory terms, under any, some, or all semisynthetic penicillin patents (as the person making such request may wish) that Beecham has the right to license as of the date of any such request.

(D) Nothing herein shall prevent any applicant from attacking the validity or scope of any patent or patents to be licensed by Beecham pursuant to this Section VI of this Final Judgment; nor shall this Final Judgment be construed as imputing any validity or invalidity to any of such patents.

(E) Beecham is ordered to file with this Court, on the date of this Final Judgment, a statement listing each semisynthetic penicillin patent that is owned by or assigned or licensed to Beecham and that Beecham has the right to license or sublicense.

VII

(A) Beecham is ordered to furnish to each person, other than Bristol, making a bona fide written request therefor, and to license such person to use, in connection with the manufacture, use, or sale of semisynthetic penicillins in the United States, or with the practice of semisynthetic penicillin patents in the United States, any, some, or all semisynthetic penicillin technical data (as the person making such request may wish) that relates to:

(1) ampicillin;

(2) the commercial exploitation of only the semisynthetic penicillin patents licensed to such person pursuant to Section VI of this Final Judgment;

(3) using, bulk processing (including the conversion of semisynthetic penicillins from bulk form to dosage form), or securing of FDA approval to market any semisynthetic penicillin claimed in a semisynthetic penicillin patent: (a) that such person makes or had made under a license granted pursuant to Section VI of this Final Judgment; (b) that such person purchases from Beecham pursuant to Section V of this Final Judgment, from a licensee of Beecham or Bristol for such semisynthetic penicillin, or from a person practicing under a license for such semisynthetic penicillin granted pursuant to Section VI hereof.

There shall be no upper limit on the number of requests made under this Section VII.

(B) The charge for such semisynthetic penicillin technical data shall be as follows:

(1) for semisynthetic penicillin technical data in the public domain and for semisynthetic penicillin technical data (whether or not in the public domain) used for manufacturing, bulk processing, using, or securing FDA approval to market ampicillin;

(a) the actual out-of-pocket cost to Beecham of reproducing the data supplied; and

(b) a royalty or fee equal to that which Beecham is legally obligated to pay (as of the date of this Final Judgment) and in fact pays to any person other than Bristol, by reason of the grant of a license thereof;

(2) for other semisynthetic penicillin technical data not in the public domain; a reasonable royalty for its use other than in connection with ampicillin, such royalty to terminate with respect to any such technical data that falls into the public domain for any reason other than the wrongful act of a licensee.

(C) In furnishing and licensing semisynthetic penicillin technical data pursuant to this Section VII, Beecham may:

(1) require the person receiving such technical data to execute an appropriate agreement forbidding its disclosure to any third party without Beecham's consent, so long as such technical data is not otherwise in the public domain; but such person may disclose such technical data to any third party who agrees to be bound by such agreement, and who manufactures or processes any semisynthetic penicillin solely for a licensee or bulk purchaser under this Final Judgment; and

(2) apply legends to such technical data indicating its proprietary nature.

VIII

(A) Beecham is ordered to assign at a time specified in Paragraph D of this Section VIII, upon written request and without charge, each trademark identified in Paragraph (B) of this Section VIII, together with the good will associated with it, to the person who marketed a semisynthetic penicillin under such trademark, as described in Paragraph (C) of this Section VIII.

(B) The trademarks to be assigned pursuant to this Section VIII are those (other than "Penbritin" or "Penbritin S") that Beecham prior to the date of this Final Judgment

(1) registered in the United States Patent and Trademark Office, and (2) allowed another person to use in connection with the United States sale of a semisynthetic penicillin that Beecham supplied to such person, as described in Paragraph (C) of this Section VIII.

(C) The persons to whom Beecham is required to assign a trademark pursuant to this Section VIII are those who, at any time prior to the date of this Final Judgment:

(1) were supplied by Beecham with a semisynthetic penicillin for United States sale only under such trademark;

(2) were authorized to use such trademark only for the United States sale of such semisynthetic penicillin supplied by Beecham, unless Beecham was itself unable to supply it; and

(3) agreed with Beecham that, while such persons were so marketing such semisynthetic penicillin, Beecham would neither sell nor authorize anyone else to sell such semisynthetic penicillin in the United States under such trademark.

