

U. S. vs. MERCK & CO., INC., and POWERS-WEIGHT-  
MAN-ROSENGARTEN CORPORATION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY.

Civil Action No. 3159.

UNITED STATES OF AMERICA, AND ALIEN PROPERTY  
CUSTODIAN, PLAINTIFFS,

VS.

MERCK & CO., INC., AND POWERS-WEIGHTMAN-ROSEN-  
GARTEN CORPORATION, DEFENDANTS.

## FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on October 28, 1943; the defendants Merck & Co., Inc., and Powers-Weightman-Rosengarten Corporation, respectively, having appeared and filed their answer to such complaint denying the substantive allegations thereof; the plaintiff, Alien Property Custodian, having intervened and filed its complaint herein on October 6, 1945; the defendant, Merck & Co., Inc., having filed its answer to such complaint denying the substantive allegations thereof; all parties hereto by their attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein and without admission by either defendant in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

## I

The Court has jurisdiction of the subject matter herein and of all the parties hereto; the complaint of the United States of America states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopoly"; and the complaint of the Alien Property Custodian states a cause of action against the defendant Merck & Co., Inc., under Section 24 (1) of the Judicial Code, as amended (Title 28, U.S.C. Section 41 (1), Section 274 (d) of the Judicial Code, as amended (Title 28, U. S. C. Section 400)), and under Section 17 of the Trading with the Enemy Act of October 6, 1917 (40 Stat. 425; Title 50, Appendix, U. S. C., Section 17).

## II

As used in this judgment:

1. "E. Merck" means a partnership trading and doing business under that name and style in Darmstadt, Germany, and its partners, and its and each of their agents, employees, affiliates, successors, subsidiaries, representatives, and assigns, and all persons acting or claiming to act under, through or for them or any of them; provided, that the term "E. Merck" shall not be deemed to refer to or include the Alien Property Custodian by reason of his vesting of any property, interests, or rights of E. Merck; this proviso, however shall not operate to impair the right of the Alien Property Custodian, as owner of all interests and rights created in E. Merck by virtue of the Treaty Agreement and all agreements amendatory and supplemental thereto, and as owner of all patents, patent applications, processes, and inventions vested in him and referred to herein, to consent to this judgment, to consent to cancellation of said Treaty Agreement and all agreements amendatory and supplemental thereto, and to administer said patents, patent applications, processes, and inventions except as provided in Paragraph X hereof.

2. "Treaty Agreement" means a written agreement, a copy of which is attached hereto and made a part hereof and marked Exhibit A, dated November 17, 1932, between Merck & Co., Inc., and E. Merck.

## III

The Treaty Agreement, and all agreements amendatory or supplemental to the Treaty Agreement are hereby cancelled and each of the defendants and each of their directors, officers, agents, employees, representatives, successors, subsidiaries and affiliates, and all persons acting or claiming to act under, through, or for them, are, and each of them and any successor or assign of the Alien Property Custodian, hereby is, enjoined and restrained from the further performance of any of the provisions of such Treaty Agreement or of any agreement amendatory or supplemental to such Treaty Agreement, and from adopting or following any course of conduct for the purpose or with the effect of reviving or reinstating any

of the provisions of said Treaty Agreement or any agreement amendatory or supplemental to such Treaty Agreement. This Paragraph III shall not be deemed to terminate any immunity, as a nonexclusive immunity, held by either defendant on the date of this judgment to manufacture, use, or sell under any existing patent, patent application, process or invention, nor to prevent Merck & Co., Inc., from enforcing or asserting such rights or immunities as it may possess for the use in its business of the name and trademark "Merck" in any form or combination of such name and trademark whatsoever.

## IV

Defendant Merck & Co., Inc., its officers, directors, agents, employees, successors, and assigns are hereby ordered and directed to issue to any applicant making written request therefor, a nonexclusive license in the form annexed hereto and marked Exhibit B, under any one or more of the United States Letters Patent and Patents issued under applications for United States Letters Patent, the patent numbers and application numbers of which are listed in subdivision 1 of Exhibit C, attached hereto and made a part hereof, including all continuances, renewals, reissues, or extensions of such patents and patent applications, without any restriction or condition whatsoever, and without royalty or charge of any kind therefor, to make, use, and sell the inventions claimed by the patents and patent applications listed in said subdivision 1 of Exhibit C, for the life of said patents respectively.

## V

Defendant Merck & Co., Inc., its officers, directors, agents, employees, successors, and assigns are hereby ordered and directed to issue to any applicant making written request therefor, to the extent that defendant Merck & Co., Inc. has or acquires the power to do so, an unrestricted and unconditional grant of immunity under foreign patents or applications for foreign patents corresponding to the United States Letters Patent and

applications for United States Letters Patent listed in Exhibits C and D, attached hereto, to import into, and to sell or to use, and to have imported, sold or used in, any country, any product made in the United States.

## VI

Each of the defendants and each of their directors, officers, agents, employees, representatives, successors, subsidiaries and affiliates, and all persons acting or claiming to act, under, through or for them, or any of them are, and each of them hereby is, enjoined and restrained from:

(A) Instituting or threatening to institute or maintaining any suit or proceedings for patent infringement, or to collect royalties (1) based upon any of the United States Letters Patent listed in Exhibits C and D, attached hereto, or issued upon any application for a patent so listed, or (2) based upon any foreign patent or application for a foreign patent corresponding to the United States Letters Patent or application for United States Letters Patent listed in Exhibits C and D, attached hereto, on account of the importation, sale, or use in any country of any product made in the United States.

