

UNITED STATES OF AMERICA

PUBLIC VERSION

In the Matter of

Bayer CropScience AG,

and

BASF Aktiengesellschaft,
a corporation.

**PETITION OF BAYERCROPSCIENCE AG FOR APPROVAL
OF PROPOSED LICENSE BACK AGREEMENT**

intellectual property rights and know-how) in Latin

Latin American Countries") and the

Taiwan, Vietnam, Malaysia and

on selling other types of chemicals, not insecticide products. To market crop protection products such as Fipronil effectively, a supplier needs a dedicated marketing and sales force that is

with experience providing technical assistance

will not restrict in any way BASF's rights to develop and market Fipronil products in the United States.

Nor will the agreement impair BASF's United States Fipronil business indirectly. It will

~~not reduce BASF's incentives to invest in research and development and marketing for the~~

Fipronil Business nor cause BASF's production of Fipronil to fall below efficient scale. This is so for two reasons. First, the countries subject to the license back account for only [] of BASF's Fipronil revenues. BASF will retain the right to the remaining []—the vast majority of its worldwide Fipronil revenues, including the largest and most lucrative markets for Fipronil for Agricultural Use.³ The retained business will be more than enough to enable BASF to operate its plant and any related research endeavors at efficient scale.

Second, because BASF will retain exclusive rights to Fipronil in the largest and most important markets, including the United States, which together account for nearly [] of its Fipronil revenues, the agreement will not reduce its incentives to exploit its Fipronil Business or

~~invest in research and development of new Fipronil based products. Indeed, because the agreement will~~

sale in markets—including the United States—that are not subject to the license back and will be well positioned to meet current and future demand for all of them.

III. BASF Lacks the Presence Necessary to Maximize the Value of the Fipronil Business in Latin America and Asia

BASF lacks the infrastructure necessary to maximize the value of the Fipronil Business in the Latin American and Asian Countries. BASF's current organization in these countries is focused on chemicals other than insecticides. To market Fipronil-based crop protection products

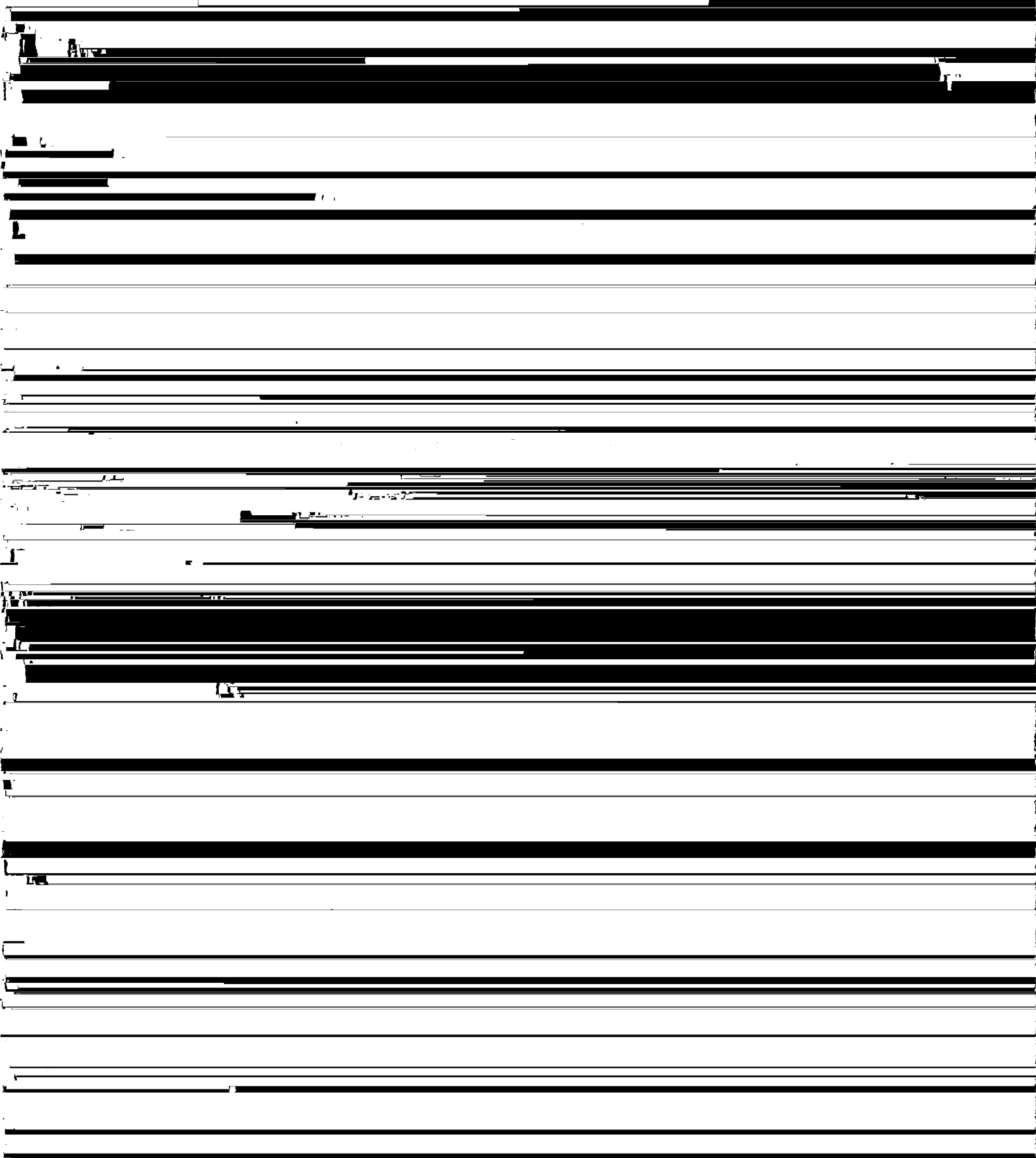
effectively in these countries, BASF would need to develop in-country staff with detailed

It would make no sense for BASF to make the very substantial investment necessary efficiently to sell Fipronil-based crop protection products in the countries where it proposes to license back to BCS. The potential Fipronil revenues in these countries, even combined, constitute only a very small portion of the overall Fipronil Business for Agricultural Use. BASF has made the investments necessary efficiently to sell Fipronil-based products in those countries where demand is large enough and where it thus makes business sense for BASF to make the



repackaging plants, more than any other agribusiness; and in Central America, it owns a

_____ distribution channels through all of the countries



* * * * *

For the reasons set forth in this petition, and in the presentation that BASF gave to the Commission's Staff on July 14, 2004, BCS respectfully requests that the Commission approve the agreement between BASF and BCS for the license back to BCS of Fipronil for Agricultural Use in the Latin American and Asian Countries.

Respectfully submitted/

A. Douglas Melamed
Leon B. Greenfield
Wilmer Cutler Pickering Hale and Dorr LLP
Counsel to BayerCropScience AG