(D) Beecham shall make the assignments of trademarks pursuant to this Article VIII at such time as (1) Beecham acquires the right, under the appropriate Beecham-Bristol Agreements of April 2, 1959, August 1, 1960, and January 1, 1967, to sell the semisynthetic penicillin involved under a trademark other than one owned by Beecham; (2) there is

a final judgment determining that such agreements are unenforceable insofar as they limit Beecham's rights thereunder to sales by Beecham under trademarks owned by it; or (3) there is a settlement of this action against Bristol and, in connection with such settlement, Bristol complies with a provision corresponding to Section IV(C) of this Final Judgment. In the meantime, Beecham is ordered to authorize, within 120 days from the date of this Final Judgment, each person described in Paragraph (C) of this Section VIII to use the trademark (to be assigned to such person pursuant to this Section VIII and described in Paragraph (B) thereof) for the United States sale of the semisynthetic penicillin involved that such person may procure from any source of his free choice. Beecham may take reasonable steps consistent with the purposes of this Final Judgment to insure that such semisynthetic penicillin procured from a source other than Beecham meets the standards of quality under which Beecham previously permitted such person to procure such semisynthetic penicillin elsewhere when Beecham was itself unable to supply it, as described in Paragraph (C) of this Section VIII.

IX

(A) Upon receipt of a written application for a license under Section VI or Section VII above, Beecham shall within 30 days advise the applicant in writing of the royalties which it deems reasonable for a license of patent(s) or technical data requested and the conditions and terms thereof, if any. If the applicant rejects the royalties, conditions, or terms proposed by Beecham, and if Beecham and the applicant are unable to agree upon reasonable conditions, terms, or

royalties, or upon a method of determining reasonable royalties (including arbitration), within 60 days from the date such rejection is communicated in writing to Beecham, the applicant or Beecham may, upon notice to plaintiff and to the other party to the dispute, apply to the Court for (1) the determination of reasonable conditions, terms, and royalties and (2) a preliminary determination of such reasonable interim royalties on patents as the Court may deem appropriate pending the completion of such proceeding. In any such proceeding, the burden of proof shall be upon Beecham to establish that the conditions, terms, and royalties which it proposes are reasonable. Pending the completion of negotiations or any such proceedings, the applicant shall have a provisional license of the scope provided in his application for a license to practice the patent(s) to which his application pertains, subject to the payment to Beecham of reasonable interim royalties on such patent(s); provided, however, that no provisional license shall contravene any of the provisions of this Final Judgment. A final determination of reasonable royalties or that no royalties are to be charged, for practicing the patent(s) shall be applicable from the date upon which the applicant requested a license. Such determination shall, unless otherwise ordered by the Court in proceedings instituted under this Section IX, be applicable thereafter to any other licensee then having or thereafter obtaining the same rights under the same patent(s) or technical data. If the applicant fails to accept a patent license after final determination by the Court of the amount of reasonable royalties with respect thereto in a proceeding under this Section IX, such applicant shall pay only the interim royalties

that may be found by the Court to be due to Beecham with respect thereto and such costs as may be determined by the Court to be just and reasonable.

(B) The licenses granted by Beecham pursuant to Sections VI and VII of this Final Judgment shall be without any condition or limitation, except as provided herein, and shall, with respect to patent(s), be granted for a term equal to the life of the licensed patent(s). Such licenses may be cancelled by the licensee upon thirty (30) days' written notice to Beecham.

(C) Beecham is enjoined from conditioning the grant of any license under either Section VI or VII of this Final Judgment, or the furnishing of semisynthetic penicillin technical data, upon the grant or acceptance by the licensee of a license under any other United States or foreign patent, or of rights relating to any other technical data.

