

A G R E E M E N T made January 1, 1970

between

MERCK & CO., INC. of Rahway, New Jersey, USA

and

E. MERCK of Darmstadt, Germany.

Definitions:

- 1.) a) "Merck & Co." as used herein shall mean Merck & Co., Inc. and its subsidiaries and affiliates.
- b) "E. Merck" shall mean E. Merck an "offene Handelsgesellschaft" according to German Law and its subsidiaries and affiliates.
- c) "Subsidiaries" and "affiliates" include any corporation, company, firm or individual subject to the control of one of the parties including particularly Merck & Co. Limited, Montreal, in the case of Merck & Co.
- d) "Germany" as used herein means the territory of the Federal Republic of Germany, of Berlin and of the German Democratic Republic to include such other territories as may belong to any of the above or to a future reunited Germany at the effective date of their political union. Such other territories shall include only these which belonged to Germany in 1935.
- e) "The United States" as used herein means the United States and all its present territories, possessions and dependencies, including but not limited to Puerto Rico, Panama Canal Zone and Virgin Islands.

- f) "All other countries" as used herein means all countries of the world other than the United States, Canada, Germany, Cuba and the Philippines.

United States and Canada:

- 2.) a) Merck & Co. will not object to the use of the name E. Merck in the United States and Canada by E. Merck as all or part of a firm-name or corporate name provided such names are geographically identified with Germany as follows: "E. Merck, Darmstadt, Germany" all words being given equal prominence.
- b) E. Merck recognizes the exclusive right of Merck & Co. to the use of the trademark Merck in the United States and Canada and in such countries will not use or attempt to acquire rights in any trademark containing Merck.

Germany:

- 3.) a) E. Merck will not object to the use in Germany by Merck & Co. of
- (i) Merck & Co., Inc. or Merck & Co. Limited as all or part of a firm name or corporate name provided such names are geographically identified with the United States or Canada as follows: "Merck & Co., Inc., Rahway, N.J., U.S.A.", and "Merck & Co. Limited, Montreal, Canada", all words being given equal prominence.

(ii) "Merck Sharp & Dohme" as all or part of a firm name, corporate name or name of a corporate subdivision, provided such names are geographically identified with a country other than Germany, all words being given equal prominence.

b) Merck & Co. recognizes the exclusive right of E. Merck to the use of the trademark Merck in Germany and in such country will not use or attempt to acquire rights in any trademark containing Merck.

All other countries:

4.) In all other countries E. Merck recognizes that "Merck Sharp & Dohme" as a trademark or name is not confusingly similar to any of the trademarks or names used or owned by E. Merck and E. Merck will not object to Merck & Co.'s use and registration of Merck Sharp & Dohme as all or part of a trademark, tradename or corporate name. When requested E. Merck shall so state in writing. The embellishments of design of such trademarks shall not imitate marks owned by E. Merck.

5.) In all other countries E. Merck will not object to the use by Merck & Co. as all or part of a firm-name or corporate name of "Merck & Co., Inc." used in association with words such as "Rahway, N.J., U.S.A." which identify it geographically with the United States or "Merck & Co. Limited" used in association with words such as "Montreal Canada" which identify it with Canada, all words being given equal prominence.

- 6.) In all other countries Merck & Co. recognizes that E. Merck is entitled to use the word "Merck" or combinations such as "E. Merck" as a trademark or name provided that any such marks or names adopted in the future shall not be confusingly similar to marks or names adopted or used by Merck & Co. under Paragraphs 4 and 5 above. When requested Merck & Co. shall so state in writing.
- 7.) In all other countries Merck & Co. has undertaken to cancel all existing registrations, withdraw all applications and discontinue all use of the trademarks "Merck", "Merck Cross" and "MerckMerckMerck".
- 8.) In all other countries Merck & Co. has undertaken to discontinue all use of the following corporate names:
Merck (Pan America) Inc.
Industrias Pharmaceuticas Merck (Norte Americana) S.A.
Merck & Co. (Great Britain) Ltd.
- 9.) It is understood that the requirements of paragraph 8 hereof will be fulfilled wherever the words "Merck Sharp & Dohme" are substituted for the word "Merck".
- 10.) Cuba and the Philippines.
Merck & Co. and E. Merck each recognize the concurrent right of the other to the unrestricted use of Merck as a tradename and as a trademark in Cuba and the Philippines; each will take appropriate steps to distinguish its goods from those of the other and avoid confusion.

