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SAMUEL C. BUTLER
THOMAS D. BARR

OF COUNSEL
ROBERT ROSENMAN
CHRISTINE BESHAR

CONFIDENTIAL TREATMENT REQUESTED

April 27, 2004

Carboplatin

Dear Mr. Clark:

On April 12, 2004, pursuant to Section XII, subsection (2) of the Decision and Order dated April 14, 2003 and 16 C.F.R. § 1.2, Bristol-Myers Squibb Company ("BMS") requested that the FTC issue an advisory opinion finding that an agreement with Teva Pharmaceuticals USA, Inc. ("Teva") did not raise issues under Section 5 of the Federal Trade Commission Act. BMS submits the enclosed documents to aid the FTC's evaluation of this request:

1. Distribution and Supply Agreement Between BMS and Teva and attached Schedules (April 26, 2004) ("Distribution and Supply Agreement");

2. Settlement Agreement between BMS, Pharmachemie B.V., and Research Corporations Technologies, Inc. and attached Exhibit (April 26, 2004) ("Settlement Agreement"); and

3. Stipulation of the Parties to Dismiss Appeal and Proposed Order, Bristol-Myers Squibb Company and Research Corporation Technologies, Inc. v. Pharmachemie B.V., Appeal No. 03-1077 (April 27, 2004).

The Distribution and Supply Agreement is the definitive agreement contemplated by the agreement between BMS and Teva, dated April 8, 2004, provided as

part of our initial submission. The Settlement Agreement resolves the ANDA patent litigation concerning the drug carboplatin and U.S. Patent No. 4,657,927. The Stipulation of the Parties to Dismiss Appeal and Proposed Order was filed with the Court of Appeals for the Federal Circuit earlier today.

Confidential treatment of this letter and the enclosed materials is respectfully requested pursuant to 15 U.S.C.A. § 57b-2(c) and 16 C.F.R. § 4.10(a)(2) and (e).

Thank you in advance for your consideration and assistance. If you have any questions, please do not hesitate to call me at the number above.

Respectfully,

Richard J. Stark

Donald Clark, Secretary
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

BY FEDERAL EXPRESS

Copy to:

Anne Schenof, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

BY FEDERAL EXPRESS

Attachment Number 1

REDACTED

SETTLEMENT AGREEMENT

This Settlement Agreement and Release ("Settlement Agreement") dated and effective as of April 26, 2004, is entered into by and among Research Corporation Technologies, Inc. ("RCT") and Bristol-Myers Squibb Company ("BMS") (collectively, "Plaintiffs"), and Pharmachemie B.V. ("Pharmachemie" or "Defendant").

Witnesseth:

WHEREAS, Pharmachemie filed an Abbreviated New Drug Application ("ANDA"), ANDA No. 76-162, for approval to market generic powder for injection products containing carboplatin, with a paragraph IV certification that U.S. Patent No. 4,657,927 ("the '927 patent") was invalid, unenforceable or not infringed;

WHEREAS, RCT is the assignee of the '927 patent and BMS is the exclusive licensee of the '927 patent;

WHEREAS, RCT and BMS filed suit in the District of New Jersey, Civil Action No. 01-CV-3751 (MLC), under 35 U.S.C. § 271(e)(2) against Pharmachemie for infringement of the '927 patent;

WHEREAS, Pharmachemie filed a second ANDA, ANDA No. 76-292, seeking approval to market premixed solution products containing carboplatin, with a paragraph IV certification that the '927 patent was invalid, unenforceable or not infringed;

WHEREAS, BMS and RCT filed a second infringement action in the District of New Jersey, Civil Action No. 02-CV-1270 (MLC), based on ANDA 76-292;

WHEREAS, a Joint Stipulation and Order consolidating the two cases was entered by the District Court on April 22, 2002 (the consolidated cases referred to hereinafter as "the Litigation");

WHEREAS, Pharmachemie answered and counterclaimed in the Litigation for a declaratory judgment that the '927 patent was invalid on the grounds of obviousness-type double patenting based on the claims of U.S. Patent No. 4,140,707 ("the '707 patent") in light of the prior art;

WHEREAS, Pharmachemie filed a motion for partial summary judgment seeking a pretrial ruling that the bar of the third sentence of 35 U.S.C. § 121 did not apply to prevent use of the '707 patent in an obviousness-type double patenting challenge to the '927 patent and the Plaintiffs filed a cross-motion for summary judgment on this § 121 issue;

