

with the expired patents with the intent to deceive competitors and the public, and to gain a competitive advantage in the market.

3.

Plaintiff seeks an award of monetary damages against Defendant pursuant to 35 U.S.C. § 292 (b) of up to \$500 for each offense, with one-half going to the use of the United States and the other half going to the person bringing the action.

THE PARTIES

4.

Plaintiff is a person residing in Lakeland, Tennessee.

5.

Defendant NOVARTIS PHARMACEUTICALS CORPORATION is a Delaware corporation with its principal place of business in East Hanover, New Jersey. Defendant's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

6.

Defendant NOVARTIS ANIMAL HEALTH US, INC., is a Delaware corporation with its principal place of business in Greensboro, North Carolina. Defendant's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

7.

Defendant NOVARTIS OPHTHALMICS, INC., is a Delaware corporation with its principal place of business in Duluth, Georgia. Defendant's registered agent for service of process is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

8.

This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9.

Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1395(a) because, at least in part, Defendant Novartis's products that are the subject-matter of this Complaint, were and are advertised, offered for sale, and sold within this District.

10.

This Court has personal jurisdiction over Defendant Novartis because Defendant has sold and continues to sell falsely marked products in Tennessee and in this District, and/or in the streams of commerce with knowledge that said products would be sold in Tennessee and in this District. Upon information and belief, such sales by Defendant are substantial, continuous, and systematic.

11.

Plaintiff brings this action under 35 U.S.C. § 292(b), which provides that any person may sue for civil money penalties for false patent marking.

GENERAL ALLEGATIONS

12.

Defendant Novartis has in the past manufactured and marketed (or caused to be manufactured and marketed), and presently manufactures and markets (or causes to be manufactured and marketed), products for sale to the general consuming public, including Denegard ®, Milbemite ®, and Ocupress ®.

13.

Specifically, Defendant Novartis has and continues to market the following products: Denegard ®, a veterinary product, is a broad-spectrum antibiotic for control and treatment of certain swine bacterial diseases; Milbemite ®, a veterinary product, is a solution intended for treatment of feline ear mites; and Ocupress ® is an eye drop used to treat open-angle glaucoma and elevated eye pressure in humans.

14.

Denegard ®, including its packaging and/or labeling, have been and continue to be marked with United States patent number 4,278,674 (hereinafter referred to as the “ ‘674 Patent”).

15.

The ‘674 Patent has expired, but Defendant Novartis nevertheless continues using the improper patent markings on Denegard ®, with the intent to deceive the public and to gain competitive advantage in the market.

16.

Milbemite ®, including its packaging and/or labeling, have been and continue to be marked with United States patent number 4,547,520 (hereinafter referred to as the “ ‘520 Patent”).

17.

The '520 Patent has expired, but Defendant Novartis nevertheless continues using the improper patent marking on Milbemite ®, with the intent to deceive the public and to gain competitive advantage in the market.

18.

Ocupress ®, including its packaging and/or labeling, have been and continue to be marked with United States patent numbers 3,910,924 and 4,309,432 (hereinafter referred to as the “ ‘924 Patent” and the “ ‘432 Patent”).

19.

The '924 Patent and '432 Patent have expired, but Defendant Novartis nevertheless continues using the improper patent markings on Ocupress ®, with the intent to deceive the public and to gain competitive advantage in the market.

20.

When a patent expires, all monopoly rights to the patent terminate irrevocably. Therefore, a product marked with an expired patent is not currently patented by such expired patent. In other words, the product is unpatented.

21.

Marking products with expired patents is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products, which, in turn, causes harm to the consuming public, including Plaintiff, by quelling product innovation and price competition.

22.

Defendant Novartis is a sophisticated company with many decades of experience applying for and obtaining patents, and therefore knows that patents do not have an indefinite duration but, rather, expire.

23.

Upon information and belief, Defendant Novartis employs an in-house legal department.

24.

Upon information and belief, attorneys in Defendant Novartis's in-house legal department is responsible for Defendant's intellectual property and marketing, labeling, and advertising law.

25.

Defendant Novartis by itself or by its representatives cannot genuinely believe that a patent does not expire, and that prospective patent rights apply even after its expiration.

26.

Defendant Novartis knew that both the '674 Patent marked on Denegard ® as identified herein, had expired. Similarly, Defendant knew that '520 Patent, marked on Milbemite ® as identified herein, had expired. Additionally, Defendant knew that the '924 Patent and '432 Patent marked on Ocupress as identified herein, had expired.

27.

After the '674 Patent expired, Defendant Novartis marked, or caused to be marked, said expired patent number upon Denegard ® and/or its packaging. Similarly, after the '520 Patent expired, Defendant marked, or caused to be marked, said expired patent number upon Milbemite ® and/or its packaging. Finally, after the expiration of '924 Patent and the '432 Patent,

Defendant marked, or caused to be marked, said expired patent numbers upon Ocupress ® and/or its packaging.

28.

Defendant Novartis knew that the patents marked on the products identified herein were expired during time periods Defendant was marking products with such expired patents.

29.