(B) Filing any claim or bringing any suit or proceeding under Section 9 of the Trading with the Enemy Act, or otherwise, for the purpose of claiming or recovering any right, title, or interest in and to any such patent or patent application listed in Exhibit D, attached hereto, or any interest therein or thereunder, except in so far as the Alien Property Custodian expressly grants rights therein or thereunder to the defendants, their successors, or assigns, or either or any of them.

(C) Reserving or undertaking to reserve for E. Merck, or any person or persons designated by E. Merck, any right or immunity to use, or to control the use of, in any market or country, any trade-mark, trade-name, or other designation adopted by either defendant for any chemical or pharmaceutical product.

(D) Vesting in E. Merck control over any of the business or over any business policy of defendant Merck & Co., Inc., or of any of its subsidiaries or affiliates.

(E) Claiming or asserting as exclusive any right or immunity received from E. Merck prior to the date of the entry of this judgment, under any patent or patent application or as to any process or invention.

(F) Conditioning in any way the sale or distribution or availability for sale or distribution of any chemical or pharmaceutical product to or by any person, upon such person refraining from reselling or distributing or refraining from exporting for resale or distribution such product in competition with E. Merck at any place in the world.

(G) Entering into, adhering to, maintaining or furthering any agreement, undertaking, plan or program with E. Merck:

(1) To refrain from competing in any market or country or in the manufacture, sale, distribution, importation, or exportation of any chemical or pharmaceutical product, or to allocate markets, territories or customers for the sale or distribution of any chemical or pharmaceutical product.

(2) To create, or to observe, an obligation to exchange or license under patents, patent applications, inventions, processes, or other rights relating to any chemical or pharmaceutical product.

(3) To establish, adopt, or agree upon terms and conditions to be imposed, observed, or required in the licensing or granting immunities to or by others under patents, patent applications, inventions, or processes relating to any chemical or pharmaceutical product, or in the sale or distribution by or to others of chemical or pharmaceutical products.

(4) To fix, maintain, or determine prices to be quoted or charged by or to, or imposed upon, any other person for any chemical or pharmaceutical product.

## VII

Each of the defendants and each of their directors, officers, agents, employees, representatives, successors and affiliates, and all persons acting or claiming to act under, through, or for them or any of them are, and each of them hereby is, ordered and directed to file with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, notice of their intention to make any agreement or arrangement with E. Merck relating to or affecting the business policy of either defendant, its successors, affiliates, or subsidiaries. The failure of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division to take any action following receipt of any information pursuant to this paragraph shall not be construed as an approval of the matter and things so received or informed, and shall not operate as a bar to any action or proceeding that may later be brought or be pending whether pursuant to this judgment or any law of the United States based on things so received or informed.

## VIII

For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to the defendants be permitted (1) access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said defendants, relating to any of the matters contained in this judgment; (2) without restraint or interference from the defendants, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and the defendants, on such request, shall submit such reports on applications for licenses and licensing

under Paragraph IV of this judgment, or with respect to any relationship with E. Merck, or on exports or sales for export by the defendants, as may from time to time be reasonably necessary for the enforcement of this judgment; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States of America is a party or as otherwise required by law.

## IX

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

## X

(A) It is adjudged and decreed that all right, title, and interest in and to the patents and patent applications listed in Exhibit D are in the Alien Property Custodian. Subject to the provisions of subsection B of this Paragraph X, this judgment shall not be deemed to affect any right of the Alien Property Custodian or his successors with respect to his ownership of, or to issue licenses or immunities under, any patent, patent application, process, or invention vested in him, or to sell or otherwise dispose of any such patent, patent application, process, or invention, pursuant to the provisions of the Trading with the Enemy Act, as amended, and in accordance with his policy in the administration thereof, or any right of the Alien Property Custodian to royalties or payments accrued prior to the date of the entry of this judgment. Subject likewise to the provisions of subsection B of this Paragraph X, this judgment shall not

be deemed to prohibit or restrict in any way the Alien Property Custodian or his successors or assigns from instituting or maintaining any suit or proceeding for patent infringement with respect to patents now or hereafter vested in him or from taking such action with respect to any vested patents, patent applications, processes, or inventions as the national interest may require.

(B) A royalty-free, nonexclusive, unconditional, and unrestricted license under any one or more of the United States Letters Patent and patents issued under applications for United States Letters Patent, the patent numbers and application numbers of which are listed in the aforementioned Exhibit D, shall be granted by the owner of the title of said patents to any applicant making written request therefor; provided, that so long as ownership of said patents and patent applications is vested in the United States, the department, agency, or officer duly authorized to administer them may, upon a determination that the national interest so requires, withhold, and upon sale or other disposition of any such patents or patent applications, require any subsequent owner thereof to withhold, licenses thereunder from any corporation or other business organization organized under the laws of or having its principal place of business in Germany or Japan, or individuals who are subjects, citizens, or residents thereof, or any corporation, business organization, or individual acting for or on behalf of any such German or Japanese corporation, business organization, or subject, citizen or resident of Germany or Japan; and provided further, that any license issued by a duly authorized department, agency, or officer of the United States may contain the terms and conditions set forth in the form annexed hereto and marked Exhibit E.

Dated October 6, 1945.

