

ORIGINAL

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CLERK

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

AUG -5 2003

Deputy Clerk

MERIAL LIMITED,

Plaintiff,

v.

INTERVET, INC.
INTERVET INTERNATIONAL bv,
and
AKZO NOBEL N.V.,

Defendants.

Civil Case No.

1:03-CV-2357

RWS

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Merial Limited ("Merial"), for their Complaint against Defendants Intervet, Inc. ("Intervet"), Intervet International, bv, ("Intervet Intl") and Akzo Nobel N.V. ("Akzo") (collectively "Defendants"), allege as follows:

PARTIES

1. Plaintiff Merial 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. Plaintiff Merial's North American Operational Headquarters are located in Duluth, Georgia.

2. Upon information and belief, Defendant Intervet is a corporation, having its principal place of business in Millsboro, Delaware.

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3. Upon information and belief, Defendant Intervet is the U.S. operating division of Defendant Intervet Intl.

4. Upon information and belief, Defendant Intervet Intl is a Dutch corporation, having its principal place of business in Boxmeer, Netherlands.

5. Upon information and belief, Defendant Intervet Intl is a division of Defendant Akzo.

6. Upon information and belief, Defendant Akzo is a Dutch corporation having its head office in Arnhem, Netherlands.

7. Upon information and belief, Defendants have regularly and continuously transacted business nationally and within this Judicial District by manufacturing, selling, offering to sell or causing to be used infringing vaccine products.

JURISDICTION VENUE

8. This Court has jurisdiction pursuant to the patent laws of the United States, Title 35, United States Code and Title 28, United States Code, Sections 1331 and 1338(a).

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

COUNT 1

CLAIM FOR INFRINGEMENT OF U.S. PATENT NO. 5,688,512

10. The allegations in Paragraphs 1 through 9 of this Complaint are incorporated herein by reference as if set forth in their entirety.

11. On November 18, 1997, United States Patent No. 5,688,512 (“the ’512 patent”) entitled “Borrelia Antigen” was duly and legally issued to Sven Bergstrom and Alan G. Barbour. A true and correct copy of the ’512 patent is attached to this Complaint as Exhibit A.

12. Symbicom Aktiebolag is the assignee of the ’512 patent.

13. Plaintiff Merial is exclusively licensed under the ’512 patent and makes, uses, sells and offers to sell products described and claimed in the ’512 patent.

14. Defendants Intervet, Intervet Intl and Akzo have been, and still are, infringing, contributing to the infringement and inducing the infringement of the ’512 patent by making, using, selling or offering to sell vaccine products and processes described and claimed in the ’512 patent within this Juridical District and elsewhere throughout the United States.

15. Upon information and belief, Defendants’ acts of infringement have been deliberate and willful.

16. Defendants will continue to engage in such infringing acts unless enjoined by this Court.

17. Upon information and belief, Defendants have had actual and constructive notice of the '512 patent and of their infringement thereof.

18. Plaintiff Merial has suffered and will continue to suffer damages and irreparable injury as a result of Defendants' infringement.

COUNT 2

CLAIM FOR INFRINGEMENT OF U.S. PATENT NO. 6,203,798

19. The allegations in Paragraphs 1 through 18 of this Complaint are incorporated herein by reference as if set forth in their entirety.

20. On March 20, 2001, United States Patent No. 6,203,798 ("the '798 patent") entitled "Borrelia Antigen" was duly and legally issued to Sven Bergstrom and Alan G. Barbour. A true and correct copy of the '798 patent is attached to this Complaint as Exhibit B.

21. Symbicom Aktiebolag is the assignee of the '798 patent.

22. Plaintiff Merial is exclusively licensed under the '798 patent and makes, uses, sells and offers to sell products described and claimed in the '798 patent.

23. Defendants Intervet, Intervet Intl and Akzo have been, and still are, infringing, contributing to the infringement and inducing the infringement of the '798 patent by making, using, selling or offering to sell vaccine products and processes described and claimed in the '798 patent within this Juridical District and elsewhere throughout the United States.

24. Upon information and belief, Defendants' acts of infringement have been deliberate and willful.

25. Defendants will continue to engage in such infringing acts unless enjoined by this Court.

26. Upon information and belief, Defendants have had actual and constructive notice of the '798 patent and of their infringement thereof.

27. Plaintiff Merial has suffered and will continue to suffer damages and irreparable injury as a result of Defendants' infringement.

WHEREFORE, Merial demands:

- (a) a judgment that Defendants have infringed one or more claims of the '512 patent;
- (b) a preliminarily and permanent injunction against Defendants and those in privity with them from further acts of

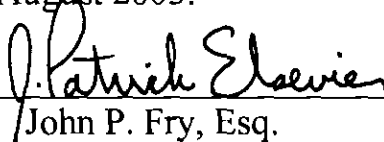
infringement, contributory infringement and inducement of infringement of the '512 patent;

- (c) a judgment that Defendants have infringed one or more claims of the '798 patent;
- (d) a preliminarily and permanent injunction against Defendants and those in privity with them from further acts of infringement, contributory infringement and inducement of infringement of the '798 patent;
- (e) an accounting to determine Plaintiff's damages and Defendants' profits resulting from Defendants' infringing acts;
- (f) an award of damages, together with interest, and a trebling of such damages in view of the willful nature of Defendants' infringing activities;
- (g) a declaration that this case is exceptional, in favor of Plaintiffs, pursuant to 35 U.S.C. § 285.
- (h) an award of Plaintiff's attorneys' fees, costs and expenses in this action; and
- (i) such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

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

Respectfully submitted this 5th day of August 2003.



John P. Fry, Esq.

Georgia Bar No. 278705

J. Patrick Elsevier, Ph.D., Esq.

Georgia Bar No. 246694

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Merial Limited

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Fax: (678) 638-3350

Attorney for Plaintiff Merial Limited

AO 440 (Rev. 8/01) Summons in a Civil Action

ORIGINAL

UNITED STATES DISTRICT COURT

Northern District of Georgia

MERIAL LIMITED,

Plaintiff,
V.

SUMMONS IN A CIVIL CASE

INTERVET, INC.
INTERVET INTERNATIONAL bv,
and
AKZO NOBEL N.V.,

Defendants.

CASE NUMBER:

1:03, CV-2357

TO: (Name and address of Defendant)

Intervet, Inc.
c/o The Corporation Trust Company
Corporate Trust Center
1209 Orange Street
Wilmington, DE 19801

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

John P. Fry, Esq.
J. Patrick Elsevier, Ph.D., Esq.
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

LUTHER D. THOMAS

CLERK

(By) DEPUTY CLERK

AUG 6 2003

DATE

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INTERVET INTERNATIONAL bvm
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AKZO NOBEL N.V.,

Defendants.

CASE NUMBER:

1-03-CV-2357

TO: (Name and address of Defendant)

Akzo Nobel N.V.
c/o A. Jan A. J. Eijsbouts
General Counsel
Velperweg 76
6824 BM Arnhem
The Netherlands

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

John P. Fry, Esq.
J. Patrick Elsevier, Ph.D., Esq.
ALSTON & BIRD LLP
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INTERVET, INC.
INTERVET INTERNATIONAL bv,
and
AKZO NOBEL N.V.,

Defendants.

CASE NUMBER:

1-03-CV-2357

TO: (Name and address of Defendant)

Intervet International, bv.
c/o Mr. A. Wilderbeek
Wim de Korverstraat 35
5831 AN Boxmeer
HOLLAND
THE NETHERLANDS

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

John P. Fry, Esq.
J. Patrick Elsevier, Ph.D., Esq.
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
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