

**PLAINTIFF'S
EXHIBIT**

JM 1096

May 27, 1966

Mr. N. Jerome Rudy, Counsel
Licenses & Litigation
Patent Department
The Dow Chemical Company
Midland, Michigan
48640

Dear Mr. Rudy:

Re: Irradiated Plastic Pipe Proposal

After a review of your proposals together with a study of the patents involved and the generally available information on the overall subject matter, we have several questions which require answering prior to our reaching any definite conclusions on your proposals. It might be that these questions would be better resolved in a joint meeting. If you think this is advisable and plan to be in the New York area in the near future, we can certainly arrange to meet with you there. If not, perhaps a meeting can be arranged for another location.

The following numbered paragraphs raise questions which we would like answered.

- ✓ 1. The proposals are directed solely to the field of irradiated plastic pipe. We have interests in many fields in which the subject matter of this proposal might be extensively used. Therefore, we would like to know if licenses under these patents are available in fields other than pipe.
- ✓ 2. Paragraph 8 on page 4 of the Collary Letter requires that the "transmitted" information be held secret and confidential for a 10-year period from the time it is transmitted. It is an established company policy that we will agree to secrecy and confidential clauses of this nature only for a 3-year period.

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- ✓ 3. The questions asked below will indicate that we do not have sufficient information to reach any conclusions relative to what we would consider a reasonable royalty. However, it appears that products manufactured under these patents would have to have physical properties greatly exceeding those outlined by Dr. Boyer before the high royalty payments of these proposals could be justified. The royalty payments of paragraph 4(a) of the Contract are greater than those generally accepted on a good patent position. However, when the royalties accruing from the purchase requirement contract of paragraph 4(b) of the Collary Letter are added thereto, the overall royalty is considered excessive. Furthermore, paragraph 3 of the Collary Letter requires us to grant you a royalty-free license under any patent we may obtain on improvements. This is another addition to the already excessive royalty. Furthermore, the grant back of a royalty-free license on an improvement is definitely against our established company policy. We would not object to a grant back on a royalty comparable to that set forth in the basic agreement.
- ✓ 4. The Contract states that minimum royalties are to be prepaid but is not definite relative to when the other payments are due, although paragraph 6 indicates they are to be prepaid quarterly. Both provisions are contrary to usual conditions.
5. The following questions are directed primarily to the allowed U. S. Patent Application, Serial No. 553,157:
- ✓ ✓ (a) Does the word "grafting" used in the application cover "cross-linking"?
- ✓ (b) Is the application limited only to vinyl compounds of the group consisting of vinyl and divinyl monomers. Is there any reason why allyls and trifunctional vinyls are not included in this terminology?
- ✓ (c) Since this patent application has been pending for many years and since numerous patents directed to this overall subject matter have issued after the filing date of this application, can you give us some idea of the strength of your position in this field and how actively it will be enforced?

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- ✓ 6. We have received very little information relative to the actual physical properties achieved by the utilization of the process disclosed in these patents. If there is any information available, which information would be supplemental to the information supplied to us by Dr. Boyer and not within the terms of the Collary Letter, we would like you to send it to us. Also, if you have any samples of products other than pipe which have been produced through these processes, perhaps you can send us these samples together with samples of the products they have replaced.
- ✓ 7. We would like to produce about 24 samples of pipe, each about two-feet in length and comprising a mixture of 75 percent PVC and 25 percent styrene, and send them to you for irradiation. We would then test the finished products. We would pay all costs associated with these samples.
- ✓ 8. To help us reach an estimate on our possible commercial interest in this area, we would like information relative to capital investment for machinery and the operating cost of the processes associated with the proposals. These costs should be estimated on an annual production of approximately five (5) million pounds. The pipe involved would be in 20-foot lengths with inside diameters from 2-to 4-inches and having weights in the 20-foot lengths from 8.5 to 30.7 pounds. Would there be any significant change to this estimate if an increase were made to ten (10) million pounds per year?
- ✓ 9. We would like to know the size of the source for this rate of production. Also, can any means other than a Cobalt 60 source be used?
10. We would like to have an idea of the geometry of the source. How it is planned to move the pipe through the source? Please include some estimate of the energy, use efficiency of the source and size in curies of the Cobalt. Also, please include information relative to the oven cycle associated with these processes.
11. Is anyone now producing products within the claims of the basic patent?
- ✓ 12. What are the French or any other European country doing in this field?

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- ✓ 13. Are the French producing pipe comprising the irradiation of PVC-monomer compound blends?
- ✓ 14. Can we obtain an option agreement on some type of license arrangement in pipe and other fields without executing the agreement for the exchange of information?
- ✓ 15. Our understanding of the statements in paragraph 4(b) of the Collary Letter is that this would be a misuse of the patents and would be a per se violation of the anti-trust laws. Your comments and reasoning in relation to these aspects of this paragraph would be helpful.

I realize that we have taken some time in reviewing these proposals, but we do consider the subject matter to be of sufficient interest to warrant a full and careful study. We will try to act as rapidly as we can on future aspects of the proposed arrangements. Please feel free to call me to expedite any problems.

Very truly yours,

Joseph J. Kelly
Patent Attorney

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