FOREMAN,

*United States District Judge.*

EXHIBIT A

AP 527

E. MERCK AND MERCK & Co., INC.

## TREATY AGREEMENT

Dated Nov. 17th, 1932

Duplicate Original

*AGREEMENT made this 17th day of November 1932, by and between E. MERCK, an open copartnership with its principal office and place of business in Darmstadt, Germany, and MERCK & CO., INC., a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business at Rahway, New Jersey, WITNESSETH:*

MERCK & CO., INC., has heretofore succeeded to all the business and property, together with the good will connected therewith, of an agency established by E. MERCK for the sale of products under the trade name "MERCK" in the *United States and Canada*.

The parties hereto for many years have carried on their respective businesses and trade and each has established a good will in connection therewith. The business of Merck & Co., Inc., and its use of the word "Merck" in connection therewith has been almost exclusively confined to the United States, its territories and dependencies (the word "territories" wherever used herein meaning Alaska and Hawaii and the word "dependencies" wherever used herein meaning Porto Rico, Virgin Islands, the Panama Canal Zone, Samoa, Guam, and the Wake and Midway Islands) and Canada, while the business of E. Merck and its use of the name "Merck" has been almost exclusively confined to the remainder of the world, except that both parties have business in Cuba, the West Indies, and the Philippine Islands (said Philippine Islands, while dependencies of the United States are not included in the definition of that word as used herein) in connection with which they have used the word "Merck." The parties hereto have carried on their respective businesses under conditions of mutual cooperation and respect for the rights of the other and they desire to confirm and establish covenants and principles of mutual cooperation and helpfulness in carrying on their respective businesses.

NOW, THEREFORE, the parties hereto hereby mutually agree as follows:

1. E. Merck recognizes and confirms the right of Merck & Co., Inc., to the *exclusive use of the word "Merck"* in the United States, its territories and dependencies, and Canada, and the right to use said name jointly with E. Merck in Cuba, the West Indies, and the Philippines, whether said word "Merck" is used alone or in conjunction with or combination with any other word or in connection with any patent or trade-mark or in any other way.

2. Merck & Co., Inc., recognizes and confirms the right of E. Merck to the exclusive use of the word "Merck" in the entire world, except the United States, its territories and dependencies, and Canada, and except in Cuba, the West Indies, and the Philippine Islands, where Merck & Co., Inc., recognizes the right of E. Merck to use said name jointly with Merck & Co., Inc. The right of E. Merck to use the name "Merck" as herein recognized and confirmed by Merck & Co., Inc., means the right to use said name alone or in conjunction with or combination with any other word or in connection with any patent or trade-mark or in any other way.

3. In case of the merger, consolidation, or transfer of assets by either party, the merged or consolidated corporation or transferee shall succeed only to such rights to use said word "Merck" as are expressly herein recognized and confirmed in the party hereto which so merges, consolidates, or transfers its assets.

4. In case of the abandonment of the use of the word "Merck" by either party as a result of merger, consolidation, or transfer of assets or otherwise, the other party hereto shall thereafter have an unrestricted right to use the name in any part of the world.

5. Either party developing a specialty (hereinafter called the "grantor") shall, except as provided in the last sentence of this paragraph and except in so far as such grantor is prevented by agreements heretofore or hereafter entered into with inventors or other parties

having rights acquired prior to or simultaneously with the acquisition by the grantor of its rights therein, offer to the other party hereto (hereinafter called the "grantee") the first right for the sole distribution and/or exclusive manufacture of such specialty in the territory in which the grantee has the exclusive right to use the name "Merck" as hereinabove set forth. In case such offer is accepted, during the first fifteen years after such acceptance, the net profits resulting from the sale of such specialty shall be divided equally between the parties hereto. Said net profits shall be determined by taking the difference between the invoice proceeds on the one side and on the other side the total of manufacturing and advertising expenses, inventor's royalties and a selling commission of 15% to the grantee. In case any loss is incurred in connection with the sale and/or manufacture of such specialty by the grantee, the grantee shall first be reimbursed for said losses out of future profits before any such profits shall be divided hereunder, it being distinctly understood and agreed, however, that the grantor shall, at no time, be responsible for such losses or any part thereof. After the expiration of such fifteen-year period, the grantor shall be entitled to receive only 25% of the profits thereafter resulting from the sale of said specialty, which latter participation of profits shall continue in perpetuity thereafter. The preferential right to market specialties under the provisions hereof is at all times subject to obligations which the grantor may be under to third parties under contracts heretofore made whereby such third parties have preferential rights with respect to the marketing of specialties within territories specified in such contracts.

6. The parties hereto agree to a mutual exchange of information and experience regarding the processes for the manufacture of products now manufactured by both parties, as well as improvements on and technical completion of such processes, but neither party hereto shall be required to give to the other any information or experience in violation of the terms of any agreements heretofore or hereafter entered into with inventors or

other persons who acquired rights with respect to such process or with respect to such improvements on or technical completions of the same, prior to or simultaneously with the acquisition of such information or experience by the party hereto. A list of products manufactured by both parties and to which the foregoing obligation applies is attached hereto and made a part hereof. All information of one party regarding such processes or improvements shall be made available to the other without compensation, except in instances where the exchange results in substantial advantages to the party receiving the information, in which case, the party furnishing the same shall be entitled to appropriate compensation. Such compensation shall be agreed upon between the parties hereto but, in case of their failure to agree, the amount thereof shall be determined by arbitrators, each party to select one arbitrator and the two so selected to choose a third and the decision of such arbitrators or a majority of them shall be final and binding upon the parties hereto. As to processes for the manufacture of products not on the list attached hereto but which may now or hereafter be manufactured by one of the parties hereto, the other party shall have a right to acquire such process from the one having the same (excepting always where such party is prevented from granting such right by reason of obligations to third parties entered into prior to or simultaneously with the acquisition of the rights therein by the party hereto) providing the parties hereto can agree upon the scope of the use of such process and the compensation to be paid therefor and, in any event, upon the same terms upon which the party having such process is willing to sell or convey the right to use the same to third parties. In case of a merger, consolidation, or transfer of assets by either of the parties hereto, the obligations contained in this paragraph 6 shall terminate and cease.

