

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FIDOPHARM, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
MERIAL LIMITED,)	
)	
Defendant.)	DEMAND FOR JURY TRIAL

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff FidoPharm, Inc. (“FidoPharm”) files the following Complaint for Declaratory Relief against Merial Limited (“Merial”) to seek a declaration that its newly formulated PetArmor® Plus flea-and-tick products for cats and dogs do not infringe any valid claims of U.S. Patent No. 6,096,329 (“the ‘329 patent”). FidoPharm previously filed claims similar to those contained herein in a complaint for declaratory relief before this Court on December 27, 2011. (Civ. A. No. 11-1285 GMS (D. Del.), D.I. 1). In response to the December 27, 2011 complaint, Merial moved to dismiss contending that “no case or controversy exist[ed] between the parties” at the time that complaint was filed because, as of that date, Merial had “not accused FidoPharm’s New Product of infringement.” (*Id.* D.I. 8 at 1.) Merial’s motion to dismiss is pending.

This complaint cures the asserted jurisdictional defect. Since the filing of the December 27, 2011 Complaint, in the context of contempt proceedings in the United States District Court for the Middle District of Georgia, Merial repeatedly has admitted that there is a controversy between the parties as to whether FidoPharm’s new PetArmor® Plus products infringe the ‘329 patent and whether the ‘329 patent is valid and enforceable. In fact, Merial

expressly has stated that FidoPharm's "'new' PetArmor Plus product[] infringe[s] Merial's '329 Patent.'" Given these assertions, Merial has no good faith basis to deny the existence of a justiciable case or controversy.

On June 5, 2012, the Middle District of Georgia denied a motion by Merial to hold FidoPharm and its parent company (Velcera Inc.) in contempt of a previously issued injunction covering old formulations of FidoPharm's PetArmor® Plus products.. (*See BASF Agro B.V. and Merial Ltd. et al. v. CIPLA Ltd., et al.*, No. 07-125, D.I. 235). That court held its prior "Order does not prohibit Velcera from proceeding with the launch of its new product." (*Id.* at 13.) The court further indicated that, from its perspective, an infringement action on the '329 patent is "the preferred mechanism for resolving the important issue that is at the bottom of this controversy." (*Id.* at 14.)

FidoPharm files the current complaint to address this infringement controversy related to the '329 patent, and to obviate the need for this Court to expend further resources deciding Merial's pending motion to dismiss filed in Civ. A. No. 11-1285 GMS (D. Del.).¹ In support thereof, FidoPharm alleges as follows:

THE PARTIES

1. Plaintiff FidoPharm is a Delaware corporation with its principal place of business in Yardley, Pennsylvania.

2. On information and belief, Defendant Merial Limited is a company limited by shares registered in England and Wales with its registered office in England. Merial Limited is domesticated in the State of Delaware as Merial LLC. Merial Limited may be properly served through its domesticated agent, Merial, LLC. On information and belief, Merial

¹ By motion filed contemporaneously with this complaint, FidoPharm is asking the Court's permission to dismiss the complaint filed in Civ. A. No. 11-1285 GMS (D. Del.) without prejudice under Rule 41(a)(2).

Limited's principal place of business is in Duluth, Georgia. Merial Limited and Merial LLC are referred to collectively as "Merial" herein.

JURISDICTION AND VENUE

3. This is a civil action for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because Plaintiff's claims for declaratory relief arise under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.*

5. This Court has personal jurisdiction over Merial because, on information and belief, Merial is domesticated in Delaware, has designated an agent for service of process in Delaware, and does and has done business in this judicial district, including regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from products and services to individuals and entities in this District, including without limitation offering for sale and selling the FRONTLINE® series of products, which are purportedly covered by the '329 patent. Del. Code. Ann. Tit. 3, § 3104(c).

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

GENERAL ALLEGATIONS

7. Plaintiff FidoPharm is a small, start-up company that seeks to provide high quality, affordable and more readily accessible pharmaceutical and parasiticide products for pets. FidoPharm has developed several fipronil-based flea and tick control products for the retail over-the-counter and veterinary markets, including PetArmor® and PetArmor® Plus.

8. Defendant Merial is a multi-billion dollar company that produces and sells animal health products for pets, livestock, and other wildlife, including the line of products for

elimination of fleas and ticks in pets, FRONTLINE®. The active ingredient in FRONTLINE® products is fipronil.

9. According to Merial, aspects of Merial's fipronil-containing animal health products are covered by a portfolio of patents, including the '329 patent.

