FILE NAME: Kent (KNT)

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DOCUMENT DESCRIPTION: Legal - Agreement Between Lorillard Co. and H&V Specialties Co.

A G R E E M E N T

AGREEMENT made this fourteenth day of February, 1952, by and between R & V SPECIALTIES CO., INC., a Massachusetts corporation, having its principal office at East Walpole, Massachusetts (hereinafter called "Specialties"), and P. LORILLARD COMPANY, a New Jersey corporation, having its principal office and place of business at 119 West 40th Street, New York 18, New York (hereinafter called "Lorillard");

W I T N E S S E T H:

WHEREAS, Specialties has acquired special knowledge and technique relating to the construction and manufacture of filtering materials comprising mineral fibers dispersed in a fibrous vehicle, particularly adapted for removing solid and/or liquid particles from gaseous streams; and

WHEREAS, Lorillard is in the business of manufacturing tobacco products and has acquired special technique in the blending of tobaccos and knowledge as to the optimum proportions of solids and volatile liquids in tobacco smoke to afford satisfaction to the smoker; and

WHEREAS, the parties have cooperated with each other in the research and development of certain processes

PLAINTIFF'S EXHIBIT 776

as hereinafter defined (hereinafter referred to as "the processes"); and

WHEREAS, Specialties and Lorillard jointly own the entire right, title and interest in and to (1) United States patent application Serial No. 260187, filed December 6, 1951 by Harold W. Knudson for Tobacco Smoke Filter, and in and to the inventions disclosed therein and (2) an application about to be filed by Harris B. Parmele for a United States patent covering a method of making filter means as described in clause (2) of the definition of processes in the following paragraph 1 (a); and

WHEREAS, the parties desire to exploit the joint ownership of the processes and/or of the inventions disclosed in the aforesaid patent application and of the hereinafter defined mutual "know-how".

NOW, THEREFORE, in consideration of the premises and of the mutual promises and undertakings herein contained, the parties agree as follows:

1. Definitions:

(a) The term "processes" as used herein shall mean (1) the adaptation of filter means for treating or conditioning of tobacco smoke to the end of rendering it less irritating or toxic without objectionably impairing the desirable qualities, such filter means comprising mineral fibres having for the most part diameters approaching that of the smoke particles to be removed, these fibres being sub-

stantially uniformly distributed in a loose, uncompact fashion in carrier fibres of substantially greater diameter, the latter being present in predominant proportions; and/or (2) a method of making filter means comprising interleaving a plurality of elongated layers of fibrous material and paper to form a strip composed of five layers, more or less, simultaneously infolding the lateral edges of said strip to cause the lateral edges to overlap the center portion of the strip, curling the infolded edges upon themselves to form a rope of substantially "c-shaped" cross-section, circumferentially confining the rope to shape it into substantially circular cross-section, wrapping the rope in a paper cover and severing the covered rope into cylindrical filter units.

(b) The term "inventions" as used herein shall mean and include the subjects matter disclosed and claimed in said United States patent applications and any United States patent or patents that may issue thereon and any and all further United States patents or applications for United States patents heretofore or hereafter filed relating to or useful in connection with the subjects matter disclosed in said United States patent applications (including, but not limited to improvements as defined in paragraph (d) of this article 1), which are owned or acquired by Specialties or Lorillard, or which either of them has the right to acquire, during the term of this agreement.

(c) The term "know-how" as used herein shall mean and include all information and data, knowledge and technique of every kind and description in each party's possession, or acquired by it during the term of this agreement, including all reports, designs, drawings, sketches, notes and other material relating to the mixing of ingredients for the manufacture of filtering materials for use in treating or conditioning tobacco smoke, the proportioning of such filtering materials to remove a predetermined proportion of solids and liquids from such smoke, the assembling and forming of such filter material into a filter or plug, and any and all other knowledge and technique relating to the filtering of tobacco smoke and the combination of tobacco smoke filters with tobacco products.

(d) The term "improvement" as used herein shall mean any improvement in the processes and/or the inventions or any of them which are owned or acquired by Specialties or Lorillard, or which either of them has the right to acquire, during the term of this agreement.

(e) The term "tobacco use" as used herein shall mean the use of the processes, inventions, know-how, and/or improvements for treating or conditioning tobacco smoke from cigarettes, cigars, smoking tobacco, pipes, cigarette and cigar holders and similar devices.

