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12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**  
15

16 **THERMOLIFE INTERNATIONAL, LLC**

17 Plaintiff,

18 vs.

19 **IP PHARMA, LTD.,**

20 Defendant.  
21  
22

Case No. '13CV2159 H NLS

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

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1 Plaintiff Thermolife International, LLC (“Plaintiff”) hereby alleges for its  
2 Complaint against IP Pharma, Ltd. (“Defendant”), on personal knowledge as to its  
3 own activities and on information and belief as to the activities of others, as  
4 follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under  
7 the laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,  
8 California, 90291.

9 2. Plaintiff is and was at all relevant times the exclusive licensee of the  
10 following United States Patents:

11 a. Patent No. 6,117,872, titled “Enhancement of Exercise  
12 Performance by Augmenting Endogenous Nitric Oxide Production  
13 or Activity”; and

14 b. Patent No. 7,452,916, titled “Enhancement of Vascular Function  
15 By Modulation of Endogenous Nitric Oxide Production or  
16 Activity.”

17 3. The above patents are and were owned by The Board of Trustees of  
18 the Leland Stanford Junior University (“Stanford University”) and Plaintiff  
19 exclusively licenses and licensed the patents from Stanford University.

20 4. The above patents are referred to herein as the “patents in suit.”

21 5. Plaintiff has been given the right by Stanford University to institute  
22 suit with respect to past, current, and future infringement of the patents in suit,  
23 including this suit against Defendant.

24 6. Defendant is a corporation organized and existing under the laws of  
25 United Kingdom with a principal place of business at Burrinder Grewal Leed  
26 Innovation Centre, 103 Clarendon Road in Leeds, West Yorkshire, LS2 9DF, Great  
27 Britain.

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**A. DIRECT INFRINGEMENTS**

1  
2 12. Defendant's employees, agents, representatives and other persons  
3 sponsored by or who endorse Defendant and Defendant's products in advertising  
4 and marketing activities, have taken, used, and orally administered the accused  
5 products.

6 13. The accused products are formulated, made, manufactured, shipped,  
7 distributed, advertised, offered for sale, and sold by Defendant to include certain  
8 ingredients that, by virtue of their inclusion in the products, infringe one or more  
9 claims of one or more of the patents in suit.

10 14. The accused products are formulated, made, manufactured, shipped,  
11 distributed, advertised, offered for sale, and sold by Defendant to include specific  
12 ingredients for certain purposes that, by virtue of their inclusion in the products for  
13 such purposes, infringe one or more claims of one or more of the patents in suit,  
14 and as a result, when Defendant's employees, agents, representatives and other  
15 persons sponsored by or who endorse Defendant and Defendant's products in  
16 advertising and marketing activities orally administer the accused products, they are  
17 practicing and they practiced the methods disclosed in those claims.

18 15. The purposes for which these ingredients are included in the accused  
19 products are and were, without limitation, to enhance nitric oxide production, to  
20 improve nitric oxide activity, to produce nitric oxide, to boost nitric oxide levels in  
21 the body, and to enhance physical performance.

22 16. Defendant encouraged and/or is aware of the fact that its employees,  
23 agents, representatives and other persons sponsored by Defendant or who endorse  
24 Defendant and Defendant's products in advertising and marketing activities orally  
25 administered and administer the accused products and practice and practiced the  
26 methods disclosed in one or more claim of one or more of the patents in suit, and  
27 these employees, agents, representatives and other persons sponsored by Defendant  
28 or who endorse Defendant and Defendant's products in advertising and marketing

1 activities are and were acting under Defendant's direction and control when  
2 practicing those methods.

3 17. Therefore, Defendant is and was a direct infringer of one or more  
4 claims of one or more of the patents in suit, and Defendant practices and practiced  
5 the methods as set forth in one or more claims of one or more of the patents in suit.

### 6 **B. INDIRECT INFRINGEMENTS**

7 18. End-users of Defendant's accused products were and are also direct  
8 infringers of one or more claims of one or more of the patents in suit.

9 19. End-users of Defendant's accused products have taken, used, and  
10 orally administered the accused products.

11 20. The accused products are and were formulated, made, manufactured,  
12 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to  
13 include certain ingredients that, by virtue of their inclusion in the products, infringe  
14 and infringed one or more claims of one or more of the patents in suit.

15 21. The accused products are and were formulated, made, manufactured,  
16 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to  
17 include specific ingredients for certain purposes that, because of their inclusion in  
18 the products for such purposes, infringe and infringed one or more claims of one or  
19 more of the patents in suit, and as a result, when end-users of Defendant's accused  
20 products orally administer and administered the accused products, they are and  
21 were practicing the methods disclosed in those claims.

