

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**NATUROPATHIC LABORATORIES** )  
**INTERNATIONAL, INC.,** )  
**a New York corporation,** )

**Plaintiff,** )

**v.** )

**Case No.: 02-0604-CV-W-4**

**DERMAL RESEARCH LABORATORIES,** )  
**INC., a Missouri corporation,** )

**Serve Registered Agent at:** )  
**Karen K. Brown** )  
**5501 NW Fox Hill Rd.** )  
**Parkville, Missouri 64152** )

**Defendant.** )

**COMPLAINT**

Plaintiff, NATUROPATHIC LABORATORIES INTERNATIONAL, INC.

(“Naturopathic”), in its Complaint against defendant, Dermal Research Laboratories, Inc. (“Dermal Research”), alleges by and through its undersigned attorneys as follows:

**Nature of the Action**

1. This is an action for a declaratory judgment of non-infringement and invalidity of a United States patent assigned, on its face, to Dermal Research.

**The Parties**

2. Plaintiff Naturopathic Laboratories, Inc. is a corporation organized under the laws of the State of New York and has its principal place of business at 1 Linden Place, Great Neck, NY 11021.

3. Defendant Dermal Research Laboratories, Inc., (“Dermal Research”), is a corporation organized under the laws of the State of Missouri and has a place of business at 5501 NW Fox Hill Rd., Parkville, Missouri 64152.

### **Jurisdiction And Venue**

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1, et seq., and is pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. The jurisdiction of this Court is conferred by 28 U.S.C. § 1338 and 28 U.S.C. § 1331.

6. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and 1391(c).

### **DECLARATORY JUDGMENT OF NON-INFRINGEMENT AND INVALIDITY**

#### **The Patents in Suit**

7. U.S. Patent No. 5,888,984 (to be referred to as the ‘984 Patent), entitled “Pharmaceutical Composition Of Complex Carbohydrates and Essential Oils and Methods of Using the Same,” was issued on March 30, 1999, to Dermal Research, as assignee of the alleged inventors. A copy of this patent, along with a copy of a later-issued Certificate of Correction is annexed hereto as Exhibit A.

8. On information and belief, Dermal Research is the owner of all right, title, and interest in the ‘984 Patent.

### Allegations Common to All Counts

9. Naturopathic has offered for sale and has sold, since at least 1999, an all-natural arthritis pain relief formulation known as Joint-Ritis, that Dermal Research has alleged infringes the '984 Patent.

10. On September 10, 2001, over two years after Naturopathic began selling Joint-Ritis on the open market, Dermal Research's Chief Executive Officer, Dr. Carol A. Cooper ("Dr. Cooper"), sent a letter to Naturopathic that identified Joint-Ritis as possibly falling within Dermal Research's "intellectual property coverage", including "an issued patent and numerous patent pending applications in [the] field," though no specific patent was mentioned. The letter also mentioned possible discussion of "licensing opportunities". A copy of this letter is annexed hereto as Exhibit B.

11. In October 2001, Naturopathic President Mr. Scott Popofsky ("Mr. Popofsky") replied to the September 10, 2001 letter in a telephone conversation with Dr. Cooper indicating that Naturopathic did not believe that Joint-Ritis infringed Dermal Research's intellectual property in any way.

12. During the October 2001 phone conversation, Dr. Cooper asserted the position that Dermal Research's intellectual property covered chondroitin sulfate-containing topical arthritis pain relief formulations, and proposed that Naturopathic help develop and distribute products produced by Dermal Research, a sample of which would be sent to Naturopathic. Mr. Popofsky indicated a willingness to consider such an arrangement, but stated that it would be difficult to consummate such a deal with the threat of infringement made by Dermal Research remaining unresolved.

13. After the October telephone conversation, Dermal Research sent a sample of a prospective product to Mr. Popofsky.

14. In November 2001, another telephone conversation took place between Dr. Cooper and Mr. Popofsky. Dr. Cooper indicated a belief that Joint-Ritis infringed the '984 Patent because it contained chondroitin sulfate and an essential oil.

15. On April 15, 2002, after a number of months of silence, Dr. Cooper wrote a letter to Mr. Popofsky that referred to Dermal Research's "issued US patent, number 5,888,984, covering topical use [of chondroitin sulfate] and [its] international filing WO 00/44367 (also referred to as EP 1165097)" and again requested discussion of "mutual interest and licensing opportunities." A copy of this letter is annexed hereto as Exhibit C.