7. The parties hereto agree that, so far as possible, they will, through reports, keep each other fully advised with respect to raw materials, conditions of markets, inventions, and other general information which, in the

opinion of either party, may be useful to the other in the carrying on of their or its business.

8. Insofar as it recognizes and confirms exclusive rights to the use of the name "Merck" this agreement protects the good will of the parties hereto in their respective businesses and is in perpetuity. Except where a different term has been specifically provided in this agreement, the term of this agreement and all obligations hereunder, shall continue for a period of fifty years from the date hereof, except insofar as the same may be terminated in whole or in part by mutual consent. Any future agreements between the parties hereto made pursuant to the terms of this agreement shall continue for such period of time as is provided therein, irrespective of the term of this agreement.

9. It is mutually agreed that in the event that either party hereto institute against the other party any legal proceedings of any nature whatsoever upon a cause of action based upon, arising out of, or in any way connected with the terms, covenants and conditions of this agreement, the party against whom such proceedings are brought, hereby agrees to accept service of process or any other papers necessary to be served to institute such proceedings, and any of the partners of E. Merck, or any of the officers of Merck & Co., Inc., are hereby authorized to accept service of such process or other papers. It is further agreed that, in the event that Merck & Co., Inc., shall institute any such legal proceedings against E. Merck, such proceedings shall be brought only in a court of competent jurisdiction in Germany, in the district in which the partnership of E. Merck has their principal place of business, and in such an event, the interpretation and construction of the terms of this agreement and the rights and liabilities of the parties, arising therefrom, as well as their remedies, shall be governed and determined solely in accordance with the law of Germany. In the event that E. Merck shall institute any such legal proceedings against Merck & Co., Inc., such proceedings shall be instituted only in a Court of competent jurisdic-

tion of the State of New Jersey, or the United States District Court for the District of New Jersey, and in such event the interpretation and construction of this agreement, and the rights and liabilities of the parties arising therefrom, as well as their remedies, shall be governed and determined solely by the laws of the State of New Jersey.

IN WITNESS WHEREOF, this instrument has been executed on behalf of E. MERCK, party of the first part, by a member of the firm under his hand and seal, and MERCK & CO., INC., the party of the second part, has caused this instrument to be signed by its duly authorized officers and its corporate seal to be hereunto affixed the day and year first above written.

E. MERCK,

By D. KARL MERCK, *A member of the firm.*

MERCK & Co., INC.,

By GEORGE W. MERCK, *Pres't.*

Attest:

OSCAR R. EWING, *Secretary.*

Merck & Co., Inc.

Corporate

Seal

1927

New Jersey

PROCESSES OPERATED BY MERCK & Co., INC. AND  
E. MERCK, DARMSTADT

Acetamide	Acid Iodic Anhydride
Acid Benzoic Reagent	Acid Meconic
Acid Chromic	Acid Oxalic C. P. & Re-
Acid Hydriodic	agent.
Acid Hydrobromic	Acid Silicic C. P.
Acid Hydrocyanic	Acid Sulphanilic C. P.
Acid Hypophosphorous	Acid Sulphocarbolic
Acid Iodic	Acid Sulphosalicylic



Acid Sulphuric Aromatic U. S. P.	Barbital Sodium
Aluminum Acetate So- lution N. F.	Barium Acetate
Aluminum Nitrate C. P.	Barium Carbonate Pure Precip. C. P. & Reagent
Aluminum Phosphate	Barium Chloride C. P. & Reagent
Aluminum Sulphate N. F. V. & C. P.	Barium Chromate
Ammonium Acetate	Barium Nitrate C. P. & Reagent
Ammonium Benzoate	Barium Sulphate C. P.
Ammonium Chloride U. S. P., C. P. & Reagent	Benzene C. P. & Reagent
Ammonium Chromate	Benzylsuccinate
Ammonium Citrate	Bismuth Betanaphthol
Ammonium Dichromate	Bismuth Chloride
Ammonium Iodide	Bismuth Citrate
Ammonium Nitrate, Pure, C. P. & Reagent	Bismuth Hydroxide
Ammonium Oxalate	Bismuth Nitrate
Ammonium Phosphates N. F., C. P. & Reagent	Bismuth Oxychloride
Ammonium Salicylate	Bismuth Oxyiodide
Ammonium Sulphate, Pure, C. P. & Reagent	Bismuth Salicylate
Ammonium Sulphide, Solution	Bismuth Subbenzoate
Ammonium Tartrate	Bismuth Subcarbonates
Amyl Nitrite	Bismuth Subgallate
Amyl Salicylate	Bismuth Subnitrate
Aniline Hydrochloride	Bismuth Subsalicylate
Aniline Sulphate	Bismuth Tannate
Antimony Chloride So- lution	Bismuth & Ammonium Citrate
Antimony Sulphurated	Blaud's Mass Powder
Apiol Fluid Green	Cadmium Acetate
Apomorphine Hydro- chloride	Cadmium Bromide
Arsenic Chloride (ous)	Cadmium Carbonate
Arsenic Iodide (ous)	Cadmium Chloride
Barbital	Cadmium Iodide
	Cadmium Nitrate
	Cadmium Sulphate
	Caffeine Citrated
	Caffeine Sodium Benzoate
	Caffeine Sodium Salicylate

