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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

EATON VETERINARY PHARMACEUTICAL, INC.,

Plaintiff,

vs.

DIAMONDBACK DRUGS OF DELAWARE, LLC, a Delaware limited liability company, DIAMONDBACK DRUGS, LLC, an Arizona limited liability company, MICHAEL R. BLAIRE, and RORY J. ALBERT,

Defendants.

CASE NO. 2:14-cv-01208-HRH

FIRST AMENDED COMPLAINT

Plaintiff Eaton Veterinary Pharmaceutical, Inc. ("Eaton"), through its undersigned attorneys of record, files this First Amended Complaint against defendants Diamondback Drugs of Delaware, LLC., Diamondback Drugs, LLC (collectively "Diamondback"), Michael R. Blaire, and Rory J. Albert (collectively "Defendants") and states and alleges as follows:

INTRODUCTION

1. This is a lawsuit for patent infringement.

2. This lawsuit stems from the flagrant theft and misuse of valuable intellectual property belonging to Eaton.

3. This intellectual property comprises a patented method of treating various ophthalmic diseases in animals. The patent being infringed is U.S. Patent No. 6,930,127 (the "'127 Patent"). Exhibit A.

4. The invention comprises the administration of a non-aqueous substance to an animal's affected eye to treat ophthalmic disease, wherein the non-aqueous substance contains a chemical called tacrolimus. The amount of tacrolimus in the substance ranges from 0.00001% to about 10.0% by weight of the substance.

5. Diamondback are veterinary compounding pharmacies, which prepare pharmaceutical products to meet the need of a particular animal/patient as prescribed by a doctor of veterinary medicine.

6. Diamondback employ pharmacists and technicians who have undergone specialized training in veterinary compounding of ophthalmic products.

7. When a new prescription for a particular compound is called into Diamondback, a pharmacist specifically requests information including the disease, the animal to be treated, and the intended use of the compound.

8. On July 30, 2013, a cease and desist letter along with a copy of the '127 Patent was sent to Michael R. Blaire, CEO of Diamondback Drugs of Delaware, and Diamondback Drugs, LLC. Exhibit B.

9. Defendants were provided detailed information in the '127 Patent regarding the treatment of chronic eye diseases in dogs.

10. Defendants were provided detailed information in the '127 Patent regarding the use of tacrolimus in a non-aqueous lubricant vehicle for treatment of chronic eye diseases in dogs.

11. Defendants were provided detailed information in the '127 Patent regarding the method of administering the tacrolimus compound to the eye of an affected animal.

12. The primary use of the tacrolimus compound disclosed in the '127 Patent in veterinary medicine is for the treatment of chronic eye diseases in dogs.

13. Defendants actively induce its customers to order the tacrolimus compound disclosed in the '127 Patent for the treatment of chronic eye diseases in dogs through advertising on their website, direct sales, publications and catalogs. Exhibits C and D.

14. Defendants knew that the tacrolimus compound disclosed in the '127 Patent was adapted for the particular use of treatment of chronic eye diseases in dogs, and that the '127 Patent proscribes that use.

15. When a new prescription for a particular compound is called into Diamondback, a pharmacist specifically requests information including the disease, the animal to be treated, and the intended use of the compound.

16. When Diamondback fills a prescription for the tacrolimus compound disclosed in the '127 Patent, it knows that the tacrolimus compound will be provided and administered in a manner that infringes one or more claims of the '127 Patent.

17. Use of tacrolimus compound for treatment of chronic eye diseases in dogs is a non-standard prescription, which requires the pharmacist to inquire about the health condition of the pet and is filled for a specific pet.

18. The chronic eye diseases in dogs disclosed in the '127 patent are chronic conditions that require treatment for the life of the pet.

19. Diamondback is required to inquire from the veterinarian or the customer the health condition of the pet before filling a prescription for the tacrolimus compound disclosed in the '127 Patent.

20. Defendants have filled tens of thousands of prescriptions for the tacrolimus compound disclosed in the '127 patent for treatment of chronic eye diseases in dogs.

21. In complete disregard for Eaton's intellectual property rights, Defendants willfully infringed Eaton's '127 Patent by using the patented technology or inducing and contributing to others' use of the patented technology, knowing they did not have the right to do so.

22. Defendants' actions have infringed and continue to infringe Eaton's '127 Patent.

23. Accordingly, at a minimum, Eaton seeks a reasonable royalty, together with such other and further relief is available under 35 U.S.C. § 285.

PARTIES

24. Eaton is a limited liability company organized and existing under the laws of the State of Arizona having an address of 711 East Carefree Hwy, Suite 130, Phoenix, Arizona 85085. Eaton possesses all rights, title and interest in the '127 Patent, including the right to sue for infringement.