10. The '329 patent, entitled "Insecticidal Combination to Control Mammal Fleas, In Particular Fleas on Cats and Dogs," was issued on August 1, 2000 and subject to an Ex Parte Reexamination Certificate for the '329 patent issued by the United States Patent and Trademark Office on October 4, 2011. Merial S.A.S. is the named assignee on the face of the '329 patent. On information and belief, Merial S.A.S., through a grant of an irrevocable exclusive right and license under the '329 patent, has granted Merial all substantial rights to enforce the '329 patent. A true and correct copy of the '329 patent is attached hereto as Exhibit A.

MERIAL'S HISTORY OF LITIGATING ITS FIPRONIL-RELATED PATENT RIGHTS

11. Merial has consistently and aggressively litigated or threatened to litigate its fipronil-related patent rights to stop perceived competitors from bringing to market, or even attempting to develop, products that could potentially compete with its FRONTLINE® series of products. In the last several years alone, Merial has initiated at least five separate lawsuits in four different jurisdictions alleging infringement of its fipronil-related patent rights. *See, e.g., BASF Agro B.V. and Merial Ltd. et al. v. CIPLA Ltd., et al.*, No. 07-125 (M.D. Ga. filed Nov. 13, 2007) (closed); *BASF Agro, Merial Ltd. et al. v. Humane Society of Inverness, Inc.*, No. 08-357 (M.D. Fla. filed Aug. 29, 2008) (closed); *Merial Ltd., BASF Agro et al. v. Virbac S.A. et al.*, No. 10-181 (N.D. Tex. filed Mar. 18, 2010) (dismissed); *BASF Agro, Merial Ltd. et al. v. Cheminova, Inc.*, No. 10-274 (M.D.N.C. filed Apr. 8, 2010) (closed).

12. For example, on November 13, 2007, Merial, Merial S.A.S. and BASF Agro B.V. (“BASF Agro”) sued a number of entities, including an Indian company Cipla Limited (“Cipla”), in the Middle District of Georgia (No. 07-125) alleging infringement of its rights in two fipronil-related patents, including the ‘329 patent. In its complaint, Merial asserted that its FRONTLINE® PLUS products are covered by the ‘329 patent, which Merial asserted “generally relates to formulations containing a compound that is a derivative of an n-phenylpyrazole, e.g., fipronil, and an insect growth regulator, e.g., methoprene.” Merial asserted that Cipla’s alleged “PROTEKTOR PLUS” animal-health products infringed the ‘329 patent. On March 6, 2008, Merial obtained a default judgment against Cipla and several other defendants, as well as a permanent injunction preventing Cipla from making, using, selling or offering to sell in the United States infringing products, importing infringing products into the United States, or inducing others to infringe the asserted patents, including the ‘329 patent.

13. On March 18, 2010, Merial and BASF Agro filed a patent infringement action (No. 10-181) in the Northern District of Texas against Virbac S.A., a French company, and its U.S. affiliate, after learning that Virbac had commissioned studies of fipronil-containing animal health compositions. Based only on what future uses Merial speculated Virbac might make of these studies, Merial sought a preliminary injunction to enjoin Virbac from ever using the data, even after the expiration of the asserted patent. On July 6, 2010, the court rejected Merial’s request for a preliminary injunction and Merial continued to pursue the litigation until after Virbac filed a motion for summary judgment when the parties reached a settlement agreement. Soon thereafter on January 5, 2011, the Court dismissed the parties’ claims and defenses with prejudice pursuant to a stipulation of dismissal.

14. On August 29, 2008, Merial, Merial S.A.S. and BASF Agro sued the Humane Society of Inverness, Florida (the “Humane Society”) in the Middle District of Florida (No. 08-357). The Humane Society is known as a small non-profit animal rescue and adoption organization with a stated mission “to aid in the reduction of the suffering of unwanted animals through education and promoting responsible pet ownership.” That lawsuit claimed that a fipronil-based animal health product made, used, offered for sale or sold by the Humane Society of Inverness infringed Merial’s fipronil-related patent rights and various trademarks. Merial sought and obtained a default judgment and permanent injunction against the Humane Society.

15. On April 8, 2010, Merial Limited’s litigation partners, BASF Agro B.V., Arnhem (NL), Wadenswil Branch, and Bayer S.A.S (collectively, “BASF”), sued Cheminova, Inc. for patent infringement in the United States District Court for the Middle District of North Carolina (No. 10-274), alleging that Cheminova, Inc. infringes patents that purportedly cover methods and processes for using and manufacturing fipronil. On October 13, 2010, Merial Limited filed a motion to intervene and joined in the complaint as an exclusive licensee of patents allegedly infringed.