(f) The term "non-tobacco use" as used herein shall mean any use of the processes, inventions, know-how,

and/or improvements other than that defined in paragraph 1 (e) hereof.

2. Full particulars of any improvement applicable to tobacco use, shall, upon recognition of such applicability, be submitted promptly, by the party making or acquiring the same, to the other party, whether or not the improvement is deemed patentable, such particulars to include written descriptions and drawings where necessary to an understanding of the improvement and in the case of a patentable improvement the particulars shall be submitted to said other party prior to the filing of a patent application thereon, to the end that the said other party may have the opportunity to propose the incorporation of modifications which shall not be unreasonably rejected by the party submitting such particulars.

3. Specialties and Lorillard each agrees to use its best efforts to require its officers, employees and agents to disclose to it all know-how acquired by them and to disclose and assign to it all inventions or improvements made or acquired by such officers, employees or agents.

4. Forthwith upon execution of this agreement, and thereafter throughout the term of the agreement, each party agrees to disclose to the other all "know-how" in its possession or acquired by it, and, subject to the provisions of paragraph 17 hereof and except as otherwise provided herein, to maintain to the best of its reasonable ability the

said know-how acquired by it from the other party and its own know-how confidential, except as to the other party, provided that neither party shall be responsible to the other party under this paragraph 4 for any information which may be published in a patent relating to the inventions.

5. Specialties and Lorillard each agrees to pay one half of any reasonable costs, prescribed fees and necessary expenses incurred during the term hereof in connection with the filing and prosecution of United States patent applications for the inventions, provided that neither party shall be required to share any costs, fees or expenses incurred prior to September 1, 1950.

6 (a). Specialties and Lorillard each agrees to assign and does hereby assign to the other an irrevocable, undivided one half interest in and to the inventions so far as not already jointly owned, and any and all improvements, and Specialties and Lorillard each agrees to execute and deliver to the other such further documents as are or may be necessary or desirable for the recording of said assignments, said documents to be delivered promptly upon request of either party, or upon the filing of an application for United States patent, or within ten days after acquisition from a third party of any such invention and/or improvement, as the case may be. Provided that if such acquisition by either party is by purchase, the obligation to assign to the other party under this paragraph 6 (a) shall be conditioned

upon the latter's paying one half the purchase cost. If either party shall not elect so to pay and become a joint owner of such purchased invention or improvement, it shall nevertheless continue to enjoy its full rights and privileges under this agreement except with respect to such purchased invention or improvement; provided that ownership of such purchased invention or improvement by Specialties alone shall not be asserted in derogation of any rights of Lorillard hereunder in the tobacco use field, and such ownership by Lorillard alone shall not be asserted in derogation of any rights of Specialties hereunder (1) in the non-tobacco use field or (2) in connection with the manufacture for and sale to Lorillard hereunder of material for tobacco use.

6 (b). Nothing in this contract shall be deemed to limit in any way Lorillard's right to sell and have sold for it throughout the world products for tobacco use made in the United States embodying the processes, inventions and/or improvements or a like right in Specialties in respect of products for non-tobacco use.

7. Either party shall have the right to make application for foreign Letters Patent relating to the inventions. The party so desiring to make application shall give the other party thirty (30) days' notice in writing to that effect, and shall indicate whether manufacturing or licensing under such patent is contemplated in the near future. If the party to whom such notice is directed ad-

vises the other party in writing within twenty (20) days after receipt of such notice that it desires to participate in such application, then the parties shall be joint owners of such foreign application and any patent that may issue thereon, and the costs of filing and prosecuting such foreign application and maintaining any patent issued thereon shall be shared equally by the parties, and any royalties or assignment considerations derived therefrom by either or both of the parties shall be divided equally; provided, however, that no license under such jointly-owned foreign Letters Patent shall be granted by either party without the prior written consent of the other, which consent shall not be unreasonably withheld. If the party to whom the aforesaid notice of intention to make application for foreign Letters Patent is directed fails within said twenty (20) day period to elect to participate in the filing of such application, the party giving notice, subject to the following provisions of this paragraph, shall thereafter be entitled to sole ownership of the foreign application and any patent that may be issued thereon. Prior to manufacturing under or giving licenses under any foreign patent which is not jointly owned, the party owning the same shall give the other party not less than thirty (30) days' prior written notice of its intent so to do and of the original cost of acquiring such patent and, if the party to whom such notice is directed informs the other party in writing within twenty (20) days

after receipt of such notice of its desire to become a joint owner of the patent in question, then the owner of such patent shall thereupon assign an undivided one half interest therein to the other party and the latter shall pay one half of such original acquisition cost; and thereafter the provisions of this paragraph as to royalties and assignment considerations shall apply to such patent.

