

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

INTERVET, INC.
29160 Intervet Lane
Millsboro, DE 19966

Plaintiff,

v.

MERIAL LIMITED
27 Knightbridge,
London SW1X 7QT
United Kingdom;

MERIAL SAS
27, Avenue Tony Garnier
69007 Lyon
France;

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Intervet, Inc. (“Intervet”), hereby brings this action for declaratory judgment against Defendants Merial Limited and Merial SAS (collectively “Merial”) and states as follows:

PARTIES

1. Intervet is a corporation organized and existing under the laws of the State of Delaware and maintains its U.S. headquarters at 29160 Intervet Lane, Millsboro, Delaware, 19966.

2. On information and belief, Defendant Merial Limited is a company limited by shares registered in England and Wales with a registered office in England, domesticated in the state of

Delaware as Merial LLC, with its North American headquarters at 3239 Satellite Boulevard, Building 500, Duluth, Georgia, 30096. On information and belief, Merial Limited sells and/or offers for sale veterinary pharmaceuticals or vaccines in this judicial district.

3. On information and belief, Merial SAS is a French corporation affiliated with Merial Limited and has a principal place of business at 29, Avenue Tony Garnier, 69007 Lyon, France.

NATURE OF THE ACTION

4. This is an action for a declaratory judgment of patent noninfringement and invalidity. Intervet seeks a declaration that the manufacture, importation, use, offer for sale, or sale of Intervet's Porcine Circovirus Vaccine Type 2 ("Intervet's Circovirus Vaccine") does not infringe any claim of U.S. Patent No. 7,192,594 ("the '594 patent") under 35 U.S.C. § 271, and that the claims of the '594 patent are invalid under 35 U.S.C. §§ 101 *et seq.*

JURISDICTION AND VENUE

5. This action for a declaratory judgment arises under Title 35 of the United States Code with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202.

6. This Court has subject matter jurisdiction over this action, which arises under the patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c). Upon information and belief, defendant Merial Limited has conducted continuous and systematic commercial activity in this judicial district. Defendant Merial SAS is subject to jurisdiction in this judicial district pursuant to 35 U.S.C. § 293.

BACKGROUND

8. Porcine Circovirus has been associated with post-weaning multisystemic wasting syndrome (PMWS) in pigs. PMWS is widely considered the most significant health problem of the last decade in nursery and young feeder pigs around the world, and it can have significant economic consequences.

9. Intervet is dedicated to the research, development, manufacture and sale of animal health products. Intervet is one of the world's largest animal health companies and is a leader in research and development of veterinary vaccines and pharmaceutical products. Intervet's products include vaccines for use in pets, livestock, poultry and aquaculture, as well as antiparasitics, anti-infectives, endocrine products, diagnostics, feed additives and productivity enhancers. Of particular relevance here, Intervet is an industry leader in the area of swine immunology and produces products, including vaccines, for preventing, treating and controlling diseases in pigs. Intervet's Circovirus Vaccine can be used to immunize pigs susceptible to PMWS.

10. On October 13, 2005, the USDA's Center for Veterinary Biologics issued to Intervet a Conditional License to produce and distribute Intervet's Circovirus Vaccine.

11. On information and belief, the '594 patent, entitled POSTWEANING MULTISYSTEMIC WASTING SYNDROME AND PORCINE CIRCOVIRUS FROM PIGS, issued March 20, 2007, and is assigned to Merial Limited and Merial SAS.

EXISTENCE OF AN ACTUAL CONTROVERSY

12. There is an actual and justiciable controversy between Intervet and Merial regarding whether the commercial manufacture, use, sale, offer for sale, or importation into the United

States of Intervet's Circovirus Vaccine infringes one or more claims of the '594 patent. It is clear that there are clear and adverse legal interests between Intervet and its vaccine, on the one hand, and Merial and its patents relating to PMWS and porcine circovirus, including the '594 patent, on the other.

13. On December 15, 2005, Merial Limited ("Merial") filed suit in the United States District Court for the Northern District of Georgia (05-CV-3168) against Intervet alleging that Intervet has infringed, contributed to the infringement of, and/or actively induced the infringement of claims of United States Patent No. 6,368,601 ("the '601 patent") by making, using, selling, and/or offering to sell Intervet's Circovirus Vaccine. The 05-CV-3168 action was dismissed by the Georgia District Court on April 27, 2006 for failure to join two of the owners of the '601 patent, in particular the University of Saskatchewan and The Queen's University of Belfast ("the Universities").

14. On April 11, 2006, Intervet filed suit against Merial and the Universities in this Court (06-CV-00658-HHK/JMF), seeking a declaration of noninfringement, invalidity, and unenforceability of the '601 patent. That litigation is still active and pending in this Court. Merial has informed Intervet that it is not interested in settlement of the ongoing litigation on the '601 patent unless such settlement includes Intervet removing its product from the U.S. market.

15. The '594 and '601 patents present common subject matter. The '594 patent arises, in part, from an application that was a continuation-in-part of the line of applications that resulted in the '601 patent. In addition to this familial link between Merial's '601 and '594 patents, both patents purport to relate to certain isolated "PCV II" or "PCV 2" viruses, the DNA sequences of the isolated viruses, proteins encoded by the DNA sequences, and vaccines created from the isolated viruses. There is also a significant overlap between the inventors on the two patents: all

ten of the purported inventors of the '601 patent are listed as inventors on the '594 patent. In addition, both patents were prosecuted by the same attorneys. Based on Merial's past actions regarding the '601 patent and the common subject matter presented by the '601 and '594 patents, a case or controversy exists between Intervet and Merial with respect to the '594 patent such that this Court has subject matter jurisdiction over the present action.

FIRST COUNT

DECLARATORY JUDGMENT OF PATENT NONINFRINGEMENT

16. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 15 and incorporates them by reference.

17. Intervet's Circovirus Vaccine does not infringe any of the claims of the '594 patent either literally or under the doctrine of equivalents, nor does Intervet's sale of or offer to sell its vaccine induce or contribute to the infringement of the '594 patent by any third party.

SECOND COUNT

DECLARATORY JUDGMENT OF PATENT INVALIDITY

18. Intervet hereby restates and realleges the allegations set forth in paragraphs 1 through 17 and incorporates them by reference.

19. The claims of the '594 patent are invalid because the claimed invention does not satisfy the requirements for patentability under Title 35 of the United States Code, including without limitation, 35 U.S.C. §§ 101, 102, 103, 112 and 116.

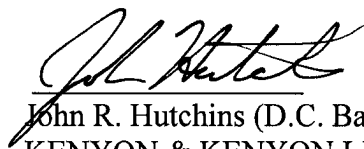
PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF requests that the Court enter judgment:

- (a) Declaring that Intervet does not infringe any claim of the '594 patent;
- (b) Declaring invalid the claims of the '594 patent;
- (c) Finding that, pursuant to 35 U.S.C. § 285 and/or other applicable laws, Merial's conduct renders this an exceptional case and that Intervet be awarded costs of this action and its attorneys' fees to the extent permitted by law; and
- (d) Granting such other and further relief as the Court deems just and proper.

Dated: March 20, 2007

Respectfully Submitted,



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