Calamine Prepared N. F.	Copper Sulphate Anhy- drous C. P.
Calcium Acetate	Copper & Ammonium Chloride
Calcium Carbonate C. P. & Reagent	Corrosive Sublimate
Calcium Chloride Anhy- drous C. P. & Reagent	Cuprex
Calcium Chloride Crystals Pure & C. P.	Dextrose C. P. Anhydrous
Calcium Chloride U. S. P.	Dextrose Solution Sterilized in ampules
Calcium Iodide	Digitan Powder, Tablets & Tincture
Calcium Lactate Dried	Dionin
Calcium Lactophosphate	Emetine & Salts
Calcium Nitrate Pure & C. P.	Eschka's Mixture
Calcium Sulphate C. P.	Eserine Salicylate
Calomel	Ethly Bromide C. P.
Calomel Special Fine	Ethyl Iodide
Camphor Monobromated	Ethyl Nitrite
Carlsbad Salt Artificial N. F.	Fibrolysin
Chlorbutanol	Gold & Sodium Chloride
Chromium Salts	Homatropine & Salts
Cocaine & Salts	Hydrastine & Salts
Codeine & Salts	Hydroalcoholic Extract of decocainized coca leaves
Colchicine	Iodine Resublimed Cryst. & Granular
Colchicine Salicylated	Iodine Trichloride
Congo Paper	Iodoform
Copper Acetate C. P. & Reagent	Ipecac & Opium Pow- der
Copper Aluminate	Iron Acetate (ic) basic & Solution
Copper Bromide	Iron Bromide
Copper Chloride C. P. & Reagent	Iron Carbonate
Copper Iodide	Iron Citrate Scales & Pearls
Copper Nitrate	Iron Dialyzed
Copper Oxide Black	Iron Hypophosphite
Copper Sulphate U. S. P., C. P. & Reagent	Iron Iodide (ous)
	Iron Iodide Saccharated

Iron Iodide Syrup	Lead Chloride
Iron Nitrate Ferric	Lead Chromate C. P.
Iron Oxalate Ferric	Lead Iodide
Iron Oxalate Ferrous	Lead Nitrate
Iron Oxide Brown Precipitated	Lead Subacetate Solution U. S. P.
Iron Oxide Red Saccharated	Lead Sulphate C. P.
Iron Peptonized	Lime Iodized
Iron Phosphate (ferric)	Soluble Scales & Pearls
Iron Phosphate Ferrous	Lithium Benzoate
Iron Pyrophosphate	Lithium Chloride
Soluble Scales & Pearls	Lithium Citrate
Iron Succinate	Lithium Iodide
Iron Sulphate Ferric	Lithium Nitrate
Power & Solution	Lithium Salicylate
Iron Sulphate Ferric	Lithium Sulphate
Basic & Solution	Litmus Paper Red & Blue
Iron Sulphate Ferrous	Magnesium Bromide
Gran. U. S. P. & C. P.	Magnesium Carbonate Heavy
Iron Sulphate Ferrous	Magnesium Chloride
Dried U. S. P.	Magnesium Citrate Soluble
Iron & Ammonium Citrate	Magnesium Nitrate C. P. & Reagent
Brown Scales & Pearls	Magnesium Oxide Heavy
Iron & Ammonium Citrate	Magnesium Phosphate Di & Tribasic
Green Scales & Pearls	Magnesium Salicylate
Iron & Ammonium Oxalate	Magnesium Sulphate Dried
Iron & Ammonium Sulphate, Ferric	Magnesium & Sulphate Reagent
Iron & Ammonium Sulphate, Ferrous	Magnesium & Ammonium Phosphate
Iron & Potassium Oxalate	Manganese Carbonate
Iron & Potassium Tartrate	Manganese Chloride
Iron & Quinine Citrate	Manganese Citrate Soluble
Iron & Quinine Citrate Scales & Pearls	Manganese Hypophosphite
Iron & Sodium Oxalate	
Lead Acetate Reagent	

