

BETTINGER Rechtsanwälte • Patentanwälte, Bavariaring 14, 80336 München

Members of the ICANN Board  
Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

UNITED STATES OF AMERICA

By email ([Reconsideration@icann.org](mailto:Reconsideration@icann.org))

**Re: Request 16-12: Merck KGaA**

Munich, October 24, 2017

**Bettinger Scheffelt  
Kobiako von Gamm**  
Partnerschaft mbB

Bavariaring 14  
80336 München

Tel +49 (0) 89 548 86 70-0  
Fax +49 (0) 89 548 86 70-22

mail@bettinger.de  
www.bettinger.de

**Dr. Torsten Bettinger, LL.M.** <sup>1,2</sup>  
Rechtsanwalt

**Dr. Michael Scheffelt** <sup>3</sup>  
Rechtsanwalt

**Iouri Kobiako von Gamm** <sup>4,5</sup>  
Patentanwalt, Dipl.-Phys.

**Martin Müller**  
Rechtsanwalt

**Dr. Friederike Manz, LL.M.**  
Rechtsanwältin

**Prof. Dr. Claudius Eisenberg** <sup>6</sup>  
Of Counsel

1 Fachanwalt für gewerblichen Rechtsschutz  
2 Fachanwalt für Informationstechnologierecht  
3 Fachanwalt für Bau- und Architektenrecht  
4 European Patent Attorney  
5 European Trademark Attorney,  
European Design Attorney  
6 Nicht als Rechtsanwalt zugelassen

Dear Members of the ICANN Board of Directors,

we are writing on behalf of our client Merck KGaA regarding ICANN's Community Priority Evaluation Process Review ("CPE Process Review"). The Review is being conducted by FTI Consulting Inc. (FTI) and focuses on gathering information and materials from the ICANN organization, and from the CPE provider (the Economist Intelligence Unit or "EIU") regarding the process.

Our client appreciates that ICANN undertakes a review of the CPE process, which has raised the concerns of many applicants.

ICANN has provided information about the Review in the 26 April 2017 update from the Chair of the Board of the Governance Committee, in the 2 June 2017 Community Priority Evaluation Process Review Update and in the September 1 2017 Community Priority Evaluation Process Review Update.

According to ICANN's September 1 2017 Community Priority Evaluation Update, the interview Process of the CPE provider personnel that had involvement in CPEs has been completed and FTI is also working with the CPE provider to obtain the reference materials for the evaluations that are the subject of the pending Reconsideration Requests.

Our client notes that it has requested access to the documents that the CPE panel relied upon in making its determination with respect to its community application for <.merck> (“Community Priority Evaluation Report”) and, in particular, to the independent research that the panel conducted and to the information on the process by which ICANN interacted with the Community Priority Evaluation (CPE) Provider.

To date, our client has not been contacted by FTI Consulting Inc. regarding the CPE Process Review related to its Request for Reconsideration of the Community Priority Evaluation Report for its <.MERCK> community application.

It is also unclear whether FTI’s final report and findings and in particular, the documents which the CPE panel used to form its determination, the independent research that the panel conducted and the information on the process by which ICANN interacted with the CPE Provider will be communicated to our client before the BGC renders a decision in this Request for Reconsideration Proceeding.

Our client therefore seeks confirmation that ICANN will disclose FTI’s final report and in particular,

- the documents that the CPE panel used to make its determination,
- the independent research that the panel conducted and
- the information on the process with which ICANN interacted with the CPE Provider

related to the CPE Provider’s “Community Priority Evaluation Report” for <.merck> immediately after FTI completes its review and that our client will have the opportunity to respond and comment on FTI’s findings before ICANN renders a determination regarding our client’s Request for Reconsideration.

Kind regards,



Torsten Bettinger