16. On or about May 10, 2002, Mr. Popofsky called Dr. Cooper. During the telephone conversation, Mr. Popofsky indicated frustration at the unresolved allegations of infringement by Dermal Research, and informed Dr. Cooper that Joint-Ritis did not infringe the '984 Patent. Dr. Cooper stated that to resolve the situation, Naturopathic could receive a license from Dermal Research costing \$1 million.

17. During the early part of June 2002, Mr. Popofsky called Dr. Cooper on numerous occasions, leaving several messages asking her to call him regarding the claims of infringement, and also sent an e-mail to Dermal Research requesting a return telephone call.

18. On June 14, 2002, Dr. Cooper returned Mr. Popofsky's calls. During that conversation, Mr. Popofsky continued to deny infringement. However, Dr. Cooper increased her demands for a license, seeking \$1.5 million up-front, plus \$500,000 per year, and an unspecified percentage of the proceeds of any sale by Naturopathic. Dr. Cooper's escalating demands made it clear to Mr. Popofsky that Naturopathic's sales of Joint-Ritis were being threatened by Dermal Research's assertions of the '984 Patent.

**COUNT I – DECLARATION OF INVALIDITY**

19. Naturapathic incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth and restated herein.

20. All of the claims of the '984 Patent are invalid for at least one or more of the following reasons:

(a) the alleged inventors of the '984 Patent did not make any invention or discovery, either novel, original, or otherwise, within the meaning of United States Code, Title 35;

(b) on information and belief, the alleged invention of the '984 Patent was made by another in this country before the patentee's alleged invention, and such other person had not abandoned, suppressed, or concealed it;

(c) in light of the prior art at the time the alleged invention was made, the subject matter as claimed in the '984 Patent would have been obvious to one skilled in the art to which the alleged invention relates and does not constitute a patentable invention;

(d) more than one year prior to the filing of the original application which matured into the '984 Patent, the alleged invention was described in printed publications in this country, and/or was in public use and on sale in this country;

(e) the patent does not contain a written description of the alleged invention in such full, clear, concise and exact terms to enable one skilled in the art to which it is directed to make and use it.

WHEREFORE, Naturopathic prays for judgment against Defendant Dermal Research Industries, Inc. declaring the claims of the '984 Patent are invalid; awarding Naturopathic its costs and

reasonable attorney fees incurred by Naturopathic herein; awarding Naturopathic its damages resulting from Dermal Research's efforts to assert the '984 patent against Naturopathic and/or any of its customers; and, for such other and further relief as the Court may deem appropriate.

**COUNT II – DECLARATION OF NON-INFRINGEMENT**

21. Naturopathic incorporates by reference each and every allegation set forth in paragraphs 1 through 20 as if fully set forth and restated herein.

21. Naturopathic's manufacture, sales, and distribution of Joint-Ritis does not infringe any claims of the '984 Patent.

22. By reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the application that matured into the '984 Patent, and in particular, the applicants and/or their representative(s) and/or agents remarks, representations, concessions, amendments and/or admissions during those proceedings, Dermal Research is precluded and estopped from asserting that Naturopathic has infringed upon any of the claims of the '984 Patent.

23. By reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the '984 Patent, and in particular, the applicants and/or their representative(s) and/or agents remarks, representations, concessions, amendments and/or admissions during those proceedings, Dermal Research is precluded and estopped from asserting a claim construction that would cause the '984 Patent to cover or include Joint-Ritis.

WHEREFORE, Naturopathic prays for judgment against Defendant Dermal Research Industries, Inc. declaring that Dermal Research is without right or authority to threaten or to maintain suit against Plaintiff, its subsidiaries, affiliates, divisions, agents or its customers for alleged infringement of the '984 Patent; declaring that the '984 Patent is not infringed by Plaintiff's making, selling, offering for sale

or use of Joint-Ritis; awarding Naturopathic its costs and reasonable attorney fees incurred by Naturopathic herein; awarding Naturopathic its damages resulting from Dermal Research's efforts to assert the '984 patent against Naturopathic and/or any of its customers; and awarding Naturopathic such other and further relief as the Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues in this matter.

Respectfully submitted,

**BRYAN CAVE LLP**

By: /s/ Jeremiah J. Morgan  
Jeremiah J. Morgan MO #50387  
3500 One Kansas City Place  
1200 Main Street  
Kansas City, Missouri 64105-2100  
Telephone: (816) 374-3200  
Facsimile: (816) 374-3300

and

N. Whitney Wilson DC #450087  
700 Thirteenth Street, N.W.  
Washington, D.C. 20005-3960  
Telephone: (202) 508-6000  
Facsimile: (202) 508-6200

**ATTORNEYS FOR NATUROPATHIC  
LABORATORIES INTERNATIONAL, INC.**