Manganese Sulphate Crystals	Potassa Sulphurated
Mercurial Ointments U. S. P.	Potassium Acetate
Mercury Redistilled U. S. P., C. P. & Reagent	Potassium Acid Phthate
Mercury Acetates	Potassium Arsenate Monobasic
Mercury Ammoniated	Potassium Arsenite Powder & Solution
Mercury Bisulphate	Potassium Bisulphate
Mercury Bromide	Potassium Carbonate U. S. P.
Mercury Cyanide	Potassium Chromate Yellow C. P. & Reagent
Mercury Iodides	Potassium Citrate
Mercury Mass U. S. P.	Potassium Dichromate C. P. & Reagent
Mercury Nitrates	Potassium Iodate
Mercury Oleate (25%)	Potassium Iodide
Mercury Oxides	Potassium Nitrate Reagent
Mercury Salicylate	Potassium Oxalate Reagent
Mercury Succinimide	Potassium Phosphate mono and dibasic
Mercury Sulphide Black	Potassium Sulphocyanate C. P. & Reagent
Mercury Sulphocyanate	Quinhydrone
Mercury with Chalk U. S. P.	Sodium Arsenate
Methyl Iodide	Sodium Arsenite
Methylene Iodide	Sodium Bisulphate
Methyl Salicylate	Sodium Carbonate Anhydrous Pure & C. P.
Morphine & Salts	Sodium Chromate Dried
Narceine & Salts	Sodium Citrates
Narcotine & Salts	Sodium Formate
Nickel Chloride C. P.	Sodium Hydroxide with Lime
Oil Ethereal N. F.	Sodium Iodate
Opium Alkaloids	Sodium Iodide
Opium Medicinal	Sodium Malate
Opium Extract N. F. V.	
Papaverine & Salts	
Peroxoids	
Phenobarbital	
Phenobarbital Sodium	
Phenylhydrazine Hydrochloride	
Pilocarpine Salicylate	
Platinic Chloride Solution	

Sodium Nitrate Reagent	Strontium Nitrate C. P.
Sodium Nitrite U. S. P.	Strontium Salicylate
Sodium Oleate Acid Mass	Stypticin & Tablets
Sodium Phosphate Dibasic Anhydrous Reagent	Sulphur Iodide
Sodium Phosphate Dibasic large crystals	Tannaform
Sodium Phosphate Monobasic	Thebain & Salts
Sodium Pyrophosphate	Theobromine Salicylate True Salt
Sodium Stearate	Theobromine Sodium Acetate
Sodium Succinate	Theobromine Sodium Salicylate
Sodium Sulphate U. S. P., C. P. & Reagent	Thiosinamine
Sodium Sulphate Anhydrous Pure, C. P. & Reagent	Thymol Iodide
Sodium Sulphide Pure, C. P. & Reagent	Tin Metal—granular
Sodium Sulphocarbonate	Tin Chloride (ous) C. P. Reagent
Sodium Sulphocyanate	Tincture Ferric Chloride
Sodium Tetraiodophenolphthalein	Tincture Ferric Chloride
Sodium Tungstate Reagent	Tincture of Iodine
Sodium & Ammonium Phosphate	Traumaticin
Spirit Ether Compound	Tropococaine Hydrochloride
Starch Iodized	Tropococaine Hydrochloride Solution in Ampules
Starch Soluble	Veronal Powder & Tablets
Strontium Acetate	Zinc Metal Mossy, Shot & Sticks
Strontium Chloride	Zinc Bromide
Strontium Iodide	Zinc Iodide
Strontium Lactate	Zinc Nitrate
	Zinc Stearate
	Zinc Sulphocarbonate

## EXHIBIT B

## LICENSE

LICENSE, granted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by MERCK & CO., INC., a corporation organized and existing under the laws of the State of New Jersey, and having a place of business at Rahway, New Jersey (hereinafter referred to as LICENSOR), to \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and having a place of business at \_\_\_\_\_ (hereinafter referred to as LICENSEE).

WHEREAS, LICENSOR is the owner of record of the entire right, title and interest in and to the following United States Patent(s) : Patent No. \_\_\_\_\_. Date Granted \_\_\_\_\_. Inventor \_\_\_\_\_. Title hereinafter referred to as the Patent(s) ;

WHEREAS, LICENSOR is required, by the terms of the decree in the case of *United States v. Merck & Co., Inc., et al* (No. 3159), entered October \_\_\_\_\_, 1945, in the District Court of the United States for the District of New Jersey, to issue to any applicant making written request therefor, a royalty-free, nonexclusive license under said Patent(s) in accordance with the terms of said decree;

WHEREAS, LICENSEE desires a royalty-free, non-exclusive license under said Patent(s) in accordance with the terms of said decree and has made written request therefor.

NOW, THEREFORE, pursuant to said decree and the foregoing:

1. LICENSOR grants to LICENSEE a nonexclusive License under said Patent(s), including all continuances, renewals, reissues, or extensions thereof, without royalty or charge of any kind therefor, and without any condition or restriction whatsoever, to make, use, and sell the inventions claimed in said Patent(s), for the life of said Patent(s) respectively.

2. LICENSOR also grants to LICENSEE, to the extent that LICENSOR has or acquires the power to do so, a grant of immunity under foreign patents corresponding to the United States Letters Patent licensed hereunder to import into, and to sell and to use, and to have imported into, sold or used, in any country any products made under this License in the United States.

3. This License is granted without any implied covenants, warranties, representations, licenses, or immunities of any kind on the part of the LICENSOR and without any admission on the part of the LICENSEE as to the enforceability, validity or scope of, or the title to, any of said Patent(s) herein licensed.

IN WITNESS WHEREOF, the LICENSOR has executed this License as of the day and year first above written, and the LICENSEE has accepted the same as indicated hereon.