- 11.) Merck & Co. and E. Merck will cooperate in the prompt termination of all litigation now pending between them involving trademarks or tradenames containing Merck. Each party will defray all expenses previously incurred to include such expenses as have already been paid or are still to be paid in compliance with a court decree already issued.
- 12.) It is understood that Merck & Co. had submitted the original agreement of September 12, 1955 - which is herewith replaced by this new agreement - to the United States Department of Justice for review and with the concurrence of the Department obtained an appropriate court order that Merck & Co. is authorized to execute and carry out the original agreement. This new agreement, which provides for formalistic amendments caused by a change of the company name of the German party, has been submitted to the United States Department of Justice for review. The Department has agreed that since the changes are formal only, they do not require approval by the Court.

Merck & Co., Inc.

By Fred Bartenstein
Fred Bartenstein
Administrative Vice President

E. Merck

By Walter Bartling Emig
Dr. Bartling Emig

B
Dr. W. A. Schmidt
EN Subs 27.1. d

MERCK & CO., INC.
Rahway, New Jersey
07065

November 24, 1975

E. Merck
Postfach 4119
61 Darmstadt, Germany

Re: Trademark and Trade Name Agreement of
January 1, 1970 Between Merck & Co., Inc.
and E. Merck

Gentlemen:

The above agreement presents some minor problems of a practical nature which relate primarily to matters of interpretation of some of its provisions. In his letter dated October 15, 1973 Dr. Bartling has made some suggestions for resolving these matters. These suggestions have been considered by us. As a consequence we propose that we mutually agree as follows:

1. Stationery

Merck & Co., Inc. and E. Merck, including their domestic subsidiaries and affiliates, may use their domestic stationery in foreign correspondence emanating from the United States and the Federal Republic of Germany, respectively.

2. Visiting Cards

Domestic Representatives of Merck & Co., Inc. and of E. Merck, including representatives of domestic subsidiaries and affiliates, who are traveling abroad may use their domestic visiting cards in the countries of travel.

3. Interpretation of the Phrase "All Words Being Given Equal Prominence" in the January 1, 1970 Agreement

The phrase "all words being given equal prominence" as used in paragraphs 2a, 3a(i), 3a(ii) and 5 of the January 1, 1970 Agreement does not require that the

November 24, 1975

firm name or corporate name and the geographic identification be in lettering of the same size but does require that the geographic identification associated with the firm name or corporate name be in close proximity thereto and in letter size which is readily legible and in reasonable proportion to the letter size of the firm name or corporate name.

4. Format

MSD
MERCK SHARP & DOHME

Merck & Co., Inc. will not use the above format in the Federal Republic of Germany, (including West Berlin), except as provided in paragraphs 1 and 2 of this Agreement, and except with respect to stationery used in correspondence which emanates from outside of the Federal Republic of Germany and except for visiting cards of representatives of Merck & Co., Inc., its subsidiaries and affiliates, traveling in the Federal Republic of Germany from abroad. E. Merck does not object to the use of the above format in any other country of the world.

5. Journal Advertising

Merck & Co., Inc. and E. Merck, including their subsidiaries and affiliates, will not object in any country to the use by the other of the term MERCK as a trademark in advertisements appearing in journals which emanate from countries where the respective company has the right to use the trademark MERCK.

The comments of Dr. Bartling concerning The Merck Index and The Merck Manual of Diagnosis and Therapy in his October 15, 1973 letter have been noted. However, we make no commitments with respect to the comments at this time.

If the above Agreement is acceptable please indicate your acceptance, as shown, on the copy and return it to use for our files.

Very truly yours,

MERCK & CO., Inc.

Anthony R. DeSimone
Anthony R. DeSimone

Accepted Nov. 24, 1975

E. Merck

ppa.

Dr. Bartling
Dr. Bartling

ppa.

Dr. Gams
Dr. Gams