

PATENTS ACT 1977

BLO/159/86

IN THE MATTER OF applications by
PORTMAN AGROCHEMICALS LTD for
settlement of terms of licences of right
under Patents Nos 1255258 and 1407587
in the name of CIBA-GEIGY AG.

DECISION

Patent No 1255258 is dated 13 February 1969, and patent No 1407587 is a patent of addition thereto. By virtue of paragraphs 3 and 4 of Schedule 1 of the Act, the term of each of these patents is extended from 16 to 20 years, the date of the patent of addition being taken to be that of the main patent in accordance with paragraph 3(1)(c), and licences of right became available under the patents after the end of the sixteenth year, ie from 13 February 1985.

The present applications were filed on 29 August 1985 together with statements indicating the terms of the licences which the applicants (hereinafter Portman) were prepared to accept. According to the statements, the patentees (hereinafter Ciba-Geigy) declined to enter into negotiations and Portman were therefore obliged to apply for settlement of terms under Section 46(3)(a).

The matter came to a hearing before me on 16, 17, 18 and 19 June 1986 when Miss M Vitoria appeared as counsel for Portman and Mr R Jacob QC and Mr G Hamer appeared as counsel for Ciba-Geigy.

At the hearing, I admitted late-filed further evidence from both sides to which no objection had been raised, and I also consented to the filing of certain further evidence after the hearing. This further evidence is referred to below to the extent that it is considered relevant to settling the terms at issue. I should also mention at this point that in response to an objection from Mr Jacob regarding the propriety of certain parts of Portman's reply evidence, which in his view amounted to unsubstantiated allegations of a

serious nature against Ciba-Geigy and sought inappropriately to introduce selected evidence filed in connection with an earlier application for a licence of right under patent No 1255258 referred to below, I decided at the hearing not to admit those parts of Portman's evidence which were the subject of objection.

The patents in suit cover processes for selectively combating grassy weeds in various crops, such processes involving application of urea derivatives previously known as total herbicides. The claims define a range of suitable compounds, but only two are of interest so far as the present applications are concerned, namely those known under the generic names chlortoluron and isoproturon. These are the active ingredients of herbicidal formulations marketed by Ciba-Geigy under the brand names Dicurane and Hytane respectively, and in each case the 50% concentration flowable formulation is by far the most important. On the evidence, chlortoluron and isoproturon are the leading herbicides in the UK for the control of weeds in autumn-sown cereals, the former being applied mainly in the autumn and the latter being usable either in the autumn or spring. The use of both is covered by the main patent, and the use of isoproturon is covered by the patent of addition.

Miss Vitoria indicated at the outset that the only issue of any real substance to be settled by me was the royalty to be paid under the licences, and that, since it had been agreed that the royalty should be expressed in the licences as a fixed amount per kilo of chlortoluron and isoproturon respectively, I was simply required to settle the fixed amount to be paid in each case. As it transpired, however, I am also required to settle a number of other issues as to which the parties were unable to reach agreement. I propose to deal with those below after settling the royalty issue.

Many of the opposing arguments as to the level of royalty appropriate in the case of the chlortoluron licence were essentially the same as those advanced at the hearing of the earlier application mentioned above, namely that of Agan Chemical Manufacturers Ltd and another (the Agan case). Thus, in Mr Jacob's submission, in the light of recent judgements of the Patent Court interpreting the decision of

the House of Lords in the case of Gist-Brocades et al., the price to be paid for a licence was to be determined with particular regard to the provisions of Section 50 of the Act, and this meant that except in very special circumstances (and there were none in this case) the status or nature of the applicants and their costs were irrelevant. Also irrelevant in Mr Jacob's view, were the actual costs of making the invention, and the fact that the claims of the patents covered the use of certain compounds rather than those compounds per se. The right approach, according to Mr Jacob, was to look at real commercial deals involving the patents in suit, in this case the chlortoluron supply arrangement concluded between Ciba-Geigy and Ashlade Formulations Ltd; and further guidance could be obtained by adopting the approach approved in the cases decided under Section 41 of the 1949 Act. On the basis of the Ashlade agreement, Mr Jacob submitted that a royalty equivalent to 24% of Ciba-Geigy's selling price to their local distributors was appropriate, namely £1.78 per kilo of chlortoluron of 99% purity, this being compatible with the result of the Section 41 approach which indicated a royalty of 22.3% of the selling price.

