

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

BAUSCH & LOMB, INCORPORATED,

Plaintiff,

v.

INVERNESS MEDICAL INNOVATIONS, INC.
and IVC INDUSTRIES, INC.,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint herein, Bausch & Lomb Incorporated alleges that:

NATURE OF ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, including 35 U.S.C. § 271.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is properly laid in this Court under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).
4. The defendants are subject to personal jurisdiction in this district.

THE PARTIES

5. Plaintiff, Bausch & Lomb, Incorporated (“Bausch & Lomb”) is a corporation of the State of New York with principal offices at One Bausch & Lomb Place

Rochester, NY 14604-2701, within this district.

6. Defendant, Inverness Medical Innovations, Inc. is a corporation of the State of Delaware with principal offices at 52 Sawyer Road #200, Waltham, MA 02453. On information and belief, Inverness Medical Innovations, Inc. is doing business within this district.

7. Defendant, IVC Industries, Inc. is a corporation of the State of Delaware, with principal offices at 500 Halls Mill Road, Freehold, NJ 07728. On information and belief, IVC Industries, Inc. is doing business within this district. On information and belief, IVC Industries, Inc. is a wholly owned subsidiary of Inverness Medical Innovations, Inc.

8. Defendants, Inverness Medical Innovations, Inc. and IVC Industries, Inc. are hereinafter collectively referred to as “IVC.”

CLAIM FOR RELIEF

9. Bausch & Lomb is a joint owner and licensee of all rights in the field of ophthalmology, including the right to enforce, of United States Patent No. 6,660,297 (the “‘297 Patent”) which was duly and lawfully granted on December 9, 2003 to Stephen P. Bartels, Cara L. Baustian, George E. Bunce, Leon Ellenbogen, Frederick L. Ferris III, Jin Kinoshita, James C. Smith and David A. Souerwine for an invention in “Nutritional Supplement to Treat Macular Degeneration.” A true copy of the ‘297 Patent is attached as Exhibit A.

10. The ‘297 Patent describes and claims, among other things, methods and compositions useful as nutritional supplements for prevention, stabilization and/or treatment of visual acuity loss by reducing the risk of age-related macular degeneration and cataracts and for maintaining and preserving eye health and vision. The invention of the ‘297 Patent provides a formulation dosage of vitamins A (in the form of beta-carotene), C, and E, as well as zinc and copper and methods of manufacturing the same.

11. IVC is infringing, inducing infringement of, and/or contributing to the infringement of the '297 Patent by making, using, offering to sell, selling, or importing, within this district or elsewhere in the United States, compositions or methods covered by the '297 Patent and/or by selling, offering for sale and/or importing compositions with instructions for use or promotions that cause and induce the user to infringe the claims in the '297 Patent, and/or by selling, offering to sell or importing components or materials, knowing the same to be especially made or especially adapted for use in an infringement of the '297 Patent.

12. IVC is making, using, importing, offering to sell or selling, compositions containing a formulation of vitamins A (in the form of beta-carotene), C, E, zinc and copper, that are specifically described and claimed in the '297 Patent, including but not limited to Walgreens' Ocutabs Vision Formula product. IVC is making, using, importing, offering to sell or selling, such compositions for the use in treating or preventing age-related eye disease or for maintaining or preserving eye health or vision, which infringe the claims of the '297 Patent.

13. On information and belief, IVC is using the processes described and claimed in the '297 Patent for making the compositions of the '297 Patent.

14. IVC is selling, offering for sale and/or importing compositions with instructions for use and promotions that cause and induce the user to infringe the claims in the '297 Patent, including but not limited to Walgreens' Ocutabs Vision Formula product.

15. On information and belief, IVC is selling, offering for sale or importing components or materials, knowing the same to be especially made or especially adapted for use in an infringement of the '297 Patent.

16. On information and belief, IVC became aware of the '297 Patent on or after its issuance date of December 9, 2003. On information and belief, IVC has willfully

infringed the patent by continuing to make, use, sell, offer for sale or import Walgreens' Ocutabs Vision Formula product after its awareness of the '297 Patent.

17. IVC is on notice that Bausch & Lomb's own product, OcuVite® PreserVision™, is proprietary.

18. The aforesaid sales and acts by IVC are without right, license or permission from Bausch & Lomb.

19. On information and belief, IVC intends to continue the sales and acts referred to in paragraphs 11-18.

20. Bausch & Lomb has been damaged by IVC's infringement of the '297 Patent, and will be irreparably damaged if that infringement is not enjoined.

PRAYER FOR RELIEF

21. WHEREFORE, Plaintiff Bausch & Lomb respectfully requests the following relief:

A. A judgment and decree that United States Patent No. 6,660,297 remains valid and enforceable;

B. A judgment that IVC has infringed one or more claims of Bausch & Lomb's United States Patent No. 6,660,297;

C. A judgment that IVC has induced infringement of one or more claims of Bausch & Lomb's United States Patent No. 6,660,297;

D. A judgment that IVC has contributed to the infringement of one or more claims of Bausch & Lomb's United States Patent No. 6,660,297;

E. A judgment that IVC has willfully infringed of one or more claims of Bausch & Lomb's United States Patent No. 6,660,297;

F. A permanent injunction restraining and enjoining IVC, its officers, agents, attorneys and employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer to sell, or sale within the United States, or importation into the United States, of compositions and methods claimed in Bausch & Lomb's United States Patent No. 6,660,297 or components or materials especially made or especially adapted for use in an infringement of Bausch & Lomb's United States Patent No. 6,660,297;

G. An accounting of all damages to Bausch & Lomb arising from IVC's infringement, inducement of infringement, contributory infringement, and willful infringement and that such damages be awarded to Bausch & Lomb together with interest;

H. Such other and further relief as the Court may deem just and proper.

Dated: March 7, 2005

Attorneys for Bausch &
Lomb Incorporated

By: s/s Michael R. Wolford
Michael R. Wolford
Wolford & Leclair LLP
600 Reynolds Arcade Building
16 East Main Street
Rochester, New York 14614
(585) 325-8000
mwolford@wolfordleclair.com

Of Counsel:

Robert L. Baechtold
Scott K. Reed
Steve C. Kline
Fitzpatrick, Cella, Harper & Scinto
30 Rockefeller Center
New York, NY 10112-3800
(212) 218-2100
rbaechtold@fchs.com
sr@fchs.com
skline@fchs.com