8. Each party agrees to contribute one half of any and all amounts heretofore, subsequent to September 1, 1950, or hereafter from time to time mutually determined by Specialties and Lorillard to be necessary to develop the use of the processes, inventions and/or improvements in the making of tobacco smoke filter material and/or to acquire, set up and expand on the premises of Specialties the necessary plant, facilities, machinery and equipment for manufacturing such material as required by Specialties to fill orders from Lorillard for such material.

9. Except as otherwise in this paragraph provided, title to any and all plant, facilities, equipment and machinery purchased pursuant to the provisions of paragraph 8 shall be in common in Specialties and Lorillard. Such plant, facilities, machinery and equipment are hereinafter generally referred to as the "jointly-owned" property and shall be depreciated on a ten-year basis. Title to any building or buildings or leasehold improvements acquired, built or used under paragraph 8 shall be in Specialties, and Specialties shall repay to Lorillard its one half contribution to the

cost thereof in equal installments over a five-year period. Reasonable interest on amounts so repaid by Specialties to Lorillard may be included by Specialties in determining the cost of material to Lorillard under this contract.

10. Specialties shall have the right to use any of the jointly-owned property for non-tobacco use at any time and from time to time when such use does not interfere with the filling of orders from Lorillard for tobacco smoke filter material, which are not unreasonably in excess of orders (reasonably forecast by Lorillard at the time when orders) for non-tobacco use are taken by Specialties. It is understood that the jointly-owned property shall, at the option of Specialties, also include all machinery and equipment for making the filter or mouthpiece. All of the jointly-owned property not originally installed on the premises of Specialties shall at the option of Specialties, as soon as reasonably practicable, be installed on Specialties' premises for operation by Specialties.

11. Specialties will pay Lorillard a reasonable rental for the use of its one half of the jointly-owned property for such time and to the extent that it is used in the manufacture of material for others than Lorillard but only if Lorillard is not sharing in a royalty or other like benefit from the selling price to, or use of such material by, such others.

12. Each party covenants and agrees with the other party that it will not grant any exclusive license or

any exclusive other right to any one to use the processes, inventions and/or improvements for the tobacco or non-tobacco use.

13. Each party covenants and agrees with the other party that it will not itself use, nor grant any non-exclusive license or right to any one else to use, the processes, inventions and/or improvements for the tobacco use or the non-tobacco use except as hereinafter in this agreement expressly authorized and provided.

14. For the period of five years from the date hereof, (1) the tobacco use of the processes, inventions and/or improvements and the jointly-owned property shall be limited to the manufacture of tobacco smoke filter material by Specialties for sale to and purchase, use and re-sale by Lorillard; (2) the non-tobacco use of the same, and the sale of material therewith made, shall be as determined by Specialties in accordance with the provisions of this contract; and (3) no license shall be granted by either party for either the tobacco use or non-tobacco use of the processes, inventions and/or improvements without the express prior written consent of the other party.

15. Each of the parties covenants and agrees with the other party that during said period of five years from the date hereof it will make every reasonable effort to utilize the processes, inventions, know-how and/or improvements so far as the tobacco use is concerned to the mutual advantage of both parties.

16. From and after the expiration of the period of five years from the date hereof and subject to the provisions of paragraph 17 hereof, each party may itself exercise either or both the tobacco or non-tobacco use of the processes, inventions and/or improvements without payment to the other, Lorillard may grant non-exclusive licenses for the tobacco use and Specialties may grant non-exclusive licenses for the non-tobacco use. Licenses granted under this paragraph shall (1) be for a term no longer than the term of this agreement; (2) provide for a reasonable royalty at rates agreed upon by both parties or, if they cannot so agree, at rates determined by arbitration in accordance with the provisions of this agreement; and (3) be in such reasonable and usual form as the parties shall determine upon or as the arbitrators shall fix in case of disagreement. All royalties received under any licenses given under this paragraph, over and above the cost of collecting the same, shall be divided equally between the parties.