(D) Reasonable provisions may be made, in the licenses granted by Beecham pursuant to Section VI or VII of this Final Judgment, for periodic royalty reports by the licensee, including such reports as may be necessary to allow Beecham to fulfill its obligations, if any, to third parties, and for inspection of the relevant books and records of the licensee by an independent auditor or other person acceptable to both licensor and licensee (or, in the absence of agreement, a person selected by this Court), who shall report to Beecham only the amount of the royalty or other charge due and payable.

X

(A) Beecham is enjoined and restrained from making any sale or other disposition of any right, patent, trademark (where applicable), technical data, or license which deprives it of the power or authority to sell semisynthetic penicillins in bulk form, to grant licenses to practice patents, or to use trademarks or technical data in accordance with the provisions of this Final Judgment, unless the purchaser, transferee, licensee, or assignee of such right, patent, trademark, technical data, or license shall file with this Court, prior to the consummation of any such sale or other disposition, an undertaking to be bound by the provisions of, and to assume the obligations of Beecham under, this Final Judgment with respect to such right, patent, trademark, technical data, or license sold or disposed of thereto.

(B) Beecham is enjoined and restrained from:

(1) Transferring any assets subject to this Final Judgment, other than goods sold or otherwise transferred in the ordinary course of business, to any third party that, according to Beecham's knowledge, proposes to make or has extant any tender offer or takeover bid in respect to the stock and assets of Beecham; has acquired such stock or assets; or has entered into any merger with Beecham or agreement therefor;

(2) Failing or declining to engage in any activity subject to this Final Judgment

in order that a third party (as referred to in paragraph (B)(1) of this section) may engage in such activity in lieu of Beecham,

unless such third party shall first have submitted to the jurisdiction of this Court and consented to be bound by this Final Judgment to the extent provided by law. Provided, however, that Beecham shall be free to take any action prohibited by this Section X, if after 30 days' prior notice to plaintiff of Beecham's intent to take any such action plaintiff has not filed any objection thereto with this Court, and provided further that, if plaintiff has filed any such objection, Beecham shall not take such action until (a) such third party has submitted to the jurisdiction of the Court and has consented to be bound by this Final Judgment to the extent provided by law, or (b) the Court shall have ruled that Beecham may take such action without such submission.

XI

Within ninety (90) days of the date of this Final Judgment:

(A) Beecham is ordered and directed to publish notice of the availability of (1) semisynthetic penicillins for purchase in bulk form pursuant to Section V of this Final Judgment, and (2) licenses under semisynthetic penicillin patents and technical data pursuant to Sections VI and VII of this Final Judgment, in one issue of Chemical & Engineering News (published by American Chemical Society) and

Chemical Week (published by McGraw-Hill, Inc.), and to publish notice of the availability of such licenses in one issue of the Official Gazette of the United States Patent and Trademark Office; and

(B) Beecham is ordered and directed to give notice in writing of such availability to each person who since Janary 1, 1965, has indicated in writing to Beecham an interest in purchasing any semisynthetic penicillin in bulk form in the United States or obtaining a license under any semisynthetic penicillin patent.

XII

(A) For the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, and subject to any legally recognized privilege, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Beecham made to its principal office, be permitted:

(1) access, during regular office hours of Beecham, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or custody or under the control of Beecham relating to any of the subject matter contained in this

Final Judgment (including all patent, trademark, trade name, or technical data licenses relating to ethical pharmaceuticals, whether or not containing provisions prohibited by this Final Judgment); and

(2) subject to the reasonable convenience of Beecham, and without restraint or interference from it, to interview officers, directors, agents, partners, or employees of Beecham, who may have counsel present, regarding any such matters; provided, however, that Beecham shall not be obligated to bring to the United States any records or documents or to bring to the United States for the purpose of interview any officer, director, agent, partner, or employee, except on order of this Court specifically so providing.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made for the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, Beecham shall submit such reports in writing with respect to matters contained in this Final Judgment as may be requested.

(C) No information obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which

the United States is a party, or for the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, or for federal law enforcement purposes by the United States, or as otherwise required by law.