16. Most recently, on November 11, 2011, Merial commenced yet another litigation against FidoPharm and its parent (Velcera, Inc.) in the Middle District of Georgia alleging, among other things, trade dress infringement relating to its FRONTLINE® series of products. *See Merial Limited et al. v. Velcera, Inc. et al.*, 11-cv-157 (CDL).

17. Based on Merial’s aggressive litigation history and on the events described below, Plaintiff has formed a reasonable belief that Merial will seek to utilize the same aggressive litigation tactics against FidoPharm in an attempt to eliminate competition and prevent re-entry of FidoPharm’s fipronil-based animal health products.

**LITIGATION BETWEEN FIDOPHARM AND MERIAL REGARDING FIPRONIL-RELATED PATENTS
INCLUDING THE '329 PATENT**

18. Beginning in 2007, Velcera recognized an opportunity to bring more affordable pet flea and tick treatments with greater consumer access to the market and began exploring possibilities for new fipronil-containing products.

19. Throughout 2007, Velcera developed a business plan to compete in the flea and tick control market. In the course of determining the regulatory pathway to market fipronil-based animal health products in the U.S., Velcera was introduced to OmniPharm Limited ("OmniPharm"), a British pharmaceutical company that was also exploring the market for fipronil-based animal health products.

20. In the course of developing its comprehensive business plan for selling fipronil-based animal health products to the U.S. market, Velcera established its wholly-owned subsidiary, FidoPharm, to carry out the business plan. Subsequently, FidoPharm entered into a license and development agreement with OmniPharm whereby OmniPharm and FidoPharm would develop and OmniPharm would exclusively license to FidoPharm proprietary formulations of fipronil and fipronil plus s-methoprene products for sale in the United States. FidoPharm then entered into a separate agreement with an Omnipharm affiliated entity, QEDetal Limited, to have FidoPharm's fipronil-containing products manufactured by Cipla to FidoPharm's specifications.

21. FidoPharm has developed several fipronil-based flea and tick control products for the retail over-the-counter and veterinary markets. For example, FidoPharm developed PetArmor® cat and dog products (generic versions of Merial's Frontline TopSpot® fipronil products), and PetArmor® Plus cat and dog products (generic versions of Merial's fipronil/s-methoprene Frontline® Plus products).

22. On February 11, 2011, before launching its PetArmor® Plus products, Velcera and FidoPharm filed a complaint for declaratory judgment against Merial in this Court (Civ. A. No. 11-134-GMS) (the “Delaware litigation”) seeking a declaration of non-infringement and invalidity as to the ‘329 Patent and two fipronil manufacturing patents. Merial answered the declaratory judgment action on March 7, 2011, and brought in an additional litigant, BASF Agro, the purported owner of the two process patents. Merial and BASF Agro asserted counterclaims of patent infringement of the same three patents, including the ‘329 Patent. In answering the complaint, Merial consented to the jurisdiction of this Court and admitted that Delaware was the appropriate venue for the parties to litigate their dispute over infringement of the ‘329 patent.

23. Shortly thereafter, on March 28, 2011, without notice to FidoPharm, Merial filed a motion in the Middle District of Georgia to hold Cipla in contempt for violating that Court’s March 6, 2008 permanent injunction, which enjoined Cipla from infringing the ‘329 patent. Merial also sought a permanent injunction against Cipla barring it from making, using, selling, offering to sell, and importing into the United States a variety of products, including FidoPharm’s PetArmor® Plus products. *See BASF Agro B.V. et al. v. Cipla Limited et al.* (3:07-cv-125-CDL) (the “Georgia Action”). To protect its rights, FidoPharm and Velcera intervened on April 18, 2011. Shortly thereafter, Merial moved to hold FidoPharm and Velcera in contempt for acting in concert with Cipla to violate the Cipla injunction, and Merial sought a permanent injunction barring FidoPharm and Velcera from making, using, selling, offering to sell, and importing into the United States a variety of products, including FidoPharm’s PetArmor® Plus products.