Because all monopoly rights in the aforementioned expired patents have terminated, Defendant Novartis cannot have any reasonable belief that Denegard ®, Milbemite ®, and/or Ocupress ® are patented or otherwise covered by the expired patents marked upon the packaging of these products.

30.

By repeatedly marking Denegard ®, Milbemite ®, and Ocupress ® with expired patents, Defendant Novartis has committed numerous violations of 35 U.S.C. § 292(a).

31.

Defendant Novartis has committed such violations of 35 U.S.C. § 292(a) with an intent to deceive competitors and the public.

32.

Plaintiff seeks an award of monetary damages against Defendant Novartis, one half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

COUNT ONE: THE '674 PATENT (DENEGARD ®)

33.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

34.

United States Patent Number 4,278,674 was filed on November 29, 1979, and issued on July 14, 1981. (Please see United States Patent No. 4,278,674, attached hereto as Exhibit 'A').

35.

The '674 Patent expired on November 29, 1999.

36.

Defendant Novartis marketed for sale to the public the product known as Denegard ®, marked with the '674 Patent.

37.

Defendant Novartis violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Denegard ® with the '674 Patent, and any and all other products marked with the '674 Patent, subsequent to the date the patent expired with the intent to deceive the public.

38.

Upon information and belief, Defendant Novartis knew, on or about the date of expiration, that the '674 Patent had expired.

39.

Defendant Novartis cannot genuinely believe that the '674 Patent applies even after it expired.

40.

Upon information and belief, Defendant Novartis is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon

information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

41.

Defendant Novartis has falsely marked Denegard ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

42.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

43.

Defendant Novartis's false marking of products with the '674 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

44.

Defendant Novartis wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;

- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT TWO: THE ‘520 PATENT (MILBEMITE ®)

45.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

46.

United States Patent Number 4,547,520 was filed on November 25, 1983, and issued on October 15, 1985. (Please see United States Patent No. 4,547,520, attached hereto as Exhibit ‘B’).

47.

The ‘520 Patent expired on July 2, 2005. (Please see “Certificate Extending Patent Term,” attached hereto as Exhibit ‘C’).

48.

Defendant Novartis marketed for sale to the public the product known as Milbemite ®, marked with the ‘520 Patent.

49.

Defendant Novartis violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Milbemite ® with the '520 Patent, and any and all other products marked with the '520 Patent, subsequent to the date the patent expired with the intent to deceive the public.

50.

Upon information and belief, Defendant Novartis knew, on or about the date of expiration, that the '520 Patent had expired.

51.

Defendant Novartis cannot genuinely believe that the '520 Patent applies even after it expired.

52.

Upon information and belief, Defendant Novartis is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

53.

Defendant Novartis has falsely marked Milbemite ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

54.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

55.

Defendant Novartis's false marking of products with the '520 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

56.

Defendant Novartis wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and

(f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT THREE: THE '924 PATENT (OCUPRESS ®)

57.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

58.

United States Patent Number 3,910,924 was filed on January 19, 1973, and issued on October 7, 1975. (Please see United States Patent No. 3,910,924, attached hereto as Exhibit 'D').

59.

The '924 Patent expired on January 19, 1993.

60.

Defendant Novartis marketed for sale to the public the product known as Ocupress ®, marked with the '924 Patent.

61.

Defendant Novartis violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Ocupress ® with the '924 Patent, and any and all other products marked with the '924 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Ocupress ® Label (p.5 of 6), attached hereto as Exhibit 'E').

62.

Upon information and belief, Defendant Novartis knew, on or about the date of expiration, that the '924 Patent had expired.

63.

Defendant Novartis cannot genuinely believe that the '924 Patent applies even after it expired.

64.

Upon information and belief, Defendant Novartis is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

65.

Defendant Novartis has falsely marked Ocupress ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

66.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

67.

Defendant Novartis's false marking of products with the '924 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

68.

Defendant Novartis wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT FOUR: THE ‘432 PATENT (OCUPRESS ®)

69.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

70.

United States Patent Number 4,309,432 was filed on January 2, 1980, and issued on January 5, 1982. (Please see United States Patent No. 4,309,432, attached hereto as Exhibit ‘F’).

71.

The '432 Patent expired on January 2, 2000.

72.

Defendant Novartis marketed for sale to the public the product known as Ocupress ®, marked with the '432 Patent.

73.

Defendant Novartis violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Ocupress ® with the '432 Patent, and any and all other products marked with the '432 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Ocupress ® Label (p.5 of 6), attached hereto as Exhibit 'E').

74.

Upon information and belief, Defendant Novartis knew, on or about the date of expiration, that the '432 Patent had expired.

75.

Defendant Novartis cannot genuinely believe that the '432 Patent applies even after it expired.

76.

Upon information and belief, Defendant Novartis is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and

advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

77.

Defendant Novartis has falsely marked Ocupress ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

78.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

79.

Defendant Novartis's false marking of products with the '432 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

80.

Defendant Novartis wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;

- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted this 13th day of April, 2010.

/s/ W. Daniel Miles, III
W. DANIEL “DEE” MILES, III *

/s/ Roman A. Shaul
ROMAN A. SHAUL (TN BPR # 024265)

/s/ Archie Grubb II
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