WHEREAS, on July 29, 2002, the District Court issued a written opinion granting BMS and RCT's motion for summary judgment and holding that § 121 barred use of the '707 patent as the basis for an obviousness-type double patenting invalidity challenge;

WHEREAS, Pharmachemie amended its answer to admit infringement of at least one claim of the '927 patent, if it were valid, and to waive the defense of inequitable conduct and all other invalidity defenses it had previously asserted, in order to establish its right to appeal from a final judgment and the District Court entered final judgment on October 28, 2002, in favor of Plaintiffs;

WHEREAS, on October 28, 2002, the District Court entered Final Judgment in favor of BMS and RCT that the '927 patent was not invalid, and that Pharmachemie would infringe at least one claim of the '927 patent, and an injunction prohibiting Pharmachemie from marketing any product pursuant to ANDAs 76-162 and 76-292 before the expiration of the '927 patent and any other exclusivity granted by the Food and Drug Administration ("FDA");

WHEREAS, on November 26, 2002, Pharmachemie filed an appeal in the United States Court of Appeals for the Federal Circuit from the District Court's final judgment ("the

Appeal") and on March 17, 2004, the Court of Appeals issued an opinion vacating that final judgment and remanding the Litigation to the District Court for further proceedings;

WHEREAS, Pharmachemie moved on March 19, 2004, to expedite issuance of the mandate and, before the Court of Appeals issued the mandate, the Plaintiffs filed on March 29, 2004, a petition for rehearing *en banc* ("the Petition for Rehearing");

WHEREAS, on April 6, 2004, the Court of Appeals denied Pharmachemie's motion to expedite issuance of the mandate;

WHEREAS, on April 9, 2004, the parties submitted a letter to the Court of Appeals informing the Court of Appeals that they had reached an agreement in principle to settle the matter;

WHEREAS, on April 21, 2004, the Court of Appeals denied the Petition for Rehearing;

WHEREAS, Pharmachemie acknowledges that BMS is entitled to a period of pediatric exclusivity with respect to Paraplatin® if and when granted by the FDA pursuant to 21 U.S.C. § 355a;

WHEREAS, the Plaintiffs and Defendant desire to avoid further expense and resolve all matters and issues in controversy between them, all without any admission by or on the part of any party of any liability of any nature whatsoever to any other party;

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed by and among the parties to this Settlement Agreement as follows:

1. Dismissal of Litigation. As soon as practicable following the execution of this Settlement Agreement, the parties will file in the United States Court of Appeals for the Federal Circuit a stipulation of dismissal and proposed order, in the form attached as Exhibit A, specifying that each party shall bear its own costs. The parties agree to file promptly any additional papers necessary or appropriate to effectuate the dismissal of the Litigation.

2. Release of and Covenant not to Sue Plaintiffs. In consideration of mutual releases, licenses, covenants, agreements and/or other good and valuable consideration, the receipt of which is hereby acknowledged, Pharmachemie, including its administrators, successors, assigns, officers, directors, employees, trustees, parents, subsidiaries and affiliates (all of the foregoing being referred to in this paragraph as "Pharmachemie Releasors") release, acquit and forever discharge, and covenant not to bring any action, suit and/or proceedings against BMS and RCT, including their administrators, successors, assigns, officers, directors, employees, attorneys, trustees, parents, subsidiaries and affiliates (all of the foregoing referred to in this paragraph as "BMS and RCT Releasees") from and for all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages and any and all claims, defenses, offsets, judgments, demands and liabilities whatsoever, of every name and nature, both at law and in equity, known or unknown, suspected or unsuspected, accrued or unaccrued, which have been asserted in the Litigation, and/or which arise out of the prosecution or defense of the Litigation, and/or other allegedly anticompetitive, unfair, wrongful, deceptive, fraudulent or tortious acts by the BMS and RCT Releasees relating to the '927 patent and/or any pediatric exclusivity with respect to Paraplatin®, provided, however, that nothing contained herein is intended to or shall release the BMS and RCT Releasees from any and all obligations

set forth in this Agreement and the Distribution and Supply Agreement between BMS and Teva Pharmaceuticals USA, Inc. (the "Distribution and Supply Agreement").