Miss Vitoria, on the other hand, advanced the profit-sharing approach which in her view was indicated on the basis of the direction given by Section 50. Thus, according to Miss Victoria, the word "reasonable", in the context of the requirement in Section 50(1)(b) to the effect that the patentee is entitled to "reasonable remuneration having regard to the nature of the invention", connotes reasonable both as regards the patentee and as regards a reasonably competent licensee. There was, in her view, a significant distinction to be drawn between the wording of Section 50(1)(b) and that of Section 41 of the 1949 Act which required that patentees derive reasonable advantage from their patent rights, with the result that it was relevant to have regard in this case to the very limited nature of the patent claims and to the fact that, even if the claims have proved in practice to be as effective as per se product claims, that is an additional bonus which should not be taken into account when settling royalty. Additional factors which should be taken into account according to Miss Victoria are that the patentees are not

entitled to full compensation, and that on the evidence the patentees have recouped their R & D expenditure and been amply rewarded for their contribution to the art. On that basis Miss Vitoria submitted that the Section 41 approach was not at all applicable, and that since the Ashlade agreement was not a patent royalty agreement and offered no useful guidance either, I should adopt the approach that the licensee should be enabled to enter the market on a reasonably profitable basis consistent with the patentee receiving reasonable payment for the use of his invention. With that approach in mind, it was Miss Vitoria's submission that I should settle the royalty for the chlortoluron licence at the level proposed by Mr J Weber, who is a director of Portman, namely at about 4p per kilo.

As indicated above, in the Agan case I was confronted by much the same general arguments as to what approach it was appropriate to adopt in settling royalty, and insofar as I have indicated my views on the relative merits of those arguments in the decision on that case which issued on 17 July 1986 , I do not consider it necessary to repeat them here.

However, I have certain observations to make concerning Miss Vitoria's submissions regarding the relevance of the Ashlade agreement and her detailed criticism of the patentees' Section 41 approach in this case.

A copy of the Ashlade agreement was produced at the hearing and Miss Vitoria took the opportunity to cross-examine Mr Norman on it, Mr Norman being the managing director of the patentees' UK subsidiary, Ciba-Geigy Agrochemicals, who are the other party to the agreement. After Mr Norman had given oral evidence in camera Mr Jacob submitted that it had now been clearly ascertained what that agreement entailed, namely the supply purchase price covers PSPS clearance and an extra, small percentage royalty covers the supply by Ciba-Geigy Agrochemicals of formulation know-how and the use by Ashlade of a new registered trade mark owned by Ciba-Geigy Agrochemicals. As to the arrangement of PSPS clearance by Ciba-Geigy UK, Mr Jacob did in fact accept that it might be necessary to account for it by applying a discount to the "patent premium" of £1.78, but in his view it was not a significant factor. He also stressed that the

"patent premium" had, in any event, only been put forward as a useful guide to identifying what the patent was worth, since it was fully accepted that the agreement was not a patent licence with a stipulated royalty. In Miss Vitoria's submission, however, one of the reasons why the Ashlade agreement should be disregarded, apart from the fact that it simply was not a patent royalty agreement at all but just a supply agreement, was that product clearance, on the evidence, was indeed time-consuming and costly to obtain and it must be assumed that that is reflected as a significant premium in the price paid by Ashlade, a premium which should not apply to Portman since they were not dependent on Ciba-Geigy Agrochemicals for clearance.

Also of significance, in Miss Vitoria's submission, was the fact that Ashlade's agreement was with Ciba-Geigy Agrochemicals and not the patentees themselves, since in her view the trading mark-up applied by the former was not attributable to royalty. Whilst Mr Jacob was unable to accept that the manner in which the "patent premium" was shared between the two companies was at all relevant, it was nevertheless agreed that Mr Norman would submit a further declaration after the hearing giving the prices paid by his company to the patentees for both chlortoluron and isoproturon. This he has done, and since it was also agreed that Portman should be allowed to reply to Mr Norman, there has also been submitted a further declaration from Portman's Solicitor, Mr S D Kon. Mr Norman's further declaration is confidential, however, and Mr Kon has replied only to an expurgated version omitting sensitive figures, ie the transfer prices and figures derived therefrom. Having considered the matter carefully, I am not persuaded that I should regard the activities of Ciba-Geigy Agrochemicals in isolation from those of the patentees, but whilst I am therefore prepared to accept that it is a matter of internal policy how the Ciba-Geigy Group shares out the rewards from its inventions within the Group, I am, nevertheless, still faced with the opposing views of Mr Norman, who declares that the "patent premium" of £1.78 was derived after taking due account of the normal overall trading mark-up made by the patentees and his company together in respect of off-patent or commodity products, and Mr Kon who declares that Mr Norman's calculations are highly artificial and

provide no commercial basis for assessment of the royalty to be paid by Portman.

