

FILED *MW*

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

2000 MAR 28 PM 3:59

CLERK OF COURT
OCALA, FLORIDA

IDEXX LABORATORIES, INC.,)

Plaintiffs,)

v.)

FRANCKS PHARMACY AND HOME)
CARE,)

Defendant.)

Civil Action No. *5:00-cv-108-00108*

COMPLAINT FOR PATENT
INFRINGEMENT AND JURY
DEMAND

Plaintiffs IDEXX Laboratories, Inc. for its Complaint against Defendant Francks
Pharmacy and Home Care, aver as follows:

THE PARTIES

1. Plaintiff IDEXX Laboratories, Inc. ("IDEXX") is a corporation organized
and existing under the laws of the State of Delaware with its principal place of business at
One IDEXX Drive, Westbrook, Maine.

2. Upon information and belief, Defendant Francks Pharmacy and Home
Care ("Francks") is a corporation organized and existing under the laws of the State of
Florida with its principal place of business at 202 S.W. 17th Street #A, Ocala FL 34474-
5139. Upon information and belief Francks is doing business in this district and
throughout the state of Florida.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

4. Jurisdiction is proper in the Middle District of Florida pursuant to Title 28, United States Code §§ 1331 and 1338(a).

5. Venue is proper in the Middle District of Florida pursuant to Title 28, United States Code §§ 1391(b) and (c), and 1400(b), as Francks resides in this judicial district having its principal place of business at 202 S.W. 17th Street #A, Ocala, Florida 34474-5139 and has committed acts of infringement here.

CAUSE OF ACTION FOR PATENT INFRINGEMENT

6. On May 5, 1998, United States Patent No. 5,747,476 (hereinafter "the '476 Patent"), entitled "Treatment of Equine Protozoal Myeloencephalitis," was duly and legally issued. A copy of the '476 Patent is attached hereto as Exhibit "A."

7. Plaintiff IDEXX is the owner of the '476 Patent by virtue of an assignment.

8. The '476 Patent issued on an application, Ser. No. 683,507 filed July 17, 1996. On information and belief, at around the time the application was filed and thereafter, Dr. Clara Fenger advised the veterinary community of her findings that treating EPM with therapeutically effective amounts of pyrimethamine and a sulfonamide in the absence of trimethoprim reduced adverse side effects of the then-preferred combination which included trimethoprim. Shortly after Dr. Fenger began publishing her findings; which included at a symposium on EPM sponsored by the Grayson Jockey Club Research Foundation on March 5-8, 1996, the standard of care for treating EPM changed.

9. On information and belief, shortly after Dr. Fenger reported her findings and continuing to around June, 1999 when IDEXX sent the attached Exhibit "B" to Francks', Francks' made and sold compositions which literally were within, and therefore infringed the '476 patent.

10. On information and belief, at or around the time Francks received Exhibit B, it began to add trimethoprim back into its compositions for EPM in amounts insufficient to have a therapeutic effect in an obviously insufficient effort to avoid infringement. This conduct is a willful violation of the '476 Patent and puts the health of animals at risk. On information and belief, Francks has encouraged and induced others to flagrantly disregard the '476 Patent by adding non-therapeutically effective amounts of trimethoprim to compositions for EPM.

11. On information and belief, Francks has made, used, sold, advertised, distributed, compounded and has filled prescriptions for compositions for the treatment of equine protozoal myelencephalitis (and related protozoal infections) using pyrimethamine and a sulfonamide (including sulfadiazine) in the absence of trimethoprim. Such methods and compositions are covered by the '476 Patent.

12. Defendant Francks, with actual knowledge of the '476 Patent, is willfully and deliberately infringing this patent or contributing to or inducing the infringement of this patent in the United States and within this District, without the authority of IDEXX and in violation of 35 U.S.C. § 271, and will continue to do so unless enjoined by this Court. Based on information presently known to Plaintiffs, Francks is infringing the '476 Patents by virtue of its making compositions, selling or offering for sale compositions and filling prescriptions throughout the state of Florida for compositions for the treatment of

equine protozoal myeloencephalitis (and related protozoal infections) using pyrimethamine and a sulfonamide (including sulfadiazine) in the absence of trimethoprim.

13. Plaintiffs have suffered and are suffering damages, including lost profits, by reason of the infringing manufacture, use, sale, or offer for sale of Francks product, which infringes the '476 Patent. Plaintiff has suffered and will continue to suffer additional irreparable damage and impairment of the value of its patent rights, including, but not limited to, damages relating to Francks' manufacture, use and sale of its product, unless Francks is enjoined by this Court from continuing to infringe the '476 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered as follows:

- A. Francks is adjudged and decreed to have infringed United States Patent No. 5,767,476;
- B. A preliminary and permanent injunction is issued restraining and enjoining Francks and its officers, agents, servants, employees and those acting in privity of concert with them, and each of them, from further infringement United States Patent No. 5,767,476, including without limitation, from further making, using, selling or offering for sale, any methods and compositions for the treatment of equine protozoal myeloencephalitis (and related protozoal infections) using pyrimethamine and a sulfonamide (including sulfadiazine) in the absence of trimethoprim;
- C. Francks is ordered to account for damages adequate to compensate Plaintiffs for Francks' infringement, together with prejudgment interest, including, but not limited to, damages relating to Francks' manufacture, use, and sale of methods and

compositions for the treatment of equine protozoal myeloencephalitis (and related protozoal infections) using pyrimethamine and a sulfonamide (including sulfadiazine) in the absence of trimethoprim;

D Such damages are trebled by the Court pursuant to 35 U.S.C. § 284 by reason of the willful, wanton, and deliberate nature of such infringement;


E This is decreed an 'exceptional case' within the meaning of 35 U.S.C. § 285 and reasonable attorneys' fees are awarded to Plaintiffs;

F. Costs are awarded to Plaintiff; and

G. Plaintiff is granted such other and further relief as the Court may deem proper under the circumstances

Respectfully submitted,

Dated: March 28, 2000

By 
(js) Mary S. Consalvo
Trial Counsel - California Bar No. 130966
HOWREY SIMON ARNOLD & WHITE LLP
4275 Executive Square, Suite 525
La Jolla, CA 92037
Telephone: (858) 657-9777
Facsimile (858) 657-9788

Local Counsel:

David A. Glenny
McKeever & Bice, P.L.
Oakhurst Professional Park
1333 SE 25th Loop, Suite 101
Ocala, Florida 34471
Telephone: (352) 732-2255
Facsimile: (352) 351-0166

JURY DEMAND

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY.

Respectfully submitted,

Dated: March 28, 2000

By: 

(POK) Mary S. Consalvi
Trial Counsel - California Bar No. 130966
HOWREY SIMON ARNOLD & WHITE LLP
4275 Executive Square, Suite 525
La Jolla, CA 92037
Telephone: (858) 657-9777
Facsimile (858) 657-9788

Local Counsel:

David A. Glenny
McKeever & Rice, P.I.
Oakhurst Professional Park
1333 SE 25th Loop, Suite 101
Ocala, Florida 34471
Telephone: (352) 732-2255
Facsimile: (352) 351-0166