17. Specialties covenants and agrees with Lorillard that, after the expiration of said five years from the date hereof, but subject to the following provisions hereof, Specialties will not use either the processes, inventions, know-how, improvements, or the jointly-owned property for the manufacture of tobacco smoke filter material for anyone other than Lorillard so as to interfere with the filling of any orders from Lorillard for such material. Lorillard covenants and

agrees with Specialties that, after the expiration of said five-year period, only to the extent and at the time or times when, Lorillard's orders for such material from Specialties exceed the capacity of both the jointly-owned property and any other equipment that Specialties may then have suitable for production of such material, will Lorillard use the processes, inventions and/or improvements to manufacture such excess tobacco smoke filter material or will Lorillard have such excess tobacco smoke filter material manufactured for it by others than Specialties, in which case, know-how may be disclosed to such others to the extent necessary for such manufacture. Provided that after the expiration of said five years Specialties shall have the right to use the processes, inventions, know-how, improvements and jointly-owned property for the manufacture of tobacco smoke filter material for domestic buyers other than Lorillard or foreign buyers holding licenses at the expiration of sixty days after notice to Lorillard of its intention to do so if Lorillard fails to give Specialties an order within said sixty-day period for a sufficient quantity of tobacco smoke filter material to utilize the capacity of the jointly-owned property for a reasonable time, not less than ninety days, provided further that Specialties shall have the right to fill any orders or complete any contracts for the manufacture of tobacco smoke filter material for any one other than Lorillard which it has accepted after the aforesaid sixty-day

period in order to maintain the aforesaid capacity, provided that Lorillard will not at any time when Specialties is using the jointly-owned property for filling orders from others than Lorillard increase its orders materially beyond the trend of its then order pattern without giving Specialties at least ninety days' notice of such increase, provided that Specialties shall at all times after such five-year period be free to use the processes, inventions, know-how and/or improvements in the filling of any orders for the tobacco or non-tobacco use in connection with plant or facilities not jointly owned with Lorillard. In the event that Specialties sells such tobacco smoke filter material to others than Lorillard at a price lower than that provided in paragraph 19 hereof, Lorillard shall have the benefit of such lower price at the time such lower price becomes effective.

18. Specialties agrees that the tobacco smoke filter material delivered by it to Lorillard will be of the quality of the specifications for such material from time to time mutually agreed upon between Specialties and Lorillard and that Lorillard shall have the right to reject and receive credit for any tobacco smoke filter material which is not of such quality, and neither party will unreasonably refuse to agree to changes in the specifications which do not materially alter its obligations hereunder.

19. Subject to all applicable governmental regulations, both parties agree that the price to be paid by Loril-

lard to Specialties for tobacco smoke filter material (and filter units, which shall for purposes of this contract be deemed included in the terms "tobacco smoke filter material") on any and all orders of Lorillard hereunder during the first fifteen months of the term of this agreement and thereafter until changed as hereinafter provided, shall be the cost to Specialties of said tobacco smoke filter material divided by .7. After the expiration of the aforesaid fifteen-month period, either party may from time to time by written notice to the other request a revision of the aforesaid pricing method. All such material shall be on terms of net 30 days, f.o.b. point of manufacture. In the event that the parties are unable to agree on a revised pricing method or on the accuracy of said cost, then said method or cost shall be determined by arbitration in accordance with the provisions of this agreement. A revised pricing method, whether determined by agreement of the parties or by arbitration, shall however be subject to further revision only after a reasonable time, and no revision of the pricing method shall in any event take effect retroactively.

20. Specialties undertakes to acquire all raw materials used in connection with the fulfillment of this contract at the most favorable prices possible and also undertakes to keep all other costs and expenses affecting the price of the filter material under this agreement as low as is consistent with sound managerial policy. Lorillard shall have the right

to inspect Specialties' books and records as to costs and expenses at all reasonable times or, at Lorillard's option, Specialties will furnish quarterly statements of such items.