25. Defendants consist of two companies and two individuals. The companies are Diamondback Drugs of Delaware, LLC which is a limited liability company organized and existing under the laws of the State of Delaware, and Diamondback Drugs, LLC, a limited liability company organized and existing under the laws of the State of Arizona. Diamondback Drugs, LLC was organized in 2001 and is presently a member of Diamondback Drugs of Delaware, LLC. On information and belief, both companies have their principal place of business at 7631 East Indian School Road, Scottsdale, Arizona 85251. The companies own and operate a veterinary pharmacy.

26. On information and belief, both defendant companies were founded by Michael R. Blaire and Rory J. Albert who are named defendants in this lawsuit.

27. On information and belief, Michael Blaire holds the position of Chief Executive Officer in both companies.

28. On information and belief, Mr. Blaire knew of the '127 patent and is an active participant in inducing the infringing activity.

29. On information and belief, Rory Albert holds the position of Managing member in both companies of Diamondback's customers.

30. On information and belief, Mr. Albert knew of the '127 patent and is an active participant in inducing the infringing activity of Diamondback's customers.

JURISDICTION AND VENUE

31. This is a patent infringement action brought under the patent laws of the United States, 35 U.S.C. Section 1 et seq. Eaton seeks damages for patent infringement and an injunction preventing Diamondback from inducing or contributing to others' use of Eaton's patented technology without its permission.

32. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

33. This Court has personal jurisdiction over Diamondback because it has purposefully availed itself of the privilege of conducting business within this State and this district.

34. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise to the claims asserted herein occurred in this district, and Diamondback has committed acts of infringement in this district.

COUNT I: PATENT INFRINGEMENT BY INDUCEMENT

35. Eaton incorporates by reference the foregoing allegations as if fully set forth herein.

36. Defendants customers directly infringe one or more claims of the '127 Patent by performing all of the steps of one or more claims of the '127 Patent.

37. Defendants advertise, sell and offer to sell the tacrolimus compound set forth in the '127 Patent for the express purpose claimed in the '127 Patent.

38. Defendants actively and knowingly provide the tacrolimus compound set forth in the '127 Patent to their customers for the express purpose claimed in the '127 Patent.

39. Defendants have committed and are continuing to commit acts of infringement of the '127 Patent under 35 U.S.C. § 271(b) by inducing their customers to use a method that infringes one or more claims of the '127 Patent.

40. Eaton has been damaged as a direct result of Defendants inducing their customers to use a method that infringes one or more claims of the '127 Patent. Eaton will continue to be damaged unless further infringement is enjoined.

41. Eaton is entitled under 35 U.S.C. § 284 to an award of damages adequate to compensate Eaton for Defendants inducing their customers to use a method that infringes one or more claims of the '127 Patent. Eaton is entitled to lost profits or, in the alternative, a reasonable royalty for the infringement and use made of the invention of the '127 Patent by Defendants and their customers, all together with interest and costs.

COUNT II: WILLFUL INFRINGEMENT

42. Eaton incorporates by reference his foregoing allegations as if fully set forth herein.

43. Defendants had actual notice of the '127 Patent and Eaton's infringement allegations.

44. Defendants continued to infringe the '127 Patent after being put on notice by Eaton at least as early as July 30, 2013.

45. Defendants' past and continuing infringement of the '127 Patent has been deliberate and willful.

46. Defendants conduct warrants an award of treble damages pursuant to 35 U.S.C. § 284. Moreover, this is an exceptional case as set forth in 35 U.S.C. § 285 warranting an award of attorneys' fees.

DEMAND FOR JURY TRIAL

47. Eaton demands trial by jury on all issues so triable. Eaton designates Phoenix, Arizona as the place of trial.

PRAYER FOR RELIEF

WHEREFORE, Eaton respectfully prays that this Honorable Court enter relief as follows:

A. A judgment that Defendants, individually and/or severally have infringed the '127 Patent;

B. A judgment and order permanently restraining and enjoining Diamondback

and its officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all those acting in concert with or under or through them, from using any methods or selling any product that infringe one or more claims of the '127 Patent, either directly or indirectly;

C. A judgment and order requiring Defendants to pay damages to Eaton adequate to compensate it for defendant's wrongful infringing acts in accordance with 35 U.S.C. § 284;

D. A judgment and order requiring Defendants to pay increased damages up to three times, in view of their willful and deliberate infringement of the '127 Patent;

E. A finding in favor of Eaton that this is an exceptional case under 35 U.S.C. § 285 and an award of Eaton its costs, including reasonable attorneys' fees and other expenses incurred in connection with this action;

F. A judgment and order requiring Defendants to pay Eaton pre-judgment interest under 35 U.S.C. § 284 and post-judgment interest under 28 U.S.C. § 1961 on all damages awarded; and

H. Such other and further relief as the Court deems just and appropriate.

DATED this 8th day of December, 2014.

ERICKSON KERNELL DERUSSEAU
& KLEYPAS, LLC

By: */s/ James J. Kernell*
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Eaton Veterinary Pharmaceutical, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2014, the foregoing First Amended Complaint were filed with the Clerk of the Court to be served via the Court's ECF system upon counsel of record.

/s/ James J. Kernell