Although Miss Vitoria's basic submission on the Section 41 approach as I understood it was that the guidance given by Section 41 considerations was totally inapplicable in the present case in that it was grossly unfair to Portman, since the cost to the patentees of making and exploiting the present inventions was relatively low and it required Portman, contrary to precedent, to contribute to other much more costly projects from which they would obtain no benefit, she nevertheless undertook a critical review of Mr Siddon's calculations as an insurance against the possibility that I might find that the approach did provide some general guidance. This review was based largely on the evidence of Mr A C Allen who is a consultant to the pharmaceutical industry and who has wide-ranging experience with both pharmaceuticals and agrochemicals, including involvement with negotiations for licence, distribution, and royalty agreements.

I do not share Miss Vitoria's strongly argued conviction that the actual costs to the patentees of making the present inventions are of any clear significance when it comes to deriving a reasonable royalty figure, and, as indicated in the decision in the Agan case, I am indeed of the view that the Section 41 approach offers the possibility of some useful guidance.

As I explained in the Agan decision, it is apparent from cases decided so far under Section 46 that the Section 41 approach has been held to consistently overstate the royalty payable, and whilst the reasons for that are not altogether clear to me it does not seem unreasonable to assume that it is due at least in part to factors such as the treatment of off-patent sales, patent and formulation costs, promotion costs and "lost profits" being presented in a manner which is too favourable to the patentees. Thus it seems to me that I am faced with a choice of either applying a blanket discount to the figure of 22.3% produced by Mr Siddons, based on what general guidance could be derived from the previously decided cases as I did in the Agan case where Mr Siddons's calculations were not attacked in detail, or attempting to resolve the various issues by applying

individual and somewhat arbitrarily chosen discounts to the components making up that figure where it seems appropriate.

Having given the matter due consideration I have come to the conclusion that no useful purpose would be served by attempting to resolve the conflicts between the evidence of Mr Siddons and Mr Allen and Counsel's opposing arguments based on that evidence. Furthermore, in the Agan decision I agreed in principle with Mr Jacob's submission that different licensees should pay the same royalty for what are otherwise essentially identical licence terms, and since then my views in this respect have been strengthened by the following remark by Mr Justice Whitford in his recent decision in the Harris Pharmaceutical Ltd and Imperial Chemical Industries Ltd case (page 4 of the transcript at B) and to which Mr Jacob drew my attention at the hearing:

"Parliament has obviously come to the conclusion that third parties should be entitled during the latter years of this particular class of patent to be licensed, and it would seem reasonable enough that they should all be licensed on the same terms."

Thus, as I can see no rational basis for concluding that Portman should pay a royalty any different from that settled in the Agan case for their licence under patent No 1255258 ie £1.00/Kg of chlortoluron of 96% purity, I have decided that the same rate of royalty is appropriate in this case. For convenience however the royalty has been indicated in the licence appended to this decision as that applying to chlortoluron of 100% purity, ie £1.04/Kg. It was agreed by both sides that the royalty should be adjustable for other percentage purities, with provision for verification of the purity, and the appended licence accordingly also reflects that agreement (clause 3a). I should perhaps add in respect of the discount I have applied to the Ashlade price that in my view it takes due account not only of the assistance given to Ashlade by Ciba-Geigy UK in obtaining product clearance and the general unease with which I regard the 15% trading mark-up applied by Mr Norman, but also of the fact that Ashlade's label, on Mr Norman's oral evidence, indicates a link with Ciba-Geigy by way of the Ciba-Geigy owned registered trade mark

"Ludorum", which link, although clearly foreseen at the time the agreement was settled, to my mind is not clearly or fully accounted for by the small percentage extra royalty payable under the agreement.