MERCK & Co., INC.,

By \_\_\_\_\_

By \_\_\_\_\_

Attest:

Attest:

### EXHIBIT C

#### SUBDIVISION 1

#### UNITED STATES LETTERS PATENT OF MERCK & CO., INC.

Patent number	Patent number	Patent number	Patent number
2,021,872	2,135,521	2,189,810	2,248,155
2,044,800	2,153,591	2,192,204	2,252,709
2,044,801	2,155,446	2,198,628	2,261,608
2,049,442	2,157,137	2,205,448	2,267,313
2,072,913	2,158,091	2,207,768	2,272,193
2,088,590	2,158,098	2,209,769	2,287,042
2,089,197	2,162,737	2,216,574	2,287,847
2,103,272	2,163,594	2,224,174	2,296,709
2,104,726	2,163,643	2,224,865	2,306,093
2,104,738	2,164,316	2,226,528	2,306,765
2,104,753	2,168,379	2,228,262	2,307,084
2,118,054	2,176,113	2,232,699	2,372,690
2,123,217	2,176,894	2,232,712	2,376,984
2,126,731	2,184,964	2,247,364	Application SN380,668
2,133,999	2,185,237	2,248,078	

#### SUBDIVISION 2

Upon the expiration of one year and five days from the date of the entry of this decree in the Office of the Clerk of the District Court of the United States for the District of New Jersey, United States Letters Patent Number 2,333,535 shall be deemed to be listed in Subdivision 1 of this Exhibit C.

#### SUBDIVISION 3

#### ABANDONED APPLICATIONS FOR UNITED STATES LETTERS PATENT OF MERCK & CO., INC.

Serial number	Date filed	Inventors
6,482	Feb. 14, 1935	Engels Weijlard.
24,908	June 4, 1935	Wallis Fernholz.
30,149	July 6, 1935	Wallis Fernholz.
34,249	Aug. 1, 1935	Wallis Fernholz.
44,469	Oct. 10, 1935	Fernholz.
52,274	Nov. 29, 1935	Stevens Zellner.
96,650	Aug. 13, 1936	Stevens Jackson Engels.
98,404	Aug. 28, 1936	Engels Schnellbach.
113,107	Nov. 28, 1936	Cook.
116,645	Dec. 18, 1936	Engels Stevens.
146,590	June 5, 1937	Bliss Moran.
154,282	July 17, 1937	Jackson.
154,754	July 21, 1937	Weijlard Folkers.
154,755	July 21, 1937	Folkers Major.
155,010	July 22, 1937	Major Folkers.
161,762	Aug. 31, 1937	Major.
164,876	Sept. 21, 1937	Major Zellner.
173,529	Nov. 8, 1937	Engels Weijlard.
180,142	Dec. 16, 1937	Major Jackson.
180,143	Dec. 16, 1937	Folkers.
218,168	July 8, 1938	Burnham Engles Lauer.
228,402	Sept. 3, 1938	Stiller.
233,412	Oct. 5, 1938	Folkers Major.
247,478	Dec. 23, 1938	Keresztesy Stevens.
247,480	Dec. 23, 1938	Keresztesy Stevens.
267,601	Apr. 13, 1939	Harris.
267,602	Apr. 13, 1939	Harris.
267,603	Apr. 13, 1939	Harris.
267,618	Apr. 13, 1939	Stiller.
320,634	Feb. 24, 1940	Van de Kamp Miller.
320,636	Feb. 24, 1940	Tishler Wellman.
322,804	Mar. 7, 1940	Stiller Keresztesy Finkelstein.
327,993	Apr. 5, 1940	Tishler.

Upon the revival or renewal of any application for a patent listed in this subdivision 3 by, or on behalf of, defendant Merck & Co., Inc., such application shall be deemed to be listed in subdivision 1 of this Exhibit C.

## EXHIBIT D

## SUBDIVISION 1

The following United States Letters Patent and active applications for United States Letters Patent have been vested in the Alien Property Custodian by Vesting Orders Nos. 68, 661, 1249, and 5251.

Patent number	Patent number	Patent number	Patent number
1,894,162	2,145,249	2,190,167	2,245,147
1,935,529	2,145,907	2,190,377	2,259,925
1,941,647	2,149,279	2,212,531	2,259,936
2,078,237	2,160,867	2,212,532	2,274,449
2,085,009	2,163,629	2,221,828	2,289,761
2,086,562	2,170,127	2,229,573	2,296,677
2,094,000	2,176,063	2,229,574	2,343,773
2,098,954	2,182,791	2,230,659	2,345,605
2,114,306	2,182,792	2,235,638	2,354,317
2,119,527	2,183,553	2,235,661	2,358,286
2,127,547	2,189,778	2,235,862	2,358,287
2,133,977	2,189,830	2,235,884	2,359,311
			2,370,015
			Applications
			SN 331,454
			346,569
			377,673

## SUBDIVISION 2

The following abandoned applications for United States Letters Patent have been vested in the Alien Property Custodian by Vesting Orders Nos. 68 and 5251.

Serial number	Date filed	Inventors
49,822	Nov. 14, 1935	Dalmer, Diehl & Pieper.
171,480	Oct. 28, 1937	Dalmer, Diehl & Pieper.
227,388	Aug. 29, 1938	Thiele.
256,387	Feb. 14, 1939	Rapp & Russow.
266,140	Apr. 5, 1939	Von Werder.
304,389	Nov. 14, 1939	Von Werder.
308,827	Dec. 12, 1939	John.
344,564	July 9, 1940	Zima & Jung.
346,568	July 20, 1940	Zima & Jung.
373,603	Jan. 8, 1941	Von Werder.
375,363	Jan. 21, 1941	Ritsert.
387,542	Apr. 8, 1941	Zima.
403,046	July 18, 1941	Von Keussler.