(D) If, at the time information or documents are furnished by Beecham to plaintiff, Beecham represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Beecham marks the appropriate portion of each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to Beecham prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which Beecham is not a party.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XIV

(A) Except as provided in Paragraph (B) of this Section XIV, this Final Judgment shall terminate ten (10) years after the date of its entry, and shall thereafter have

no force or effect.

(B)(1) The provisions of Section VI shall continue in effect until the expiration of the patents required to be licensed thereunder.

(2) The obligation to grant licenses to use semisynthetic penicillin technical data pursuant to the provisions of Section VII shall continue in effect until the expiration of Beecham's obligation to license the patents or to sell the semisynthetic penicillins in bulk form to which the licensed semisynthetic penicillin technical data relates.

(3) The compulsory bulk selling provisions of Section V shall continue in effect, as to 6-APA and each semisynthetic penicillin (other than ampicillin) required to be sold in bulk form thereunder, until the expiration of the last of the patents owned by or assigned or licensed to Beecham which claims 6-APA or that semisynthetic penicillin, or ten (10) years after the date of this Final Judgment, whichever is sooner.

(4) The compulsory bulk selling provisions of Section V, as to ampicillin, shall continue in effect for ten (10) years after the date of this Final Judgment.

XV

Within 60 days of entry of this Final Judgment, Beecham shall pay the sum of $1 million to the order of the Treasurer of the United States in consideration for a covenant by the United States not to sue Beecham on any claim set forth in the compliant herein, including (1) any claim in respect

of damages which may have been sustained by the United States, by reason of its direct and indirect purchases of ampicillin, and (2) any claim based upon the violations alleged in the complaint in respect of damages which may have been sustained by the United States, by reason of its direct and indirect purchases of other semisynthetic penicillins, including expenditures of money under any domestic or foreign aid or welfare program made during the period beginning four years preceding the date of filing the complaint in this action and ending on the date of entry of this Final Judgment.

XVI

If a final judgment in this matter against Bristol is consented to by the United States of America which omits any injunctive provision applicable to Beecham herein, or which contains any such provision that differs from any provision herein (other than Article VIII herein), in that it is more favorable to Bristol than the corresponding provision of this Final Judgment in respect of Beecham, then the United States of America agrees that Beecham shall have the right to apply to this Court to have any provision of this Final Judgment modified to the extent necessary to conform such provision in this Final Judgment with the corresponding provision of any such final judgment against Bristol. The United States of America may join in, oppose or take no position with respect to any such application.

XVII

For the purpose of continued discovery against Beecham, Beecham and the United States of America have entered

into an agreement providing therefor; that agreement is attached as Exhibit A hereto and made a part of this Final Judgment.

XVIII

Entry of this Final Judgment is in the public interest. There is no just reason for delay of entry of this Final Judgment against Beecham, and the entry of this Final Judgment is now expressly directed.

DATED: May 21, 1979

/s/ Charles R. Richey
UNITED STATES DISTRICT JUDGE

EXHIBIT A

1. The United States recognizes that there has been some substantial prior interrogatory and document discovery from Beecham and that a principal consideration on Beecham's part in entering into this settlement is to avoid unreasonable intrusion into and disruption of its normal business affairs and diversion of Beecham personnel from Beecham's business affairs. Accordingly, the United States will exert its best efforts to minimize the burden of the requests it will make of Beecham pursuant to this paragraph, to coordinate its discovery hereunder with that of attorneys for the CCS Plaintiffs in this action, to avoid unnecessarily repetitious discovery, and to conduct expeditiously interviews and depositions of Beecham personnel. Accordingly, the United States agrees that any further discovery from Beecham shall be conducted in accordance with the terms stated below. So long as the United States' action continues against Bristol, and solely for the purpose of the continuation of said actions against Bristol, Beecham

(a) will make available to CCS Plaintiffs' attorneys and attorneys for the United States (hereinafter the "Governmental Entity Attorneys"), a reasonable number of Beecham's officers, directors, managing agents and employees ("Beecham Personnel")* as said attorneys may identify for informal interviews respecting the subject matter of the

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* A reasonable number means those Beecham Personnel previously specified by the United States and a reasonable number of Beecham Personnel in addition thereto.