I turn now to the question of what royalty should be paid for the licence under patent 1407587. The patentees are asking for the royalty in respect of isoproturon to be assessed on the same basis as that for chlortoluron, ie 24% of the net average selling price for last season of £9.60/Kg as declared by Mr Norman, or about £2.34 Kg. Fortman for their part, on the basis of their profit-sharing approach, are offering a little over 6p/Kg, a figure which in Miss Vitoria's submission is consistent with the value put on the invention by the patentees in cross-licensing arrangements they negotiated in 1974 with two other companies, namely Farbwerke Hoechst AG and Pepero (now Rhône-Poulenc). These arrangements are referred to by Dr L Ebner, who is a senior member of the patentees' agricultural division, and a copy of the agreement with Hoechst was filed after the hearing together with a translation thereof. According to Dr Ebner, when it was realised that Hoechst and Pepero had also filed applications in a number of countries (including the UK) for patents covering the use of isoproturon on certain crops, and that complex and costly litigation would ensue, the compromise cross-licensing agreement was negotiated whereby the Hoechst and Pepero applications would be restricted to the use of isoproturon in maize, cotton and soya crops while his company would exclude those crops from the scope of their claims. It was also agreed that each company could operate under the others' patents, either royalty free in countries where the company also owned a patent or on payment of a nominal 1% royalty on sales in countries where the company had no patent of its own. There was also provision for cooperation in obtaining approval from regulatory authorities, and for sharing costs of technical and scientific work in that connection.

These earlier agreements, which were negotiated at a stage when the real value of the invention had not been ascertained, and when the parties concerned were all claiming extensive patent rights in respect of the same basic invention (the use of isoproturon as a selective herbicide), and which provided for co-operation and the

sharing of costs in obtaining clearance from regulatory authorities, do not appear to offer me any reliable guidance on the rate of royalty which should apply under the present circumstances. Therefore, bearing in mind that isoproturon is used for similar purposes as chlortoluron, and that similar commercial considerations appertain, I have decided that the same per-centage royalty should apply, namely a little under 14% of the patentees' net selling price to their distributors. There was considerable conflict of evidence as to what this price was, but on balance I prefer the direct evidence of Mr Norman who was not cross-examined on that evidence. The price declared by Mr Norman is £4.90 per litre of formulated product, or £9.60 per kilo of isoproturon, and thus the royalty should be £1.33/Kg.(100% purity).

Finally, I have to deal with the other licence terms as to which the parties have been unable to reach agreement. These were discussed further between the parties after the hearing, and a joint draft licence was filed showing the alternative versions of certain clauses which were being sought. From this draft licence it is apparent that one of the major issues discussed at the hearing, namely the form of the grant, remains unresolved, and I propose to deal with that first, referring exclusively in the first instance to the licence under patent 1255258. According to the joint draft licence, Portman have reverted to their original request, as contained in the draft licence which accompanied their statement, for the right to do in the UK any act which but for the licence of right would be an infringement of the patent. I say "reverted" since at the hearing Miss Vitoria indicated that it was the right to do any act in relation to chlortoluron that Portman wanted, including the right to sell on chlortoluron per se. Each of these proposed grant clauses is somewhat at odds with Portman's statement which, at paragraph 3, indicated that they wish to sell in the UK formulations for application by a process falling within the claims of the patent, and the grant clause now sought by Portman is also not clearly consistent with their version of the recital (B) in the joint draft licence, according to which they desire a licence to market chlortoluron and formulations thereof in the UK for eventual use as a selective herbicide. A further inconsistency is apparent in that in the agreed royalty clauses (3a

and 3b) in the joint draft licence, the royalty is expressed per kilo of chlortoluron but assessed "upon formulation of chlortoluron used, sold or otherwise disposed of by Portman"; ie no royalty seems to be due when chlortoluron per se is sold on. I would also observe here that I am unable to find any reference in

