

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTERVET INC., d/b/a MERCK ANIMAL)
HEALTH and THE ARIZONA BOARD OF)
REGENTS, on behalf of The University of)
Arizona,)

Plaintiffs,)

v.)

BOEHRINGER INGELHEIM VETMEDICA,)
INC.,)

Defendant.)

C.A. No. _____

COMPLAINT FOR PATENT INFRINGEMENT

Intervet Inc., d/b/a Merck Animal Health (“Intervet”) and the Arizona Board of Regents, on behalf of The University of Arizona (the “University”) (collectively “Plaintiffs”), hereby assert the following claim for patent infringement against Defendant Boehringer Ingelheim Vetmedica, Inc. (“Boehringer”), and allege as follows:

THE PARTIES

1. Intervet is a corporation organized and existing under the laws of Delaware with its principal place of business at 556 Morris Avenue, Summit, New Jersey.

2. The University is a constitutionally-created body corporate, an instrumentality of the state of Arizona, having a place of business at 1401 East University Blvd, Administration Bldg – Room 103, Tucson, Arizona 85721-0066.

3. On information and belief, Boehringer is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business in St. Joseph’s Missouri. On information and belief, Boehringer is engaged in the manufacturing,

marketing and sale of products in the United States, including in the District of Delaware, and conducts business in Delaware and throughout the United States.

NATURE OF THE ACTION

4. This is a civil action for the infringement of United States Patent No. 5,610,059 (“the ‘059 Patent” or “the Patent-in-Suit”). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the matters asserted herein under 28 U.S.C. §§ 1331 and 1338(a).

6. Boehringer is subject to personal jurisdiction in this District because it is incorporated in this District, conducts business in this District, purposefully avails itself of the rights and benefits of Delaware law, and has substantial and continuing contacts with Delaware.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

THE PATENT

8. On March 11, 1997, the United States Patent and Trademark Office (the “PTO”) issued the ‘059 Patent, entitled “Etiological Agent for Porcine Enteritis.” The named inventors are Lynn A. Joens and Robert D. Glock. All rights to the ‘059 patent have been assigned to the University, and the University is the assignee and sole owner of the ‘059 patent. A copy of the ‘059 Patent is attached hereto as Exhibit A.

9. Intervet is the exclusive licensee under the Patent-in-Suit. Plaintiffs have the right to sue to enforce the Patents-in-Suit.

CLAIM FOR RELIEF

INFRINGEMENT OF THE '059 PATENT

10. Plaintiffs incorporate by reference paragraphs 1 through 9.

11. Boehringer has infringed and continues to infringe the '059 patent under 35 U.S.C. § 271(a)-(c) by making, using, selling, and offering for sale Enterisol® Ileitis embodying the claimed inventions of the '059 patent.

12. Boehringer had actual and constructive notice of the '059 Patent prior to conducting infringing activities.

13. On information and belief, Boehringer's infringement of the '059 Patent has been and is knowing and willful.

14. Boehringer will continue to infringe the '059 patent and Boehringer's infringing activities will irreparably harm Plaintiffs unless enjoined by this Court. Plaintiffs do not have an adequate remedy at law.

JURY DEMAND

Plaintiffs demand a jury for all issues triable to a jury by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment:

1. Declaring that Boehringer has infringed the '059 Patent;
2. Declaring that the commercial use, sale, offer for sale, manufacture, and importation by Boehringer of Enterisol® Ileitis infringes the '059 Patent;
3. Permanently enjoining Boehringer, its officers, agents, servants, and employees, and those persons in active concert or participation with any of them, from commercially manufacturing, using, offering to sell, or selling Enterisol® Ileitis or any other product that infringes the '059 Patent within the United States, or importing Enterisol® Ileitis or

any other product that infringes the '059 Patent into the United States, or in any other way infringing the '059 prior to the expiration of the '059 Patent, including any extensions;

4. Awarding Plaintiffs damages from Boehringer adequate to compensate for Boehringer's infringement, including interest and costs;

5. Awarding Plaintiffs treble damages based on the willfulness of Boehringer's infringement pursuant to 35 U.S.C. § 284;

6. Awarding Plaintiffs their reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

7. Granting Plaintiffs such other and further relief as the Court may deem just and proper under the circumstances.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Mary B. Graham

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