24. FidoPharm launched its PetArmor® Plus and PetArmor® products in the United States in early April, 2011.

25. On June 21, 2011, the Georgia Court granted Merial's motions seeking contempt sanctions against Cipla, Velcera, and FidoPharm for violation of the Court's March 6, 2008 Order granting a default judgment and permanent injunction against Cipla. In doing so, the Georgia Court found that Velcera and FidoPharm had acted in concert with Cipla and that the PetArmor® Plus products were not more than colorably different than Cipla's products described in the Court's March 6, 2008 Order. The Georgia Court then entered a permanent injunction against Cipla prohibiting it, and those in active concert with it, from among other things, the making, using, selling, offering to sell, and importing into the United States a variety of fipronil and s-methoprene products, including FidoPharm's PetArmor® Plus products. As to Velcera and FidoPharm, as clarified in its March 22, 2012 Order, the Georgia Court specifically limited its order and injunction to specific fipronil and s-methoprene products "that it has developed, manufactured, and/or packaged in concert with Cipla." (Georgia Action, D.I. 175 at 2..)

26. FidoPharm and Velcera have complied with the Georgia Court's order and judgment and, as of August 19, 2011, stopped selling the enjoined PetArmor® Plus products.

27. Shortly after entry of the Georgia Court's order and judgment on July 1, 2011, Merial filed a motion to dismiss the Delaware litigation (Civ. A. No. 11-134-GMS) involving the '329 Patent and the two fipronil manufacturing patents. Merial sought dismissal for lack of subject matter jurisdiction on the basis of the Georgia Court's permanent injunction barring marketing of FidoPharm's PetArmor® Plus products. On August 3, 2011, the Delaware Court granted Merial's motion as to the '329 Patent only, finding FidoPharm and Velcera's allegations moot in light of the Georgia Court's injunction. The Delaware Court specifically contemplated a case or controversy with respect to the '329 patent were FidoPharm and Velcera

to have a “new, non-enjoined product containing fipronil and methoprene.” (Civ. A. No. 11-134-GMS, D.I. 38 at 4 n.4.)

FIDO PHARM DEVELOPED A NEW PET ARMOR® PLUS PRODUCT AND HAS TAKEN CONCRETE STEPS TO RE-ENTER THE U.S. MARKET

28. Despite Merial’s aggressive efforts, FidoPharm remains committed to providing high quality, affordable and more readily accessible pharmaceutical and parasiticide products for pets. In furtherance of its objective, FidoPharm has recently completed numerous concrete steps completely independent of Cipla to introduce new PetArmor® Plus formulations for cats and dogs containing fipronil and s-methoprene (“New PetArmor® Plus Products”) into the U.S. market as generic alternatives to Merial’s Frontline® Plus products.

29. FidoPharm has taken substantial steps to modify their New PetArmor® Plus Products and have entirely removed Cipla from any involvement in the development, manufacture, packaging or sale of the new product. FidoPharm has developed “new, non-enjoined product[s] containing fipronil and [s-]methoprene” using a different manufacturing process.

30. FidoPharm received approval by the U.S. Environmental Protection Agency (“EPA”) for its New PetArmor® Plus Products on September 20, 2011 and stands at the threshold of launching its new products into the market in the upcoming flea and tick season.

31. FidoPharm is poised to enter the U.S. market with its New PetArmor® Plus Products.

MERIAL IS AWARE OF FIDOPHARM'S NEW PETARMOR® PLUS PRODUCTS AND HAS MADE ADDITIONAL AFFIRMATIVE ACTS REGARDING ENFORCEMENT OF ITS '329 PATENT RIGHTS

32. In the interests of ensuring absolute clarity that its New PetArmor® Plus products are not enjoined products and do not infringe any valid and enforceable patent claim of the '329 patent, on December 27, 2011 Plaintiff filed (1) a Motion for Clarification with the Georgia Court to clarify that FidoPharm's New PetArmor® Plus products fall outside the scope of the injunction; and (2) a Complaint for Declaratory Relief with this Court that its New PetArmor® Plus products do not infringe any valid claims of the '329 patent. Merial has subsequently made a number of affirmative acts asserting that FidoPharm's New PetArmor® Plus Products are the same as the enjoined products and also infringe the '329 patent.

33. In response to FidoPharm's Motion for Clarification, on January 20, 2012, Merial asserted in the Georgia Action that FidoPharm is seeking to market the same products that it previously alleged infringe the '329 Patent and were enjoined by the Georgia Court. Specifically, Merial told the Georgia Court that a document submission obtained from the EPA dated December 14, 2011 "appears to show that [FidoPharm's] 'new' product is the same as its Cipla-developed (and enjoined) product, just with a new registration number and the addition of a 'new site for manufacture.'" Merial further explained that the EPA submission revealed "that Velcera's 'new product' has the same concentrations of fipronil (9.8%), s-methoprene (8.8%), and 'other' ingredients (81.4%), as that which was enjoined by this Court." Merial concluded: "[I]t appears that Velcera's 'new' EPA registration number was not obtained via a new EPA application as Velcera implies, but rather was obtained via a continuation of the same application for the same product . . . that was enjoined by this Court." Thus, Merial asserted to the Georgia Court that FidoPharm's New PetArmor® Plus Products appear to be the same as the products

that Merial alleged infringe the '329 Patent in its March 7, 2011 patent infringement counterclaims.