3. Release of and Covenant not to Sue Defendant. In consideration of mutual releases, licenses, covenants, agreements and/or other good and valuable consideration, the receipt of which is hereby acknowledged, BMS and RCT, including their respective administrators, successors, assigns, officers, directors, employees, trustees, parents, subsidiaries and affiliates (all of the foregoing being referred to in this paragraph as "BMS and RCT Releasors") release, acquit and forever discharge, and covenant not to bring any action, suit and/or proceeding against Pharmachemie, including its administrators, successors, assigns, officers, directors, employees, attorneys, trustees, parents, subsidiaries and affiliates (all of the foregoing referred to in this paragraph as "Pharmachemie Releasees") from and for all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages and any and all claims, defenses, offsets, judgments, demands and liabilities whatsoever, of every name and nature, both at law and in equity, known or unknown, suspected or unsuspected, accrued or unaccrued, which have been asserted in the Litigation, and/or which arise out of the prosecution or defense of the Litigation, and/or which are based on any infringement or alleged infringement of any patent owned, licensed or assigned by or to the BMS and/or RCT Releasors for manufacturing, using, purchasing, offering for sale, selling, importing and/or distributing any pharmaceutical product containing carboplatin as its active ingredient, provided, however, that nothing contained herein is intended to or shall release the Pharmachemie Releasees from any and all obligations set forth in this Agreement and the Distribution and Supply Agreement. BMS and RCT do not waive any legal challenge in the

event the FDA grants final approval of either or both of ANDAs 76-162 and 76-292 before October 15, 2004.

4. Covenant Not to Challenge Pediatric Exclusivity. The Pharmachemie Releasors, as defined in paragraph 2, agree that they shall not institute, encourage, support, sponsor or participate in any legal action directly or indirectly against the FDA or any other entity to obtain final approval of either or both ANDA 76-162 and 76-292 before the expiration of any exclusivity granted to BMS by the FDA pursuant to 21 U.S.C. § 355a.

5. No Admission of Liability. This Settlement Agreement does not contain or constitute any admission, concession or agreement by any party concerning the merits of any issues raised in the Litigation, Appeal, or Petition for Rehearing. This Settlement Agreement shall not be construed as constituting or containing any such admission, concession or agreement.

6. Representations. Each of the parties hereto represents, acknowledges and warrants (i) that it fully understands its right to discuss any and all aspects of this Settlement Agreement with legal counsel of its own choosing; and to the extent, if any, that any party desires, it has availed itself of this right; (ii) that it has carefully read and fully understands all of the provisions of this Settlement Agreement; (iii) that it voluntarily enters into this Settlement Agreement; (iv) that it has the capacity to enter into this Settlement Agreement, and (v) that its signatory hereto has the authority to bind it to the obligations and benefits of this Settlement Agreement.

7. No Prior Representation. Each of the parties hereto represents, acknowledges and warrants that in executing this Settlement Agreement it does not rely and has not relied upon any

representation or statement not set forth herein with regard to the subject matter, basis, or effect of this Settlement Agreement or otherwise.

8. Entire Agreement. This Settlement Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all prior negotiations, understandings and agreements are incorporated herein. This Settlement Agreement may not be modified, changed, amended, supplemented or rescinded except pursuant to a written instrument signed by the party against whom the enforcement of the modification, change, amendment, supplementation or rescission is sought.

9. Regulatory Review. Each party, within ten (10) days of the execution of this Settlement Agreement, shall comply with the requirements of Title XI, Subtitle B of the Access to Affordable Pharmaceuticals Act (the Medicare Prescription Drug Improvement Act of 2003, Pub. L. 108-173) (the "Act"), by filing a copy of this Settlement Agreement with the Federal Trade Commission (the "FTC") and the Antitrust Division of the Department of Justice ("DOJ"). BMS will make the following submissions and notices as soon as practicable and in any event no later than ten (10) days following the execution of this Settlement Agreement: (a) submission of this Settlement Agreement to the FTC in connection with the request for advisory opinion required by the April 14, 2003 Decision and Order in Federal Trade Commission Docket No. C-4076 (the "FTC Order"), (b) submission of this Settlement Agreement in connection with the notification required by the May 14, 2003 Order and Stipulated Injunction in *Ohio v. Bristol-Myers Squibb Co.*, No. 1:02-CV-01080 (EGS) (D.D.C.), and (c) submission of this Settlement Agreement in connection with the notification required by the November 14, 2003 Revised Order and Stipulated Injunction in *In re Buspirone Antitrust Litigation*, No. 01 CV 11401 (S.D.N.Y.) (the parties to whom notice is provided under the these last two orders are referred to

herein as the "Attorneys General"). The parties shall use commercially reasonable efforts to coordinate such submissions and to respond promptly to any requests for additional information made by the FTC, the DOJ or the Attorneys General. If the FTC, DOJ or Attorneys General object to the Settlement Agreement, the parties shall use all commercially reasonable efforts to address such objection, provided that there shall be no material change to the rights and obligations of the parties under this Settlement Agreement.