[SEAL]

## EXHIBIT E

## OFFICE OF ALIEN PROPERTY CUSTODIAN

## WASHINGTON

## PATENT LICENSE

Number\_\_\_\_\_

The ALIEN PROPERTY CUSTODIAN, Licensor, acting under the authority of the President of the United States, pursuant to the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, HEREBY GRANTS TO \_\_\_\_\_, Licensee, THIS LICENSE, effective from the date hereof, to make, and sell each of the inventions covered by the \_\_\_\_\_ ( ) vested United States (Number of items) patents and/or applications for United States patents listed in Schedule A and under the "Terms and Conditions," both appended hereto and made a part hereof.

Signed at Washington, District of Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 194\_\_\_\_\_.

JAMES E. MARKHAM,

ALIEN PROPERTY CUSTODIAN, LICENSOR.

By \_\_\_\_\_,

Chief, Division of Patent Administration.

\_\_\_\_\_, Chief, Licensing Section.

## TERMS AND CONDITIONS

SECTION 1. *Extent of Grant.*—This license is royalty-free, nonexclusive and nontransferable. It does not confer on the Licensee any right to grant sublicenses and cannot be pledged or encumbered except with the written consent of the Custodian. Each patent, patent application, and patent issuing upon such patent application (all hereinafter referred to by the word "patent") hereby licensed

has been vested as the property of a national of a designated enemy country and is licensed for the remaining life of the patent beginning with the effective date of this license, unless this license is earlier terminated either in its entirety or as to any specific patent listed in Schedule A, as herein provided.

SECTION 2. *Inventions of Licensee.*—This license does not confer upon the Custodian any rights to or under any invention or patent of the Licensee, past, present, or future.

SECTION 3. *Title and Defenses.*—(a) The Custodian will defend to the full extent of his legal power his authority to issue this license, to vest the licensed patents, and to cut off the rights of the former enemy owners, in any litigation brought against the Licensee, or arising under this license, where the title or authority of the Alien Property Custodian is drawn into question.

The patents covered by this license were vested by the Custodian in the interest of and for the benefit of the United States, and this license is granted by the Custodian, under the direction of the President, in the interest of and for the benefit of the United States under the authority of and in furtherance of the purposes of § 5 (b) of the Trading with the Enemy Act, as amended [§ 301, First War Powers Act, 1941; 50 U. S. Code, App., § 5 (b)]. This license shall be deemed to be an "instruction or direction" that the licensed patent may be used as provided herein, within the meaning of that portion of § 5 (b) which provides that

no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

The Licensee shall promptly notify the Custodian in writing of any claim or demand made upon, or suit threatened or brought against, the Licensee, which is in any way related to this license.

(b) In any suit or proceeding brought against the Licensee by a former enemy owner of a licensed patent, the Licensee may make any and all defenses which would be available had this license not been granted.

(c) This license is not a warranty that the manufacture, use, or sale of any licensed invention does not infringe valid patents or persons not party hereto.

(d) This license does not confer upon the Licensee any license, implied or otherwise, under any unexpired patent not included in Schedule A, regardless of the ownership of such patent.

SECTION 4. *Reports.*—The Licensee shall keep a record of and shall report to the Custodian the character and extent of his utilization of each licensed patent, including the kind and quantity of products (if any) made, used, or sold under such licensed patent. If there has been no manufacture, use, or sale, such reports shall set forth the manner in which and extent to which this license has been or in the Licensee's opinion will be useful to the Licensee. The Custodian, upon request in writing by the Licensee and upon a showing that reports under individual patents are not feasible, may authorize the Licensee to make group reports with respect to such patents as cannot feasibly be reported individually. Unless otherwise directed by the Custodian such reports shall be made for the calendar year and submitted not later than January 31st of the following year. Where governmental war secrecy provisions prevent the making of reports required by this section, the Custodian may direct that such reports be submitted after the war.

SECTION 5. *Limitations on Use.*—No licensed patent shall be used in furtherance of any unlawful cartel or combination or in any other way which is contrary to the laws of the United States.

SECTION 6. *Termination.*<sup>1</sup>—(a) The Custodian reserves

<sup>1</sup> Subject to the terms and provisions of the judgment entered October 6, 1945 in the District Court of the United States for the District of New Jersey in Civil Action No. 3159, entitled *United States of America and Alien Property Custodian v. Merck & Co., Inc. et al.*

the power to take such action as the national interest requires, including suspension or cancellation of this license if he determines it to be necessary. The Custodian will not cancel this license except after notice and opportunity for hearing.

(b) If an interest in a licensed patent adverse to that of the Custodian shall be established the Custodian may at his option terminate or renegotiate this license after notice to the Licensee.

(c) This license may be surrendered by the Licensee either in its entirety, or as to any patent listed in Schedule A, by returning it to the Custodian with written request for such cancellation or modification.

(d) Termination of this license under par. (a), (b), or (c) of this section shall not relieve the Licensee from making reports as required by Section 4, up to the date of termination.

SECTION 7. *Notice.*—Any notice in writing required hereby in connection with this license shall be given to the Custodian at Washington, D. C., and to the Licensee at the address shown upon this license unless a change of such address has been noted upon the records of the Custodian at the request of the Licensee. Notice of hearing, or of termination, or requests by the Licensee for cancellation or modification shall be sent by registered mail.

Licensee\_\_\_\_\_ License No.\_\_\_\_\_

#### SCHEDULE A

Patent No. or serial no.	Inventor and title of invention	Issue date or filing date	Vesting order No.
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