Mr Weber's evidence to the effect that Portman wishes to sell on chlortoluron. As for the patentees' version of the grant clause and the recital (B), here I seem to be faced with further apparent inconsistencies, in that the former entitles Portman "to market chlortoluron (whether alone or mixed with other substances) for eventual use as a selective herbicide in the United Kingdom ..." whereas, according to the latter, Portman desires only to market formulations of chlortoluron in the United Kingdom for eventual use as a selective herbicide, and as noted above the agreed royalty clause provides for royalty to be assessed only "upon formulation of chlortoluron used, sold or otherwise disposed of by Portman". At the hearing, Mr Jacob argued that Portman should only be allowed to do that which they said they wanted to do and which their evidence relates to, ie acquire the raw material, formulate it and supply the formulations to merchants, and not to sell on the raw material. However, he did qualify that by saying that they could sell on the

raw material if it was decided that the patent had its price and Portman's costs did not matter. Whilst I have not decided in fact that

the profit-sharing approach would be fundamentally misconceived in all cases, in this particular case after due consideration it is my view

that, since Portman are paying the same royalty as that settled in the Agan case, they should obtain similar rights, namely the right to sell on chlortoluron per se as well as formulations. I have accordingly decided to adopt Portman's version of the recital B and, since in my view it covers the marketing of chlortoluron per se and formulations thereof, the patentees' version of the grant clause. As a consequence, I have also decided that, as in the Agan case, royalty should be assessed upon chlortoluron acquired by Portman. These decisions are reflected in the draft licence appended hereto.

I turn next to the clause in the draft licence by which the patentees seek to limit exports by Portman to parallel patent countries, a similar clause having been considered in the Agan case, where I decided to include it in the licence but without the requirement that the licensees should inform their customers that the licence was a licence of right limited to the UK. In the present case, in response to a submission by Miss Vitoria, the patentees have conceded that the clause should not prohibit exports to their licensees in parallel patent countries, but this concession has not led to Portman withdrawing their objection to the clause. According to Miss Vitoria, the patentees should rely on their remedies against infringers in other countries, and in her submission the clause should not be included since it would impose an unreasonable obligation on Portman to cross-examine their customers as to the eventual use of the chlortoluron, dealing in chlortoluron per se not being an infringement. Miss Vitoria further submitted that such a clause is contrary to EEC law insofar as it restricts passive (unsolicited) sales in parallel patent countries. As this latter point was not argued before me in detail, however, I do not propose to take it into consideration, and since I gave due regard to the other points raised by Miss Vitoria in reaching my decision on this clause in the Agan case, I see no reason not to include it in this case. Clause 1(b) of the appended licence therefore corresponds to the patentees revised version of that clause which appeared in the joint draft licence except that, for the reasons given in the Agan decision, I have omitted the requirement that Portman should inform their customers that the licence is a licence of right limited to the UK.

Whilst in the Agan case it was agreed that there should be a clause requiring the licensees to satisfy all requirements and standards of the code of practice of the British Agrochemicals Association relating to the quality of chlortoluron and formulations thereof, Portman are opposed to the inclusion of such a clause in their licence. The reasons, according to Miss Vitoria, are that it is an unnecessary restriction on Portman, and she was particularly concerned that minor infraction of this clause would give Ciba-Geigy an excuse to terminate the licence. In Miss Vitoria's submissions, it is entirely up to Portman which codes of practice they intend to adhere to, but on the evidence they have already obtained PSPS

clearance and intend to seek ACAS approval as soon as they are free to conduct the necessary field trials, so there is no doubt that they will conduct their business properly under the licence. Miss Victoria also regarded it as relevant that clauses of this kind had been omitted in previously-decided cases settling the terms of licences of right under pharmaceutical patents. In Mr Jacob's submission, however, the same considerations do not apply for agro-chemicals as for pharmaceuticals, since the code for the former is voluntary whereas that for the latter is compulsory, and in his view it was perfectly reasonable for the patentees to seek to ensure that the good name of chlortoluron was preserved. He also referred me to the decision of the House of Lords in the Gist-Brocades case, where Lord Diplock indicated that quality control considerations were a particularly relevant matter, and he insisted that it would not in fact be open to Ciba-Geigy to terminate for trivial breaches. For my part, whilst I did not have to settle this issue in the Agan case, it seems to me that to exclude the quality control clause from Portman's licence I should be satisfied that there are significant considerations which apply to Portman but not to Agan, since the Agan case provided me with prima facie confirmation of the view that the clause is one which it is reasonable to include. In the event, I am not satisfied that there are any such significant considerations which I should take into account, and I have therefore acceded to the patentees' request that clause 2(a) of the joint draft licence be included in Portman's licence.

I refer next to clause 4 of the appended licence where I have adopted the wording proposed by the patentees rather than that proposed by Portman, since in my view it follows, from the decision arrived at above regarding the grant clause, that it is the quantities of chlortoluron acquired by Portman that is significant rather than the quantities of formulations used, sold or otherwise disposed of by Portman.