10. Choice of Law. This Settlement Agreement shall be governed by, subject to, and construed in accordance with the laws of the state of New York without regard to its internal conflicts of law principles.

11. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which together shall constitute one and the same agreement.

12. Legal Fees and Costs. Each party shall bear its own legal fees and costs in connection with the Litigation, Appeal, Petition for Rehearing and this Settlement Agreement.

13. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, regardless of the outcome of the review by the Attorneys General initiated by BMS on April 14, 2004, and the request for an advisory opinion from the FTC made by BMS on April 12, 2004, with respect to the Distribution and Supply Agreement.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first above written.

Dated: April __, 2004

Research Corporation Technologies, Inc.

By:_____

Dated: April __, 2004

Bristol-Myers Squibb Company

By_____

Dated: April __, 2004

Pharmachemie B.V.

By:_____

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first above written.

Dated: April 26, 2004

Research Corporation Technologies, Inc.

By: _____

Dated: April __, 2004

Bristol-Myers Squibb Company

By _____

Dated: April __, 2004

Pharmachemie B.V.

By: _____

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first above written.

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By:_____

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Bristol-Myers Squibb Company

By:

Dated: April __, 2004

Pharmachemie B.V.

By:_____

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Research Corporation Technologies, Inc.

By:_____

Dated: April __, 2004

Bristol-Myers Squibb Company

By_____

Dated: April 26 2004

Pharmachemie B.V.

By:_____

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 03-1077

BRISTOL-MYERS SQUIBB COMPANY,

Plaintiff-Appellee,

and

RESEARCH CORPORATION TECHNOLOGIES, INC.,

Plaintiff-Appellee,

v.

PHARMACHEMIE B.V.,

Defendant-Appellant.

Appeal from the United States District Court for the District of New Jersey
in Case No. 01-CV-3751, Judge Mary L. Cooper

STIPULATION OF THE PARTIES TO DISMISS APPEAL

The parties, having settled and resolved all issues in the case, consent to dismissal of the appeal and the underlying action.

The parties agree to bear their own costs.

Dated: April __, 2004.

By: _____
David T. Pritikin
Constantine L. Trela, Jr.
Lisa A. Schneider
Marc A. Cavan
SIDLEY AUSTIN BROWN & WOOD LLP
10 South Dearborn Street
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Counsel for Research Corporation Technologies, Inc.

By: _____

Robert L. Baechtold
Fitzpatrick, Cella, Harper & Scinto
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2100
(212) 218-2200 (fax)

Counsel for Bristol-Myers Squibb Company

By:_____

Francis C. Lynch
Laurie S. Gill
PALMER & DODGE LLP
50 West State Street, Suite 1400
111 Huntington Avenue
P.O. Box 1298
Boston, MA 02199-7613
Counsel for Pharmachemie, B.V.

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

03-1077

BRISTOL-MYERS SQUIBB COMPANY,

Plaintiff-Appellee,

and

RESEARCH CORPORATION TECHNOLOGIES, INC.

Plaintiff-Appellee,

v.

PHARMACHEMIE B.V.,

Defendant-Appellant.

Appeal from the United States District Court for the District of New Jersey in Case No. 01-CV-3751, Judge Mary L. Cooper

---

[PROPOSED] ORDER

Pursuant to the Stipulation of the parties dated April __, 2004 and by Federal Rule of Appellate Procedure 42(b),

It is ORDERED that:

Appeal dismissed. This case is remanded to the district court with instructions to dismiss the case.

No costs.

For the Court

Date: _____ _____

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 03-1077

BRISTOL-MYERS SQUIBB COMPANY,

Plaintiff-Appellee,

and

RESEARCH CORPORATION TECHNOLOGIES, INC.,

Plaintiff-Appellee,

v.

PHARMACHEMIE B.V.,

Defendant-Appellant.

