



**PARTIES**

2. Merial Limited is one of the world's leading animal healthcare companies. Merial Limited develops, produces and sells veterinary pharmaceuticals and vaccines for livestock, pets and wildlife. Of particular relevance here, Merial Limited has contributed to and continues to research in the Swine Health field. Merial Limited has products for treating diseases in pigs, products for preventing diseases in pigs, and other products for controlling and preventing diseases in pigs and for alleviating pain and inflammation in pigs. Merial Limited is a company limited by shares registered in England and Wales with a registered office in England, and domesticated in the state of Delaware as Merial LLC. Merial Limited's North American Operational Headquarters is located in Duluth, Georgia. Merial SAS (a société par actions simplifiée of France) is located in Lyon, France. Merial SAS is wholly-owned by Merial Limited.

3. Upon information and belief, Defendant Intervet is a corporation, having its principal place of business located at 29160 Intervet Lane, in Millsboro, Delaware.

**JURISDICTION VENUE**

4. This Court has subject matter jurisdiction over this matter pursuant to Title 28, United States Code, Sections 1331 and 1338(a).

5. On information and belief Intervet sells or causes to be sold veterinary pharmaceuticals or vaccines in this judicial district and is thereby doing business in this judicial district.

6. This Court has personal jurisdiction over Defendant Intervet by virtue of its actions and those of its agents which directly infringe or which induce or knowingly contribute in the infringement of the '601 patent within this state and/or its systematic and continuous contact with this state.

7. Venue is proper in this District under Title 28, United States Code, Sections 1391 and 1400(b).

**COUNT 1**

**CLAIM FOR INFRINGEMENT OF U.S. PATENT NO. 6,368,601**

8. The allegations in Paragraphs 1 through 7 of this Complaint are incorporated herein by reference as if set forth in their entirety.

9. The United States Patent and Trademark Office duly and legally issued the '601 patent on April 9, 2002.

10. The '601 patent is assigned to Merial SAS, Lyon, France, the Queen's University of Belfast ("QUB"), and the University of Saskatchewan ("USASK"). Merial SAS is exclusively licensed under the '601 patent by agreement with QUB and USASK. Through wholly owning Merial SAS, and an intra-corporate agreement, parent Merial Limited holds exclusive patent rights from its wholly-owned subsidiary Merial SAS, under the '601 patent as to the United States.

11. The '601 patent generally relates to Porcine Circovirus (PCV) vaccines. PCV is a causative agent of post-weaning multisystemic wasting syndrome (PMWS) in pigs. PMWS is an infection of young pigs (usually 8-16 weeks old). PMWS tends to be a slow and progressive disease with a high fatality in affected pigs. PMWS or PCV infection can have devastating economic consequences. Mortality in acutely infected herds varies from 5 to 50%, and chronically infected herds may sustain losses of 15% from weaning to slaughter, on average.

12. Merial's business activities include PCV vaccines. Indeed, Merial has been and continues to be involved in research involving PCV and PMWS. Merial publishes a quarterly Swine Bibliographical Bulletin and has also sponsored the publication of a book on Porcine Circovirus and PMWS. Furthermore, Merial owns or has the exclusive rights under numerous patents worldwide in the field of

Porcine Circovirus and PMWS. Through Merial SAS, Merial Limited makes a Porcine Circovirus vaccine called CIRCOVAC®. CIRCOVAC® is approved for use in sows in Europe and Canada. Merial is seeking authorization to market CIRCOVAC® in the United States. Over 350,000 sows in Europe have been vaccinated with CIRCOVAC®. CIRCOVAC® was introduced into the Canadian market on or about March 20, 2006. CIRCOVAC® has been reported to be effective. CIRCOVAC® is believed to be the first approved PCV vaccine. Thus, Merial develops, has developed, makes, has made, uses, has used, sells, or has sold, or causes to be developed, made, used, or sold, PCV vaccines.

13. Upon information and belief, Intervet has infringed, contributed to the infringement of, and/or actively induced the infringement of claims of the '601 patent by making, using, selling, and/or offering for sale products, including but not limited to a PCV vaccine (Intervet's "infringing acts").

14. Upon information and belief, Intervet has had notice of the '601 patent, and its infringement of the '601 patent has been deliberate and willful.

15. Intervet's infringing acts have not been authorized by Merial, and are in violation of Merial's patent rights.

16. As a direct result of Intervet's infringing acts, Merial has suffered and continues to suffer damage and irreparable harm.

17. Merial has no adequate remedy at law for Intervet's infringing acts. Unless and until Intervet's infringing acts are enjoined by this Court, Merial will continue to be damaged and irreparably harmed.

**WHEREFORE**, Merial prays that the Court:

- (a) Enter a judgment that Intervet has infringed, either directly, by contribution or inducement, one or more claims of the '601 patent;
- (b) Preliminarily and permanently enjoin Intervet and those in privity with it from further acts of direct infringement, contributory infringement and inducement of infringement of the '601 patent;
- (c) Award Merial damages adequate to compensate it for Intervet's infringement of the '601 patent;
- (d) Declare that Intervet's infringement of the '601 patent has been knowing and willful;
- (e) Treble the award of damages pursuant to 35 U.S.C. § 284 and in view of the willful nature of Intervet's infringement;
- (f) Declare this to be an exceptional case pursuant to 35 U.S.C. § 285;

- (g) Award Merial its attorneys' fees, costs and expenses in this action; and
- (h) Award Merial prejudgment interest, and such further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Merial demands a trial by jury of all issues so triable in this action.

Respectfully submitted this 17<sup>th</sup> day of April, 2006.

/s/ J. Patrick Elsevier

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