21. In the event that any action or suit for patent infringement is brought against either or both of the parties with respect to the tobacco use of the processes, inventions or improvements, the expenses of defending such litigation and any damages recovered against either or both of the parties as a result of such litigation shall be borne by the parties equally. Neither party shall make any settlement of such litigation without the prior written consent of the other party, provided, however, that if a bona fide offer of settlement of such litigation is tendered by the plaintiff or plaintiffs in such litigation to either or both of the parties, each party shall within ten (10) days notify the other party in writing as to whether it deems such offer of settlement to be acceptable, and if such offer of settlement is acceptable to one but not to both of the parties, such offer of settlement shall be rejected, but the party to whom such offer of settlement was acceptable shall forthwith deposit in escrow with the attorneys for the party to whom such offer of settlement was not acceptable a sum equal to one half of the damages contemplated by such offer of settlement, and the party to whom such offer of settlement was not acceptable shall bear all of the expenses in defending such litiga-

tion incurred after such rejection, shall have the sole right to accept or reject any subsequent offer of settlement and shall bear and satisfy all of the damages, if any, recovered against either or both of the parties, either by means of a subsequent settlement or of a final judgment in such litigation, and the sum held in escrow by the attorneys for the party to whom such offer of settlement was not acceptable shall be utilized by them first to apply to or satisfy to the full extent of such sum, if required, the amount, if any, of the damages recovered against either or both of the parties by means of such subsequent settlement or such final judgment and thereafter to pay over to the party to whom such offer of settlement was not acceptable all or the balance of such sum, if any.

22. If during the life of this agreement either party believes that any patent on an invention or improvement is being infringed, such party may by written notice call upon the other party to join with it in bringing and prosecuting an action or suit for such infringement against those responsible therefor. If the other party within ninety (90) days of the receipt by it of such written notice elects to join in the institution of such litigation, the action or suit shall be brought in the name of both parties, the expenses and costs of such litigation shall be borne by the parties equally, and the net amount of all damages affirmatively recovered by the parties by means of such litigation shall be divided between

them equally. If the other party does not so elect within the aforesaid period of ninety (90) days, the party giving such notice may itself institute such litigation in the name of either or both parties, as it may deem desirable, but the expenses of such litigation shall be borne solely by such party, and the damages recovered by such litigation shall belong solely to such party. Such party shall indemnify and save harmless the other party from and against any damages resulting from either recoupment, counterclaim or separate suit or action thereafter filed or brought either directly or indirectly by the defendants named in such litigation against either or both of the parties.

23. Lorillard agrees that it will indemnify and save Specialties harmless from and against all damages, costs, expenses and liabilities arising from or caused by or in any way connected with any claims, suits, actions or proceedings of any kind whatsoever which at any time may be made or brought by any natural or corporate person or persons alleging any misrepresentations by Lorillard as to the tobacco smoke filter material sold by Specialties to Lorillard hereunder or any harmful effects of any finished products sold by Lorillard, provided that this indemnification shall not extend to claims or liability in connection with which Specialties shall have been fully covered and indemnified by manufacturers' product-liability insurance. Specialties agrees that it will maintain and keep in force such product-

liability insurance as Lorillard shall specify (so far as same is obtainable in sound insurance companies), and Lorillard agrees that the cost thereof may be included in computing the cost of the material under paragraph 19 hereof.

24. Both parties agree that all original documents relating to the processes, inventions and/or improvements shall be kept in the custody of Specialties at its office, or such other place as it may think proper, provided that Lorillard shall have custody of original assignments by Specialties to it of inventions and/or improvements as provided herein, and each party may at any time have access to the documents held in custody by the other and may at any time make or have made copies of the same.

25. This agreement shall in no way be construed as creating the relationship of principal and agent or partnership or joint venture between the parties hereto. Neither party shall pledge or have the right to pledge the credit of the other, or be responsible for the obligations or acts of the other.

26. Neither party shall sell or assign, in whole or in part, to any third party its rights under this agreement or its interest in and to the processes, inventions and/or improvements, without the prior written consent of the other, which shall not be unreasonably withheld, and if the parties cannot agree on the conditions of such assign-

ment, the same shall be determined by arbitration as provided in this agreement.

27. In case either of the parties, during the term of this agreement, but not before termination of five years from the date hereof, shall be of the opinion that the same is not likely to prove remunerative and shall be desirous of abandoning the same, but the other party shall desire to preserve its rights with respect to the processes, inventions and/or improvements, the said first-mentioned party may, by notice in writing to the other party, declare his intention of abandoning the same, and this agreement shall thereupon terminate, and the party giving such notice shall not be under any further liability with respect to obligations arising thereafter, and the processes, inventions and improvements shall thenceforth be the absolute property of the party to whom such notice shall be given, and such assignments and other instruments shall be executed as shall be necessary or appropriate for effectuating the same.

