

Judith L. Harris  
Direct Phone: +1 202 414 9276  
Email: [jlharris@reedsmith.com](mailto:jlharris@reedsmith.com)

Reed Smith LLP  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005-3373  
+1 202 414 9200  
Fax +1 202 414 9299  
[reedsmith.com](http://reedsmith.com)

September 13, 2013

Dr. Bruce Tonkin, Chair  
ICANN Board Governance Committee  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292  
USA

**By regular mail and by e-mail:  
[reconsideration@icann.org](mailto:reconsideration@icann.org)**

**Re: Merck KGaA's Request for Reconsideration of NGPC's 13 July 2013  
Resolution (2013.07.13.NG04)**

Dear Dr. Tonkin:

We refer to the Request for Reconsideration dated 30 August 2013 from Merck KGaA with respect to the decision taken by the New gTLD Program Committee (NGPC) in its Resolution of 13 July 2013 (2013.07.13.NG04) ("Resolution") and to yesterday's (12 September 2013) communication from Ana Sylvia Prado, Deputy Manager of the ICC International Centre for Expertise, attached hereto.

Shortly after adoption by the NGPC of its 13 July 2013 Resolution, and pursuant to the terms of that Resolution, we submitted to the ICC International Centre for ADR ("Centre"), with a copy to counsel for Merck KGaA, a request for reconsideration by the Centre's Standing Committee of the Centre's previous rejection of two community objections filed by our law firm on behalf of Merck & Co., Inc. ("Merck & Co.") against two applications submitted by Merck KGaA (for .MERCK (application 1-980 7217) and .EMERCK (application 1-980-60636)). By letter dated 20 August 2013 from the Centre, both Merck & Co. and Merck KGaA were given until on or before 27 August 2013 to file further comments regarding Merck & Co.'s request to the Centre. Both parties did so and, as confirmed by a letter from the Centre dated 30 August 2013, the Centre then invited its Standing Committee to take a decision on whether to reconsider the Centre's prior decision not to register Merck & Co.'s community objections.

However, also on 30 August 2013, Merck KGaA filed with the ICANN Board Governance Committee the above referenced Request for Reconsideration regarding the NGPC's 13 July Resolution and, yesterday, on 12 September 2013, we were informed by the Centre that Merck & Co.'s request for reconsideration by the Centre of its previous rejection of Merck & Co.'s two community objections would be held in abeyance, pending notification by ICANN as to whether it will revise the NGPC Resolution.

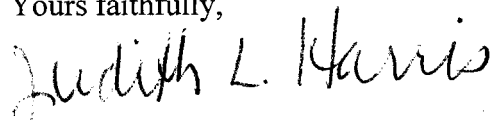
Merck & Co notes the allegations made in Merck KGaA's Request for Reconsideration against Merck & Co, and its outside counsel, as well as against ICANN and the New gTLD Program Committee, and

September 13, 2013  
Page 2

wishes to state that Merck & Co remains fully available to respond robustly to the false accusations made by Merck KGaA should the BGC or the ICANN Board wish.

**For now, however, Merck & Co respectfully requests that until both Merck KGaA's Request for Reconsideration of the Resolution and Merck & Co.'s request to the Centre concerning rejection of its Community Objections are finally resolved, the related .emerck and .merck applications not move forward in the contracting/delegation process.**

Yours faithfully,



Judith L. Harris

JLH:lsj

Enclosure

cc: Mr. Cherine Chalaby, BGC (by regular mail and by e-mail at [cherine.chalaby@icann.org](mailto:cherine.chalaby@icann.org))  
Ms. Ana Sylvia Prado, Deputy Manager, ICC International Centre for Expertise (by e-mail at [expertise@iccwbo.org](mailto:expertise@iccwbo.org) and [adr@iccwbo.org](mailto:adr@iccwbo.org)).



**International Chamber of Commerce**

*The world business organization*

International Centre for Expertise • Centre international d'expertise

**EXP/522/ICANN/137**

**MERCK & CO., INC. (USA) vs/ MERCK KGAA (GERMANY)**

---

REED SMITH LLP

Ms. Tracy Zurzolo Quinn and Ms. Judith L. Harris

2500 Liberty Place, 1650 Market Street

Philadelphia, PA

USA

*By email: [tquinn@reedsmith.com](mailto:tquinn@reedsmith.com)  
and [JLHarris@reedsmith.com](mailto:JLHarris@reedsmith.com)*

BETTINGER SCHNEIDER & SCHRAMM

PATENT UND RECHTSANWÄLTE

Mr. Torsten Bettinger

Culvilliesstrasse 14a

81679 Munich

Germany

*By email: [bettinger@bettinger.de](mailto:bettinger@bettinger.de)*

12 September 2013

Dear Madam, Dear Sir,

The Centre acknowledges receipt of Mr. Torsten Bettinger's email dated 30 August 2013, sent on behalf of the Applicant, a copy of which was sent directly to the Objector.

The Centre has also taken note of the documents attached to Mr. Bettinger's email, in particular the Applicant's formal request for reconsideration of the NGPC Resolution dated 13 July 2013, addressed to the ICANN Governance Board.

With reference to the Objector's request for reconsideration of the Centre's prior decision not to register this matter dated 16 August 2013 and the Centre's recent correspondence in this matter with the parties, we note that Objector's request for reconsideration is *inter alia* based on the above-referenced NGPC Resolution.

Accordingly, the Centre shall not invite the Standing Committee to decide whether to reconsider the Centre's previous decision in this matter until ICANN has informed the Centre whether it will revise the NGPC Resolution.

.../...

**ICC International Centre for ADR • Centre international d'ADR de la CCI**

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49

E-mail [expertise@iccwbo.org](mailto:expertise@iccwbo.org) Website [www.iccexpertise.org](http://www.iccexpertise.org)

**EXP/522/ICANN/137**

---

As soon as the Centre has received the above-mentioned information from ICANN, it will inform the parties accordingly.

Faithfully yours,

A handwritten signature in black ink, appearing to read 'Ana Sylvia Prado', with a horizontal line extending from the end of the signature.

Ana Sylvia Prado  
Deputy Manager  
ICC International Centre for Expertise