22 22. Defendant's labels and advertising for the accused products explain  
23 and explained the elements and essential elements of one or more of the methods  
24 disclosed in the patents in suit, and those labels and advertising statements  
25 encourage, urge, and induce the accused products' end-users, and did so in the past,  
26 to purchase and orally ingest the products to practice those methods, and end-users  
27 do and did practice those methods.

28

1           23. Defendant has therefore specifically intended to cause these end-users  
2 to directly infringe the claimed methods of these patents, and in fact urged them to  
3 do so.

4           24. The accused products are and were not suitable for non-infringing  
5 uses, and none of Defendant's labels or advertisements for the accused products  
6 disclose or disclosed any uses for the products, nor for the compounds disclosed in  
7 the claimed methods of the patents in suit, that do not infringe upon such methods.

8           25. The inclusion of the specific infringing compounds in the products is  
9 and was material to practicing such methods.

10          26. Defendant has and had knowledge that the accused products are and  
11 were especially adapted by end-users of the products for the practicing of such  
12 methods, and, indeed, Defendant encourages, urges, and induces the accused  
13 products' end-users to purchase and orally administer the accused products to  
14 practice such methods, and has done so in the past.

15          27. Defendant intentionally and knowingly induced, encouraged, and  
16 urged end-users of the accused products to purchase and orally administer the  
17 accused products for the purposes of practicing the claimed methods, by having  
18 them orally ingest the compounds disclosed in such claims.

19          28. Defendant has and had knowledge of the fact that the accused  
20 products, particularly as administered, infringe on one or more claims of the patents  
21 in suit.

22          29. Defendant has and had direct, firsthand knowledge of the patents in  
23 suit.

24          30. For example and without limitation, Plaintiff believes Defendant has  
25 had knowledge of the patents in suit since November 2006, when an ongoing  
26 settlement of a patent infringement case relating to at least some of the patents in  
27 suit against Herbalife, a well-known company in Defendant's industry, was  
28 announced in press releases issued in a highly publicized manner. Plaintiff believes

1 Defendant's employees, agents, and representatives saw the press releases and were  
2 aware of the settlement and thus the patents in suit.

3 31. By way of further example and without limitation, Defendant sold its  
4 products through retailers, including online retailers, and those retailers have sold  
5 other companies' products whose labels and/or advertisements have been  
6 prominently marked with one or more of the patents in suit, by patent number,  
7 including without limitation, upon information and belief, the products  
8 manufactured and sold by Herbalife, Daily Wellness, and Vitality Research Labs.  
9 Defendant's employees, agents, and representatives have seen these labels and  
10 advertisements and, thus, Defendant has and had direct knowledge of the patents in  
11 suit.

12 32. By way of further example and without limitation, Defendant received  
13 written notice of the patents in suit from Plaintiff in April 2013.

14 33. Defendant brazenly and willfully decided to infringe the patents in suit  
15 despite knowledge of the patents' existence and its knowledge of the accused  
16 products' infringements of the patents.

17 34. At a minimum, and in the alternative, Plaintiff pleads that Defendant  
18 willfully blinded itself to the infringing nature of the accused products' sales.

19 35. Defendant did not cease its own direct infringement, nor its  
20 contributory infringement or inducement of infringement by end-users, despite its  
21 knowledge of the patents in suit and the end-users' infringing activities with respect  
22 to the patents in suit.

#### 23 **IV. FIRST CAUSE OF ACTION**

##### 24 **Infringement of U.S. Patent No. 7,452,916**

25 36. Plaintiff repeats and re-alleges the allegations of the foregoing  
26 paragraphs of this Complaint as if fully set forth herein.

27 37. Defendant has in the past literally and directly infringed or directly  
28 infringed under the doctrine of equivalents one or more claims of United States

1 Patent No. 7,452,916 by making, using, selling, and offering for sale the accused  
2 products, or any one of those products.

3 38. In addition to the fact that Defendant makes, uses, sells, and offers for  
4 sale the accused products, and did so in the past, further examples of Defendant's  
5 direct infringements include, without limitation, the fact that Defendant encouraged  
6 and/or is aware of the fact that its employees, agents, representatives and other  
7 persons sponsored by or who endorse Defendant and Defendant's products in  
8 advertising and marketing activities orally administer the accused products and  
9 practice the methods disclosed in one or more claims of United States Patent No.  
10 7,452,916, and these employees, agents, representatives and other persons  
11 sponsored by or who endorse Defendant and Defendant's products in advertising  
12 and marketing activities acted under Defendant's direction and control when  
13 practicing those methods.

14 39. Defendant encouraged and was aware of these persons' oral  
15 administration of the accused products for these purposes, these persons are acting  
16 under Defendant's direction and control, and therefore Defendant directly practiced  
17 the methods disclosed in United States Patent No. 7,452,916.