Finally, I refer to clause 7(iii) of the appended licence which the patentees had proposed, as in the Agan case, and to which Portman were opposed, this providing for termination of the licence if Portman comes under the control of any other company operating in the field covered by the licence. In Mr Jacob's submission, this clause

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in effect complements the agreed no-assignment provision of clause 8, and it would be an extraordinary situation if Portman were precluded from selling the licence alone but could sell it along with the rest of their assets as a package. He also submitted that if he is correct in his contention that the price of the licence does not depend on Portman's costs, and that anyone can have a licence at the same price, the clause is still necessary since the patentees might well want different provisions as to payment to apply to any new owners of Portman, but he did concede that in these circumstances he was not so concerned as to whether the clause was included or not. In Miss Vitoria's view, however, the licence of right is a valuable asset which should be saleable with the rest of Portman's assets, and there would be no inconsistency with clause 8 if Portman did come under the control of another company, since the licence remained part of the business assets of Portman and personal to them. In this connection, Miss Vitoria submitted that there was an analogy with the situation provided for by Section 64(2) of the Act, where a prior user of an invention, if a body corporate, can assign the right to continued use of the invention on its dissolution to any person who acquires the business. I am unable to accept, however, that Section 64(2) provides any relevant guidance. In this case, Portman has effectively agreed by clause 7(ii) that the licence should be terminated upon dissolution of the company, and I feel that the patentees must be considered to be entitled to the sanction provided by clause 7(iii) in view of the decision of Mr Justice Whitford in the recent case of Generics v Syntex.

That, I believe deals with all the points at issue, and I therefore order that Ciba-Geigy grant to Portman a licence under patent 1255258 in the form appended to this decision. I further order that Ciba-Geigy grant to Portman a licence under patents 1255258 and 1407587, this licence to be identical in form to that appended hereto save that the word 'isoproturon' shall be substituted for 'chlortoluron' and where reference is made to 'Patent No 1255258 and 'the Patent' there shall be substituted reference to 'Patents Nos 1255258 and

1407587' and 'the Patents' respectively, and in clause 3(a) the royalty shall be at the rate of £1.33 per kilogramme. These licences are to take effect from the date of this decision.

Dated this 1st day of August 1986

K E PANCHEN

Superintending Examiner, acting for the Comptroller



PATENT OFFICE

APPENDIX

LICENCE OF RIGHT - Patent No. 1,255,258

THIS LICENCE OF RIGHT dated day of 1986 is
BETWEEN :

(1) CIBA-GEIGY A.G. of Postfach 4000, Basle 7, Switzerland
("the Patentee") and

(2) PORTMAN AGROCHEMICALS LIMITED of
("Portman").

WHEREAS:

(A) The Patentee is the proprietor of United Kingdom Letters Patent Number 1,255,258 ("the Patent") which is by virtue of the Patents Act 1977 deemed to be endorsed "licences of right" under s. 35 of the Patents Act 1949;

(B) Portman desires a licence under the Patent for Portman to market the chemical compound chlortoluron and market formulations of chlortoluron in the United Kingdom for eventual use as a selective herbicide;

(C) The Patentee and Portman having been unable to agree terms for such licence, Portman has applied to the Comptroller to settle such terms; and

(D) The Comptroller has settled the terms hereinafter set forth:

(1) (a) Portman is permitted to market chlortoluron (whether alone or mixed with other substances) for eventual use as a selective herbicide in the United Kingdom and to conduct all such trials and do all such things to that end which would otherwise be an infringement of the Patent.

(b) Portman shall not directly or indirectly export from the United Kingdom save for the purpose of supplying a licensee of the Patentee chlortoluron or any formulation containing chlortoluron to any country in which a patent subsists corresponding to the Patent or supply chlortoluron or any formulation containing chlortoluron to a person whom Portman believes will so export it.

(2) (a) During the continuance of this Licence Portman shall ensure that all requirements and standards of the Code of Practice of the British Agrochemical Association for the time being in force relating to the quality of all chlortoluron and chlortoluron formulations used, sold or otherwise disposed of by Portman will be satisfied. Portman shall if required by the Patentee send to the Patentee copies of all clearances issued by the Ministry of Agriculture Fisheries and Food in respect of any such chlortoluron or formulation.

