

**Subject:** Re: [Reconsideration Request] Reconsideration Request 19-4  
**Date:** Thursday, November 21, 2019 at 8:15:02 AM Pacific Standard Time  
**From:** reconsider on behalf of Herb Wayne  
**To:** Reconsideration  
**CC:** ombudsman  
**Attachments:** ATT00001.txt

Reconsideration Request 19-4

Pursuant to Article 4, Section 4.2(l)(iii), I am recusing myself from consideration of Request 19-4.

Best regards,

Herb Wayne  
ICANN Ombudsman

<https://www.icann.org/ombudsman> [icann.org]

<https://www.facebook.com/ICANNOmbudsman> [facebook.com]

Twitter: @IcannOmbudsman

ICANN Expected Standards of Behavior:

<https://www.icann.org/en/system/files/files/expected-standards-15sep16-en.pdf> [icann.org]

Community Anti-Harassment Policy

<https://www.icann.org/resources/pages/community-anti-harassment-policy-2017-03-24-en> [icann.org]

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint

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**From:** Reconsideration <reconsideration@icann.org>

**Date:** Tuesday, November 19, 2019 at 11:02 PM

**To:** ombudsman <ombudsman@icann.org>

**Subject:** Reconsideration Request 19-4

Dear Herb,

ICANN recently received Reconsideration Request 19-4 which was submitted on 14 October 2019 by Merck KGaA and Merck Registry Holdings, Inc. (Requestors), seeking reconsideration of ICANN organization's denial of their mutual request for a second postponement of a string contention auction for the .MERCCK string, for which the Requestors are the only two applicants. The Board Accountability Mechanisms Committee (BAMC) has determined that Request 19-4 is sufficiently stated pursuant to Article 4, Section 4.2(k) of the

ICANN Bylaws. Pursuant the Article 4, Section 4.2(I) of the ICANN Bylaws, a reconsideration request must be sent to the Ombudsman for consideration and evaluation if the request is not summarily dismissed following review by the BAMC to determine if the request is sufficiently stated. Specifically, [Section 4.2 \(I\) \[icann.org\]](#) states:

(I) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in [Section 4.2\(I\)\(iii\)](#) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to [Article 5](#) of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

Please advise whether you are accepting Request 19-4 for evaluation or whether you are recusing yourself pursuant to the grounds for recusal set forth in Section 4.2(I)(iii). If you are accepting Request 19-4 for evaluation, please note that your substantive evaluation must be provided to the BAMC within 15 days of receipt of Request 19-4.

Best regards,  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094