

801.1 (c)

[REDACTED]

[REDACTED]

[REDACTED]

October 3, 2000

VIA FACSIMILE

Michael Verne  
Premerger Notification Office

Washington, D.C. 20580

Dear Mike:

I am writing to confirm my understanding of telephone conversations we had on September 29, 2000 and October 20, 2000 regarding the proposed acquisition of Corporation A by Corporation B.

Upon execution of the Agreement, Corporation A will make a payment of \$15 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 of Corporation A.

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The options and rights Corporation A will be exercising at the point of executing the Agreement are as follows. First, no later than ten days after the issuance of the first patent in

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

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 exercise an ownership interest in some

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 exercise or be no obligation for Corporation A to acquire the second fifty percent interest in any event. You also

ownership in Corporation B's intellectual property.

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.

<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

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time of the issuance of the last payment in the Intellectual Property Portfolio if none of the payments 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

Very truly yours,

[REDACTED]

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

*B. [Signature]*

10/5/00

[REDACTED]

[REDACTED]