(b) Portman shall hold the Patentee and its subsidiaries including Ciba-Geigy plc harmless as to all matters including damages and costs against any and all claims which may be made against the Patentee or any of its subsidiaries including Ciba-Geigy plc arising out of the use or supply by anyone of chlortoluron or chlortoluron formulations used, sold or otherwise disposed of by Portman pursuant to this Licence of Right.

3 (a) Portman will pay to the Patentee a royalty at the rate (exclusive of V.A.T. if applicable) of £1.04 per kilogramme of 100% pure chlortoluron (adjusted for other purities). Portman will from time to time supply to the Patentee (i) a certificate from an independent analytical laboratory approved by the Patentee (such approval not to be unreasonably withheld) stating the purity of all

chlortoluron acquired by Portman, and (ii) samples of such chlortoluron upon the Patentee's request at all reasonable times.

(b) The royalties due shall be assessed in pounds sterling upon formulation of chlortoluron acquired by Portman in each quarterly period ending on 31st March, 30th June, 30th September and 31st December each year (or shorter period ending on termination of this Licence) and shall be paid within one calendar month of the end of each such period.

(4) Portman will keep at its usual places of business proper and accurate and separate books and accounts of everything (including without limitation the quantities of chlortoluron acquired by it) necessary to ensure the making of an accurate return each quarter of the royalties to be paid and will permit any independent chartered accountants appointed by the Patentee and approved in writing by Portman (such approval not to be unreasonably withheld) to inspect the books and accounts relative to this Licence and take copies thereof and extracts therefrom (on their undertaking to use the same solely for the purpose of such inspection and audit and not to disclose the same to any other person without the written consent of Portman or by leave of the Court). The expenses of any such inspection shall be borne by the Patentee unless an error of 2% or more against the interests of the Patentee is revealed by the inspection in which case Portman shall be liable for such expenses.

(5) Portman shall within twenty-one days of the end of each quarterly period as aforesaid deliver to the Patentee a true and complete statement in writing of the accounts in respect of that quarterly period and stating the quantities of chlortoluron used, sold or otherwise disposed of by it or on

its behalf and the amount of royalties becoming payable. Portman on the request of the Patentee shall verify any such statement by statutory declaration by it or by a certified statement by an independent auditor or some other person approved by the Patentee.

(6) All chemical compound chlortoluron supplied pursuant to this Licence shall be identified with the name of Portman and all formulations of chlortoluron distributed pursuant to this Licence shall bear upon the labels thereof the words:

"Label text has been supplied by Portman Agrochemicals Limited of [] cleared under MAFF Number _____".

or words equivalent thereto, to the end that the Patentee may at all times be able to identify with Portman chlortoluron and formulations of chlortoluron dealt with under this Licence.

(7) If:-

(i) Portman makes default in the performance or observation of any obligation on its part herein contained and does not make good the same within 30 days after the Patentee by notice in writing has required it so to do; or

(ii) Portman becomes insolvent or has a receiver appointed over a substantial part of its assets or enters into liquidation otherwise than for the purpose of amalgamation or re-construction;

or (iii) Portman comes under the direct or indirect or de facto direction or control of any other company operating in the field covered by this licence;

then the Patentee shall be entitled forthwith to terminate this licence, but without prejudice to and so as not in any manner to affect any liability hereunder on the part of Portman which may then be subsisting or have accrued.

(8) This Licence is personal to Portman who shall not assign mortgage charge or otherwise dispose of it. Nothing in this licence shall be deemed to grant to Portman any right to sub-license any third party save insofar as such licences are implied by law.

(9) The Patentee does not warrant that any patent or other rights of any third party are not infringed by the importation, use, formulation, or marketing of isoproturon or use thereof in the United Kingdom.

(10) Nothing in this licence shall be deemed to grant to Portman any licence or other right under any patent other than the Patent.

(11) All notices or statements required to be given by virtue of this licence shall be given in writing and deemed to have arrived in the ordinary course of post if despatched in a pre-paid stamped envelope addressed to one of the addresses in the United Kingdom stated below:

(a) If to the Patentee:

The Managing Director,
Ciba-Geigy Agrochemicals,
Whittlesford,
Cambridge,
CB2 4QT,
ENGLAND

(b). If to Portman:

The Managing Director,
Porman Agrochemicals Limited,
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(12) This Licence shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English Courts.