28. If during the term hereof any process, invention and/or improvement shall be held or declared by an unappealed or unappealable order, judgment or decree of a court of competent jurisdiction to infringe upon Letters Patent issued to any one other than the parties hereto, this agreement shall, if the parties are unable to secure a license on terms mutually satisfactory to both of them,

forthwith terminate as to such process, invention and/or improvement, except as to the rights and obligations of the parties theretofore accrued or incurred hereunder.

29. Lorillard for the tobacco use and Specialties for the non-tobacco use shall have the right to adopt such trade-marks and trade names for the material as each may desire and to have such trade-marks and trade names registered in the United States Patent Office, and neither of the parties may use any of the trade-marks or trade names adopted by the other party without the written consent of the other party.

30. Unless and until sooner terminated by agreement of the parties or pursuant to the provisions of either paragraph 27 or paragraph 28 hereof, the term of this agreement shall extend for the life of the last to expire of any United States patent which may be issued on any of the inventions, provided, however, that if no such United States patent shall be issued, this agreement shall continue until the expiration of twenty (20) years from the date hereof in consideration of the mutual know-how of the parties and their joint ownership of the processes.

31. Upon termination of this agreement for any cause whatsoever Specialties and Lorillard shall each have an option for sixty (60) days from the effective termination date to purchase from the other said other's one-half interest in the then jointly-owned property at a price acceptable

by said other. Upon notice from one party that it desires to exercise its option to purchase the said property at a price stated in the notice, the other party shall have a period of thirty (30) days in which to accept the offer or make a counter-offer which in turn shall be accepted within thirty (30) days or superseded by a counter-offer from said one party, but if said counter-offer from said one party is not accepted within thirty (30) days by said other party, the negotiations shall be deemed to be terminated by default. If neither Specialties nor Lorillard exercises such option, or the negotiations are terminated by default as aforesaid, the jointly-owned property shall be sold at private or public sale, as the same may be mutually agreed upon between the parties, and either party may bid at any such public sale, and the net proceeds of either such private or such public sale shall be divided equally between the parties. Provided, however, that both parties agree that in exercising their rights under this paragraph, they will cooperate with one another to the end that so far as practicable all unfilled orders that either party may have which require the utilization of the jointly-owned property may be completed prior to the transfer of title of the jointly-owned property.

32. The parties hereto agree that any and all controversies which may arise between them with respect to this agreement shall be determined by arbitration in the following manner: Either party hereto may request arbitration by giving written notice to the other party, such notice specify-

ing the controversy to be submitted to arbitration and designating one disinterested arbitrator. Within ten (10) days from the date of mailing such notice, the other party, by written notice to the party requesting the arbitration, shall designate a disinterested arbitrator, and the two arbitrators so chosen shall within five (5) days thereafter choose a third disinterested arbitrator. If the two arbitrators designated by the parties shall within said 5-day period fail to appoint a third arbitrator, either arbitrator already appointed shall have the right, upon not less than five (5) days' written notice to the other arbitrator, stating in such notice the time and place at which the application is made, to make application to the American Arbitration Association for the appointment of a third arbitrator, and an arbitrator so appointed shall have the same standing and power as though he had been seasonably appointed by the two arbitrators first appointed. If within ten (10) days after receipt of notice of the request for arbitration the other party shall fail to appoint a second arbitrator, the party requesting the arbitration shall have the right, upon not less than five (5) days' written notice to the other, stating in such notice the time and place at which the application is made, to make application to the American Arbitration Association for appointment of such second arbitrator, and a second arbitrator so appointed shall have the same standing and power as though he had been seasonably appointed by the second party. The