18 40. End-users of Defendant's accused products were also direct infringers  
19 of one or more claims of United States Patent No. 7,452,916.

20 41. End-users of Defendant's accused products have taken, used, and  
21 orally administered the accused products.

22 42. The accused products were formulated, made, manufactured, shipped,  
23 distributed, advertised, offered for sale, and sold by Defendant to include certain  
24 ingredients that, by virtue of their inclusion in the products, infringed one or more  
25 claims of United States Patent No. 7,452,916.

26 43. The accused products were formulated, made, manufactured, shipped,  
27 distributed, advertised, offered for sale, and sold by Defendant to include specific  
28 ingredients for purposes that, by their inclusion in the products for such purposes,



1 infringed one or more claims of United States Patent No. 7,452,916, and as a result,  
2 when end-users of Defendant's accused products orally administered the accused  
3 products, they were practicing the methods disclosed in one or more claims of that  
4 patent.

5 44. Defendant's labels and advertising for the accused products explained  
6 the elements and essential elements of the methods disclosed in United States  
7 Patent No. 7,452,916, and those labels and advertising statements encouraged,  
8 urged, and induced the accused products' end-users to purchase and orally ingest  
9 the products to practice those methods, and end-users did practice those methods.

10 45. Defendant therefore specifically intended to cause these end-users to  
11 directly infringe the claimed methods of United States Patent No. 7,452,916, and  
12 had in fact urged them to do so.

13 46. The accused products were not suitable for non-infringing uses, and  
14 none of Defendant's labels or advertisements for the accused products disclosed  
15 any uses for the products, nor for the compounds disclosed in the claimed methods,  
16 that did not infringe upon such methods.

17 47. The inclusion of these specific infringing compounds in the products  
18 was material to practicing such methods.

19 48. Defendant had knowledge that the accused products were especially  
20 adapted by end-users of the products for the practicing of such methods, and,  
21 indeed, Defendant encouraged, urged, and induced the accused products' end-users  
22 to purchase and orally administer the accused products to practice such methods.

23 49. Defendant intentionally and knowingly induced, encouraged, and  
24 urged end-users of the accused products to purchase and orally administer the  
25 accused products for the purposes disclosed in one or more claims of United States  
26 Patent No. 7,452,916, by having them orally ingest the compounds disclosed in  
27 such claims.

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1 50. Defendant had knowledge of the fact that the accused products,  
2 particularly as administered, infringed on one or more claims of United States  
3 Patent No. 7,452,916.

4 51. Defendant also had direct, firsthand knowledge of United States Patent  
5 No. 7,452,916 itself.

6 52. Defendant's activities were without express or implied license by  
7 Plaintiff.

8 53. As a result of Defendant's acts of infringement, Plaintiff suffered and  
9 will continue to suffer damages in an amount to be proved at trial.

10 54. Defendant's past infringements and/or continuing infringements have  
11 been deliberate and willful, and this case is therefore an exceptional case, which  
12 warrants an award of treble damages and attorneys' fees in accordance with 35  
13 U.S.C. § 285.

#### 14 **V. SECOND CAUSE OF ACTION**

#### 15 **Infringement of U.S. Patent No. 6,117,872**

16 55. Plaintiff repeats and re-alleges the allegations of the foregoing  
17 paragraphs of this Complaint as if fully set forth herein.

18 56. Defendant has in the past and still is literally and directly infringing or  
19 directly infringing under the doctrine of equivalents one or more claims of United  
20 States Patent No. 6,117,872 by making, using, selling, and offering for sale the  
21 accused products, or any one of those products, and will continue to do so unless  
22 enjoined by this Court.

23 57. In addition to the fact that Defendant makes, uses, sells, and offers for  
24 sale the accused products, further examples of Defendant's direct infringements  
25 include, without limitation, the fact that Defendant has encouraged and/or is aware  
26 of the fact that its employees, agents, representatives and other persons sponsored  
27 by or who endorse Defendant and Defendant's products in advertising and  
28 marketing activities orally administer the accused products and practice the

1 methods disclosed in one or more claims of United States Patent No. 6,117,872,  
2 and these employees, agents, representatives and other persons sponsored by or  
3 who endorse Defendant and Defendant's products in advertising and marketing  
4 activities are acting under Defendant's direction and control when practicing those  
5 methods.

6 58. Defendant has encouraged and is aware of these persons' oral  
7 administration of the accused products for these purposes, these persons are acting  
8 under Defendant's direction and control, and therefore Defendant is directly  
9 practicing the methods disclosed in United States Patent No. 6,117,872.

10 59. End-users of Defendant's accused products are also direct infringers of  
11 one or more claims of United States Patent No. 6,117,872.