Appeal from the United States District Court for the District of New Jersey
in Case No. 01-CV-3751, Judge Mary L. Cooper

STIPULATION OF THE PARTIES TO DISMISS APPEAL

The parties, having settled and resolved all issues in the case, consent to dismissal of the appeal and the underlying action.

The parties agree to bear their own costs.

Dated: April 27, 2004.

By: David T. Pritikin
by Anne M. Maher

David T. Pritikin
Constantine L. Trela, Jr.
Lisa A. Schneider
Marc A. Cavan
SIDLEY AUSTIN BROWN & WOOD LLP
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Chicago, IL 60603
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(312) 853-7036 (fax)

Counsel for Research Corporation Technologies, Inc.

By: Robert L. Baechtold
by Anne M. Maher

Robert L. Baechtold
Fitzpatrick, Cella, Harper & Scinto
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2100
(212) 218-2200 (fax)

Counsel for Bristol-Myers Squibb Company

By: Francis C. Lynch
by Anne M. Maher

Francis C. Lynch
Laurie S. Gill
PALMER & DODGE LLP
50 West State Street, Suite 1400
111 Huntington Avenue
P.O. Box 1298
Boston, MA 02199-7613
Counsel for Pharmachemie, B.V.

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

03-1077

BRISTOL-MYERS SQUIBB COMPANY,

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v.

PHARMACHEMIE B.V.,

Defendant-Appellant.

Appeal from the United States District Court for the District of New Jersey in Case No. 01-CV-3751, Judge Mary L. Cooper

---

[PROPOSED] ORDER

Pursuant to the Stipulation of the parties dated April 27, 2004 and by Federal Rule of Appellate Procedure 42(b),

It is ORDERED that:

Appeal dismissed. This case is remanded to the district court with instructions to dismiss the case.

No costs.

For the Court

Date: _____ _____

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 03-1077

BRISTOL-MYERS SQUIBB COMPANY,

Plaintiff-Appellee,

and

RESEARCH CORPORATION TECHNOLOGIES, INC.,

Plaintiff-Appellee,

v.

PHARMACHEMIE B.V.,

Defendant-Appellant.

Appeal from the United States District Court for the District of New Jersey
in Case No. 01-CV-3751, Judge Mary L. Cooper

DECLARATION OF AUTHORITY OF ANNE M. MAHER

I, Anne M. Maher, hereby declare as follows:

1. I am Partner of Fitzpatrick, Cella, Harper & Scinto. I submit this declaration of authority pursuant to Federal Circuit Rule 47.3(d) and 28 U.S.C. § 1746.

2. On April 14, 2004, I was given actual authority to sign the enclosed Stipulation of the Parties to Dismiss Appeal on behalf of Robert L. Baechtold, a

partner in the law firm of Fitzpatrick, Cella, Harper & Scinto, the attorney of record for Bristol-Myers Squibb Company in the above-captioned action.

3. On April 14, 2004 was given actual authority to sign the enclosed Stipulation of the Parties to Dismiss Appeal on behalf of David T. Pritikin, a partner of the law firm of Sidley, Austin, Brown & Wood LLP, the attorney of record for Research Corporation Technologies, Inc. in the above-captioned action.

4. On April 27, 2004, I was given actual to sign the enclosed Stipulation of the Parties to Dismiss Appeal on behalf of Francis Lynch, a partner in the law firm of Palmer & Dodge, LLP, the attorney of record for Pharmachemie, B.V.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: April 27, 2004

Anne M. Maher

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2004, two copies of the foregoing STIPULATION OF THE PARTIES TO DISMISS APPEAL and [PROPOSED] ORDER were served upon counsel of record as follows:

Francis C. Lynch
Laurie S. Gill
PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02199-7613

Counsel for Defendant-Appellant Pharmachemie B.V.

David T. Pritikin
SIDLEY AUSTIN BROWN & WOOD LLP
10 South Dearborn Street
Chicago, IL 60603

Counsel for Research Corporation Technologies, Inc.

Robert L. Baechtold
Fitzpatrick, Cella, Harper & Scinto
30 Rockefeller Plaza
New York, New York 10112-3801

Counsel for Bristol-Myers Squibb Company

by delivery of said copies, properly addressed with shipping charges prepaid, to a commercial overnight delivery service with instructions to deliver said copies to the addressee the next business day.

Anne M. Maher
On behalf of Plaintiffs-Appellees