three arbitrators chosen as hereinbefore provided shall give notice in writing to both parties hereto of the date set for a hearing of the controversy submitted to arbitration, which hearing shall be begun as soon as possible after the arbitrators have been chosen. The award or decision of such arbitrators or of a majority of them shall be made and reported in writing to both parties hereto within sixty (60) days after the termination of such hearing, and being made and reported to any court having jurisdiction within one year from the date of the submission or within such further time as the court may upon application of the arbitrators allow, the judgment thereon shall be final. Any such award or decision may include reasonable compensation and expenses of the arbitrators to be apportioned as provided in such award or decision, and shall be conclusive and binding upon both parties hereto. If either party shall fail, neglect or refuse to appear at the hearing fixed by the arbitrators, they may act in the absence of said party. It is further covenanted and agreed by both parties hereto that they will act and proceed in all respects in accordance with the award or decision of the arbitrators, and that if such award or decision shall find any money to be payable by one party to the other, they will forthwith pay any and all sums which shall be found to be due from them in accordance with any such award or decision. Breach of any award or decision of the arbitrators, or of a majority of them, or of any

judgment of a court of competent jurisdiction entered thereon, shall, in addition to such other rights and remedies as the injured party may have, be deemed to be a breach of this agreement.

33. Any notice hereunder shall be deemed duly given if mailed by registered mail, postage prepaid, in the case of Specialties addressed to it at East Walpole, Massachusetts, or such other address as it may from time to time last have specified by written notice to Lorillard in the manner herein provided for the giving of such notices, and in the case of Lorillard addressed to it at 119 West 40th Street, New York 18, New York, or such other address as it may from time to time last have specified by written notice to Specialties in the manner herein provided for the giving of such notices.

34. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, subject to the requirement for consent to assignment provided in paragraph 26 hereof.

35. Fire, differences with workmen, strikes, sit-downs, lockouts, accidents to plant or equipment, failure of the usual sources of supply of material, breakdowns of machinery or equipment, government regulations or restrictions, embargoes, insurrection, acts of public enemy, or acts of God, or any other contingencies beyond the control of Specialties, whether related or unrelated, or similar, or dissimilar, to any of the foregoing, shall excuse non-delivery, and Special-

ties shall not in any manner whatsoever be liable therefor. Similar causes, unavoidable by Lorillard, shall be sufficient excuse for the failure of Lorillard to take tobacco smoke filter material under this contract, beyond such as is in transit, until such contingencies are removed. In case of any non-delivery by Specialties to Lorillard hereunder not excused as in this paragraph provided, Lorillard shall, upon ten (10) days' prior written notice to Specialties, have the right to take possession of the jointly-owned property and to operate the same in the name and for the account of Specialties until such time as Lorillard shall receive from Specialties reasonable assurances that Specialties is ready, willing and able to make future deliveries to Lorillard hereunder.

36. Notwithstanding any other provision hereof, neither party shall be deemed in default hereunder for non-performance of any undertaking herein the performance of which is forbidden by any applicable law, ordinance or regulations of any governmental authority, or written order or direction issued pursuant thereto. Either party receiving notice of any law, ordinance, regulation or [illegible] which it deems applicable shall furnish the other with a copy thereof.

37. If any term or provision of this agreement, or any application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the re-

mainder of this agreement, and every application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and enforced to the fullest extent permitted by law.

38. The provisions of this contract shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF said H & V Specialties Co., Inc. has caused this instrument to be executed in its name and its corporate seal to be hereto affixed by its Treasurer and Clerk thereunto duly authorized, and said P. Lorillard Company has caused this instrument to be executed in its name and its corporate seal to be hereto affixed by its President and Secretary thereunto duly authorized, all on the day and year above written.

H & V SPECIALTIES CO., INC.

By _____
Its Treasurer

ATTEST:

_____
Its Clerk
(SEAL)

P. LORILLARD COMPANY

By _____
Its President

ATTEST:

_____
Its Secretary
(SEAL)

COMMONWEALTH OF MASSACHUSETTS

[illegible] ss. [illegible], 1952

Then personally appeared the above-named Bruce G. Lennox and acknowledged the foregoing instrument to be the free act and deed of said H & V Specialties Co., Inc.

Before me,

Arthur F. Platt
Notary Public
My Commission Expires
My commission expires June 7 1958

STATE OF NEW YORK

COUNTY OF NEW YORK ss. February 14th, 1952

Then personally appeared the above-named H. A. Kent and acknowledged the foregoing instrument to be the free act and deed of said P. Lorillard Company.

Before me,

William G. Snider
Notary Public
My commission expires

WILLIAM G. SNIDER
NOTARY PUBLIC, State of New York
No. 24-6093
Qualified in Kings County
Certificate filed with Kings County Clerk
New York County Clerk
Commission expires March 30, 1953