12 60. End-users of Defendant's accused products have taken, used, and  
13 orally administered the accused products.

14 61. The accused products are formulated, made, manufactured, shipped,  
15 distributed, advertised, offered for sale, and sold by Defendant to include certain  
16 ingredients that, by virtue of their inclusion in the products, infringe one or more  
17 claims of United States Patent No. 6,117,872.

18 62. The accused products is formulated, made, manufactured, shipped,  
19 distributed, advertised, offered for sale, and sold by Defendant to include specific  
20 ingredients for purposes that, by their inclusion in the products for such purposes,  
21 infringe one or more claims of United States Patent No. 6,117,872, and as a result,  
22 when end-users of Defendant's accused products orally administer the accused  
23 products, they are practicing the methods disclosed in one or more claims of that  
24 patent.

25 63. Defendant's labels and advertising for the accused products explain the  
26 elements and essential elements of the methods disclosed in United States Patent  
27 No. 6,117,872, and those labels and advertising statements encourage, urge, and  
28

1 induce the accused products' end-users to purchase and orally ingest the products to  
2 practice those methods, and end-users do practice those methods.

3 64. Defendant has therefore specifically intended to cause these end-users  
4 to directly infringe the claimed methods of United States Patent No. 6,117,872, and  
5 has in fact urged them to do so.

6 65. The accused products are not suitable for non-infringing uses, and  
7 none of Defendant's labels or advertisements for the accused products disclose any  
8 uses for the products, nor for the compounds disclosed in the claimed methods, that  
9 do not infringe upon such methods.

10 66. The inclusion of these specific infringing compounds in the products is  
11 material to practicing such methods.

12 67. Defendant has knowledge that the accused products are especially  
13 adapted by end-users of the products for the practicing of such methods, and,  
14 indeed, Defendant encourages, urges, and induces the accused products' end-users  
15 to purchase and orally administer the accused products to practice such methods,  
16 and have done so in the past.

17 68. Defendant has intentionally and knowingly induced, encouraged, and  
18 urged end-users of the accused products to purchase and orally administer the  
19 accused products for the purposes disclosed in one or more claims of United States  
20 Patent No. 6,117,872, by having them orally ingest the compounds disclosed in  
21 such claims.

22 69. Defendant has knowledge of the fact that the accused products,  
23 particularly as administered, infringe on one or more claims of United States Patent  
24 No. 6,117,872.

25 70. Defendant also has direct, firsthand knowledge of United States Patent  
26 No. 6,117,872.

27 71. Defendant's activities have been without express or implied license by  
28 Plaintiff.

1 72. As a result of Defendant's acts of infringement, Plaintiff has suffered  
2 and will continue to suffer damages in an amount to be proved at trial.

3 73. As a result of Defendant's acts of infringement, Plaintiff has been and  
4 will continue to be irreparably harmed by Defendant's infringements, which will  
5 continue unless Defendant is enjoined by this Court.

6 74. Defendant's past infringements and/or continuing infringements have  
7 been deliberate and willful, and this case is therefore an exceptional case, which  
8 warrants an award of treble damages and attorneys' fees in accordance with 35  
9 U.S.C. § 285.

10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as  
12 follows:

13 1. A declaration that Defendant has infringed the patents in suit, under 35  
14 U.S.C. §§ 271 *et seq.*;

15 2. That injunctions, preliminary and permanent, be issued by this Court  
16 restraining Defendant, its officers, agents, servants, directors, and employees, and  
17 all persons in active concert or participation with each, from directly or indirectly  
18 infringing, or inducing or contributing to the infringement by others of, United  
19 States Patent No. 6,117,872;

20 3. That Defendant be required to provide to Plaintiff an accounting of all  
21 gains, profits, and advantages derived by Defendant's infringement of the patents in  
22 suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the  
23 wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

24 4. That the damages awarded to Plaintiff with regard to the patents in suit  
25 be increased up to three times, in view of Defendant's willful infringement, in  
26 accordance with 35 U.S.C. § 284;

27 5. That this case be declared to be exceptional in favor of Plaintiff under  
28 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and

- 1 other expenses incurred in connection with this action;
- 2 6. That Plaintiff be awarded its interest and costs of suit incurred in this
- 3 action;
- 4 7. Compensatory damages;
- 5 8. Punitive damages; and
- 6 9. That Plaintiff be awarded such other and further relief as this Court
- 7 may deem just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a

10 jury trial for all issues in this case that properly are subject to a jury trial.

11

12 DATED: September 12, 2013

**HIDEN, ROTT & OERTLE, LLP**

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14 By: 

15 Eric M. Overholt, Esq.

16 *Attorneys for Plaintiff*

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