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Heinz Süllhöfer Niederrheinstr. 158 40474 Düsseldorf

Bayer Aktiengesellschaft
Gebäude Q 26 (Rechtsabteilung)
Kaiser-Wilhelm-Allee

51368 Leverkusen

March 17, 2009

Countermotion for the Annual Stockholders' Meeting on May 12, 2009

I hereby notify you that I will oppose the proposals of the Board of Management and the Supervisory Board as regards Item 2 of the Agenda, and will induce the other stockholders to vote in favor of the following countermotion.

Countermotion to Item 2: The actions of the members of the Board of Management are not ratified

As is apparent from a strategy paper by Dr. Heimbach dated July 26, 1967, which was leaked by an anonymous source, the Bayer Group defrauded inventor Heinz Süllhöfer, for the purpose of invalidating his patent, by asserting in 81 civil and criminal actions between 1967 and today prior use of his invention, processes and machinery for the continuous manufacture of laminated rigid polyurethane foam panels.

The document, which was sent to inventor Heinz Süllhöfer anonymously by a former Bayer employee on July 24, 2008, shows that, on behalf of the company, Bayer crooks Dr. Ernst and Dr. Heimbach committed perjury before the court in the 42-year-long patent infringement case and, therefore, perpetrated a scandalous economic crime

In the action to obtain information and recover money submitted by Süllhöfer in 1973 in the matter Süllhöfer vs. Bayer AG, case no. 4 b O 281/2007, formerly case no. 4 O 139/73, which is **not time-barred** and is still pending before the 4th Civil Division of the District Court in Düsseldorf, **it is sufficient if the injured party learned that a tort caused harm.**

The court intended to end the unpleasant, 41-year-long patent dispute by ordering on March 3, 2008 that the amount in dispute be set at €500 million. On the basis of this amount in dispute, a demand for the payment of more than €3 million in court costs was issued to Süllhöfer even though the 12th Civil Division of the District Court in Düsseldorf (case no. 12 O 15/95) had already handed down a final judgment against the company on February 22, 1995, citing the following reasons:

“The subject of the proceedings is claims in the millions. Of particular interest to the public is the fact that an employee of the Petitioner is clearly of the opinion that the Respondent has legitimate claims against the company, the Petitioner, and is supporting the Respondent anonymously with highly damaging documents from the company.”

Thus, it is time for the Bayer Group to make Heinz Süllhöfer a reasonable settlement offer. Until this occurs, the actions of the Board of Management should not be ratified.

At approximately 9:00 p.m. on July 24, 2008, coincidentally his 82nd birthday, the Plaintiff (Heinz Süllhöfer) received an anonymous phone call, the gist of which was as follows:

“Dear Mr. Süllhöfer, I left you some good news in your mailbox. I have not noticed any reaction whatsoever to the evidence of fraud sent to you previously in February 2008, most likely because, as the media is reporting, the court set an amount in dispute of **€500 million** and is ordering you to pay court costs in excess of **€3 million** before the trial can continue. According to Dr. Heimbach’s strategy paper, the court intended not only to silence you, but to declare Bayer AG’s claim for damages against you as settled once and for all after 41 years. On **July 24, 2008**, I sent you a **“check” in the form of a document** for the amount set by the patent court in March 2008 as the amount in dispute. You can cash this through the court or directly at Bayer. I admire you and wish you much success.”

The new-found document from the Bayer Group **disproves** the 41-year-old claim of **prior use** of [processes and machinery of] inventor Heinz Süllhöfer, **showing it to be fraudulent**. The formal, confidential brief intended for internal use dated **July 24, 1967** and drafted by Attorney-at-Law Decker, counsel for Bayer subsidiary Maschinenfabrik Karl Hennecke in case no. 2 O 79/67, was submitted to Hennecke by Dr. Ernst and to Farbenfabriken Bayer AG by Dr. Heimbach.¹ Excerpts from this document read as follows:

“... It is significant that the opposing side’s patent application will be published on July 18, 1967.

¹ The translation of this sentence assumes that the “wurde von” is out of place and that the sentence should have read “Der intern geheime urkundliche Schriftsatz vom **24. Juli 1967** des Prozeßbevollmächtigten der Bayer Tochter Maschinenfabrik Karl-Hennecke, RA Decker, in dem Verfahren Az. 2 O 79/67 wurde an Hennecke von Dr. Ernst und der Farbenfabriken Bayer AG von Dr. Heimbach überreicht.”

We agreed that patent attorney Mr. Brose should lodge an objection to this publication and petition to have the utility model revoked.

The gentlemen from Farbenfabriken Bayer also stated that a patent infringement claim should be brought against Süllhöfer.

Given the impending announcement of the opposing side's patent application, it is advisable to inform your clients about this application, which affords the opposing party provisional protection. The application contains, in addition to a device claim, a process claim that conflicts with your prior use right, which means you will not be able to exonerate your clients just like that. Thus, your clients need to be made aware that starting August 17, 1967, they must run their equipment using only the standard friction gap. To avoid unnecessary complications, it would be helpful if we worked together with the gentlemen from Bayer to draft a memo for your clients.

... The further course of action against Süllhöfer could be discussed at that meeting, as well ...”

Evidence: The document, the letter from Attorney-at-Law Decker dated July 24, 1967 in the matter of Süllhöfer vs. Hennecke, case no. 2 U 59/67.

I request confirmation of receipt of this countermotion and the reasons for it published pursuant to Sections 125, 126 of the German Stock Corporation Act (AktG).

Signed

Heinz Süllhöfer



Board of Management

Bayer AG
D-51368 Leverkusen

Statement by the Board of Management Regarding Mr. Süllhöfer's Counter-motion

Regarding Item 2 of the Agenda of the Annual Stockholders' Meeting, Mr. Süllhöfer proposes that the actions of the Board of Management not be ratified.

Over the last decades Mr. Süllhöfer has brought numerous actions against the Bayer Group involving various claims and petitions. The underlying factual and legal issues have been adjudicated by all levels of the judiciary, including the German Federal Supreme Court and the European Court of Justice. In the final analysis, none of these cases has resulted in an outcome that upheld Mr. Süllhöfer's view that Bayer infringed his patents or that he was entitled to demand royalties from Bayer.

The civil proceeding that was reopened at the beginning of 2008 at the request of Mr. Süllhöfer and is mentioned in his counter-motion relates to a proceeding taken in 1973 that both parties laid to rest over ten years ago. The Board of Management expects that Mr. Süllhöfer will not prevail with any of his claims in the current proceeding either. The assertions made in the counter-motion have all been well-known for a long time. We totally reject Mr. Süllhöfer's description of former Bayer employees as "crooks" and his insinuation that perjury was committed in this matter on behalf of the company.

The Board of Management believes that the counter-motion is without foundation and, therefore, is standing by its proposal.

The Board of Management

27 April 2009

Board of Management:
Werner Wenning,
Chairman

Klaus Kühn
Wolfgang Plischke
Richard Pott

Chairman of the
Supervisory Board:
Manfred Schneider

Registered office:
Leverkusen
Local court Cologne

HRB 48248