

801.1 (c)

[REDACTED]

October 3, 2000

VIA FACSIMILE

Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
7th & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Dear Mike:

I am writing to confirm my understanding of telephone conversations we had on September 28, 2000 and September 29, 2000 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") of a proposed transaction discussed below.

As we discussed, our client, Corporation A, intends to enter into an agreement ("Agreement") with Corporation B relating to an intellectual property portfolio ("Intellectual Property Portfolio") currently owned by Corporation B.

In consideration of rights and options granted to Corporation A under the Agreement, upon execution of the Agreement, Corporation A will make a payment of \$13 million to Corporation B, and within sixty days of this Agreement will make a payment of \$500,000. In addition, within thirty days of the issuance of a certain patent, Corporation A, upon written notice by Corporation B, will pay Corporation B \$5 million, fifty percent of which will be a credit against the purchase price for the possible purchase, discussed below, of the second fifty percent interest in the Intellectual Property Portfolio. Further, at the end of each twelve month period until Corporation A purchases some ownership interest in intellectual property from Corporation B, Corporation A will make a payment to Corporation B of approximately \$800,000. I collectively refer to above payments as the "Initial Payments." The Initial Payments will be made regardless of whether Corporation A purchases an ownership interest in the Intellectual Property Portfolio.

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The options and rights Corporation A will be receiving at the point of executing the Agreement are as follows. First, no later than ten days after the issuance of the first patent in Corporation B's Intellectual Property Portfolio with an acceptable claim ("Acceptable Claim"). Corporation A shall purchase from Corporation B for \$37.5 million a fifty percent interest in the Intellectual Property Portfolio. However, if an Acceptable Claim does not ever issue, Corporation A has no obligation to purchase a fifty percent interest in the Intellectual Property Portfolio. Second, for a period of six months after the issuance of the first patent with an Acceptable Claim, or with prior written notice, Corporation A has an option to purchase the other 50% of the Intellectual Property Portfolio for a purchase price of approximately \$43.5 million.

The rights acquired by Corporation A at the point of executing the Agreement include the right to file and prosecute certain patent applications owned by Corporation B although these applications shall be filed, prosecuted and maintained in Corporation B's name and Corporation B shall be consulted in the process. Corporation A may acquire ownership of these applications and the underlying intellectual property if it acquires Corporation B's Intellectual Property Portfolio pursuant to the options and rights discussed above.

If, at the time of the issuance of the last patent in the Intellectual Property Portfolio, none of the patents contain an Acceptable Claim, and Corporation A has not elected to purchase an interest in the Intellectual Property Portfolio, Corporation A shall purchase an ownership interest in some intellectual property owned by Corporation B, to be agreed upon by the parties, for a purchase price of \$12.5 million.

You concluded that the making of Initial Payments from Corporation A to Corporation B in advance of the acquisition of a beneficial ownership interest in Corporation B's intellectual property does not necessitate first conducting an HSR filing even assuming the size of the parties test is met. You confirmed that the rights discussed above to acquire 50% or 100% of the Intellectual Property Portfolio should be deemed options since there is no certainty that Corporation A will acquire or be obligated to acquire the first fifty percent interest in the Intellectual Property Portfolio, and there is no obligation for Corporation A to acquire the second fifty percent interest in any event. You also confirmed that the acquisition of options and rights such as these are not reportable under the HSR Act, and that the acquisition of the options and rights does not constitute the acquisition of beneficial ownership in Corporation B's intellectual property.

Additionally, you confirmed that acquiring rights to file and prosecute certain patent applications owned by Corporation B would not constitute acquiring beneficial ownership in the underlying intellectual property because these applications shall be filed, prosecuted and maintained in Corporation B's name, and Corporation B shall be consulted in the process.

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<sup>1</sup> Corporation A must prior to a certain time designate in writing what claims it deems to be Acceptable Claims, or subsequently may designate in writing what claims are Acceptable Claims with Corporation B's consent.

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You also confirmed that the Initial Payments would not be deemed to be paying consideration for a potentially HSR reportable asset acquisition because Corporation A will not necessarily acquire any ownership interest in Corporation B's Intellectual Property Portfolio despite making the payments. You further confirmed that this would still be the case even though at the time of the issuance of the last patent in the Intellectual Property Portfolio if none of the patents contain an Acceptable Claim, and Corporation A has not elected to purchase an interest in the Intellectual Property Portfolio, Corporation A is required to purchase from Corporation B an ownership interest in some intellectual property owned by Corporation B, to be agreed upon by the parties, for a purchase price of \$12.5 million. You noted that separate consideration was being paid for this ownership interest.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Very truly yours,

[REDACTED]

AGREE - THE FIRST POTENTIALLY REPORTABLE EVENT  
WOULD BE THE PURCHASE OF 100% INTEREST IN  
THE PORTFOLIO. N. OVEN, T. HANCOCK, R. SMITH  
COYCHA.

*B. [Signature]*

10/5/00

[REDACTED]

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