

Ottawa, Wednesday, March 29, 2000

Decision: PMPRB-95-D6/Virazole

IN THE MATTER OF the *Patent Act, R.S. 1985, c. P-4*, as amended by R.S. 1985, c. 33 (3rd Supp.) and as further amended by S.C. 1983, c. 2;

AND IN THE MATTER OF Canadian Patent Nos. 997,756, 1,028,264, 1,261,265, 1,297,057 and 1,297,058

AND IN THE MATTER OF ICN Canada Limited and ICN Pharmaceuticals, Inc. (Respondents)

VARIATION ORDER

The joint motion of Board Staff and the Respondents for an Order varying the Board's Order dated July 26, 1996, was heard this day at the City of Ottawa.

ON HEARING SUBMISSIONS from the parties, the Board hereby orders that:

1. The amount owing by the Respondents under the Board's Order of July 26, 1996, is \$1,711,957.00 as of January 31, 2000. The obligation to make payment in this amount shall be that of ICN Canada Ltd. and ICN Pharmaceuticals, Inc. jointly and severally.
2. The Respondents' obligation of \$1,711,957.00 aforesaid shall be satisfied by way of price reductions and payments in the following manner:
 - (a) By April 29, 2000, the Respondents shall make a payment to Her Majesty in right of Canada in the amount of \$350,000.00, by which amount the Respondents' obligation hereunder shall be reduced;
 - (b) From and after March 31, 2000, the Respondents shall reduce the price at which Virazole is sold in Canada such that the average price (on an annual calendar year basis) at which Virazole is sold in Canada shall be an amount that is at least \$200.00 per 6 gram vial less than the MNE for Virazole in each year. For the purpose of calculating the future MNE for Virazole, sales of Virazole at prices reduced in accordance with this Order shall be deemed to have been made at the applicable MNE for Virazole, such MNE to be no less than the 1999 MNE of \$410.84;

- (c) The price reduction described in paragraph 2(b) above, shall remain in effect until the Respondents have satisfied their total obligation of \$1,711,957.00;
 - (d) The Respondents shall comply with their obligation to provide information concerning Virazole to the Board in accordance with the Regulations;
 - (e) In addition, by January 31st in each year, the Respondents shall provide the Board with copies of all invoices relating to sales of Virazole in Canada during the preceding year;
 - (f) Effective January 31st in each year, beginning with January 31, 2001 and continuing until the Respondents have satisfied their total obligation of \$1,711,957.00, the sum of the price reductions for the preceding year shall be determined in accordance with the following formula: number of vials sold x MNE - total net revenues from sales of Virazole (referred to hereinafter as the "Offset");
 - (g) By February 28th in each year, beginning with February 28, 2001 and continuing until the Respondents have satisfied their total obligation of \$1,711.957.00, the Respondents shall make a payment to Her Majesty in right of Canada equal to the amount, if any, by which \$350,000.00 exceeds the Offset for the preceding year;
 - (h) Effective February 28th in each year the Respondents' obligation shall be reduced each year by the total of the Offset calculated for the preceding year under paragraph 2(f) plus the amount, if any, paid pursuant to 2(g).
3. If the Respondents' total net revenues (net of credits and rebates) from sales of Virazole in Canada fall below \$27,500.00 in any year, the Respondents shall pay Her Majesty in right of Canada the sum of \$1,711,957.00, less Offsets and payments made prior to that time, by January 31 of the following year.
 4. If the Respondents cease offering Virazole for sale in Canada at any time prior to satisfaction of their total obligation of \$1,711,957.00, they shall pay Her Majesty in right of Canada the sum of \$1,711,957.00, less Offsets and payments made prior to that time, within 30 days of the date on which they cease offering Virazole for sale in Canada.
 5. Any sale or supply of Virazole which is not made to an arms' length purchaser pursuant to a bona fide purchase order or request for use in Canada, shall not be included in the determination of Offsets for the purposes of this Order.

6. In the event that any payment or price reduction required by this Order is not made within 30 days of the receipt by the Respondents of notice in writing from the Board of the default, the Respondents shall pay Her Majesty in right of Canada the sum of \$1,711,957.00, less Offsets and payments made prior to that time within 30 days of receipt of the said notice.
7. In the event that the manner of implementing or complying with this Order requires further direction from the Board, either Board Staff or the Respondents may apply in writing for such direction.
8. The proceeding in this matter will be terminated once the Respondents have satisfied their total obligation of \$1,711,957.00 in accordance with this Order.

Sylvie Dupont
Secretary of the Board