CCS or United States Actions. As to Beecham Personnel who reside in and whose principal place of business is in the United Kingdom, such interviews shall take place in the United Kingdom at, to the extent possible, one central, convenient location in metropolitan London, England (such as the London offices of Shearman & Sterling, Beecham House, or such other places) and at such times as may be mutually agreed upon, except that as to Beecham Personnel who have their place of business or residence outside the United States, such interviews may also be held in the United States on those occasions when such Beecham Personnel are in the United States on business, at such times as may be mutually agreed upon. As to Beecham Personnel who reside in and whose principal place of business is in the United States, or as to such personnel who reside outside or whose principal place of business is outside the United States and who are to be interviewed in the United States on occasions when they are in the United States on business, such interviews shall take place in New York City at the law offices of Shearman & Sterling at such times as may be mutually agreed upon;

(b) will use its best efforts to assist the Governmental Entity Attorneys in obtaining written statements from such Beecham Personnel;

(c) will use its best efforts to assist the Governmental Entity Attorneys in locating, obtaining

interviews with, obtaining written statements from, deposing and securing the presence at trial of retired or former Beecham Personnel;

(d) will use its best efforts to comply with Governmental Entity Attorneys' requests for inspection and copying of further documents relating to the subject matter of the CCS or United States Actions and for further information relating thereto provided that such requests are not unduly burdensome and the United States will pay the costs of copying such documents;

(e) will produce at any trial of the CCS or United States actions against Bristol before a judge or jury at the place of trial or, in the alternative (if the Governmental Entity Attorneys so elect), at depositions for the purpose of giving testimony, such Beecham Personnel who have been interviewed (except those persons who have been deposed in these CCS or United States Actions at the instance of the CCS Plaintiffs or the United States) as Governmental Entity Attorneys may request, provided, however, that if Governmental Entity Attorneys believe in good faith, in rare and exceptional cases, that it will be essential to the successful prosecution of their actions against Bristol to produce a witness at trial whose deposition has been previously taken at such attorneys' instance in accordance with this procedure, then Beecham will produce such Beecham Personnel at trial; in

making the good faith judgment that the production of a witness at trial who has already been deposed in accordance with this procedure is "essential" as aforesaid, Governmental Entity Attorneys will take into account Beecham's considerations and objectives as stated in paragraph 1 above. The situs and times of any depositions shall be determined in accordance with paragraph 1(a) above, except that depositions of Beecham Personnel who reside in the United States or which are taken in the United States when such persons are in the United States on business in accordance with paragraph 1(a), shall be taken in Washington, D.C.

Each party shall bear its own costs and expenses respecting performance under this paragraph except that as to any Beecham Personnel requested to appear at trial, CCS Plaintiffs and the United States shall advance and pay for the reasonable costs of transportation (limited to economy class fares on regularly scheduled airlines), for such personnel to and from the place of trial and for the reasonable costs of meals and lodging for such times as their attendance at trial is required.

2. To facilitate the continued prosecution of the CCS and United States Actions, Beecham agrees that the procedures described in paragraph 1 above may begin as soon as this Final Judgment is filed by the United States with the United States District Court for the District of Columbia in accordance with the requirements of 15 USC § 16. The

parties will cooperate in resolving any dispute as to objections Beecham may raise during the taking of discovery pursuant to paragraph 1 including promptly raising any such questions by telephone or otherwise with the Court for a prompt resolution thereof.

3. Beecham will withdraw its motion, filed June 1, 1978, seeking leave to reargue, and upon reargument, allowance of its claims of privilege for patent agents' communications and, pursuant to the Court's order filed March 20, 1978, will produce to Governmental Entity Attorneys those documents, or portions thereof, as to which the Court, in said order, overruled its claims of privilege. Beecham specifically does not waive either its claim that said documents and portions thereof, under the law properly interpreted and applied, are privileged or its claim that the Court's memorandum opinion, also filed March 20, 1978 accompanying said order, improperly interprets and applies the law of privilege as respects patent agents.