34. In response to FidoPharm's motion to treat the Motion for Clarification as an emergency motion, on March 20, 2012, Merial again made arguments in the Georgia Action that FidoPharm's New PetArmor® Plus Products are the same as products that have been adjudicated as infringing the '329 Patent. Specifically, Merial argued that it is improper for FidoPharm to seek "emergency relief" to market a product with "the same active ingredients, fipronil and methoprene, in the same concentrations ... as the Cipla-developed PetArmor Plus products, Velcera's sales of which this Court has found violate Merial's '329 Patent and this Court's March 6, 2008 Order." Merial also stated that FidoPharm "stubbornly persists to attempt to market products that have the same combination of active ingredients in the same concentrations as Merial's Frontline Plus products and the previously enjoined PetArmor Plus products, even though compositions having those active ingredients, in combination with at least one customary spot-on formulation adjuvant, have been adjudicated to infringe Merial's '329 Patent."

35. On April 20, 2012, in the Georgia Action, Merial moved to hold FidoPharm and Velcera in contempt and also sought an emergency temporary restraining order. In its filing, Merial asserted that FidoPharm's New PetArmor® Plus products are subject to the Georgia Court's injunction and infringe the '329 Patent. For example, Merial stated that it "brings the present motions to prevent [FidoPharm] from flouting this Court's ...[Orders], and from further infringing Merial's U.S. Patent No. 6,096,329 ("the '329 Patent')." Merial also asserted that FidoPharm "is in contempt for violating the 2008 and 2011 Injunctions because its "new" PetArmor Plus products infringe Merial's '329 patent..." In further briefing of its motion

on May 17, 2012, after obtaining discovery related to FidoPharm's New PetArmor® Plus Products, Merial again asserted that FidoPharm's New PetArmor® Plus Products infringe the '329 patent, in particular that "the purportedly 'new' PetArmor Plus products contain all of the elements sufficient to infringe Merial's '329 Patent." Thus, Merial has expressly asserted in another Court in the context of contempt proceedings that FidoPharm's New PetArmor® Plus Products infringe the '329 patent.

36. Upon information and belief, Merial contends that each and every claim of the '329 patent is valid.

37. Plaintiff's New PetArmor® Plus Products do not infringe, either directly, by inducement, or contributorily, any valid and enforceable claim of the '329 patent.

38. The '329 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

39. All of the circumstances described above demonstrate that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. The circumstances include, among other things, (a) the contempt proceedings initiated by Merial against the PetArmor® Plus products (both New and Old); (b) the counterclaim for infringement of the '329 patent asserted by Merial against FidoPharm in the Delaware litigation; (c) Merial's demonstrated history of initiating infringement litigation against entities making preparations to enter the market for fipronil-based animal health products, including products combining fipronil and s-methoprene; and (d) FidoPharm's imminent re-entry into the market with their New PetArmor® Plus Products approved by the EPA as a generic alternatives to Frontline® Plus products.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '329 PATENT

40. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Upon information and belief, Merial claims to be the owner by assignment of all right, title, and interest in and to the '329 Patent.

42. Plaintiff's New PetArmor® Plus product does not directly infringe any valid and enforceable claim of the '329 patent.

43. Plaintiff has not induced, and does not now induce, infringement of any valid and enforceable claim of the '329 patent.

44. Plaintiff has not contributorily infringed, and does not now contributorily infringe, any valid and enforceable claim of the '329 patent.

45. An actual and justiciable case or controversy exists between Plaintiff and Merial as to whether Plaintiff's New PetArmor® Plus product infringes the '329 patent, which requires a declaration of rights by this Court.

46. Plaintiff is entitled to a judicial determination and declaration that Plaintiff has not infringed and is not infringing, directly, indirectly, contributorily, by active inducement or otherwise, any valid and enforceable claim of the '329 Patent.

COUNT II

DECLARATORY JUDGMENT OF INVALIDITY OF THE '329 PATENT

47. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 46 of this Complaint as though fully set forth herein.

48. Upon information and belief, Merial claims to be the owner by assignment of all right, title, and interest in and to the '329 Patent.

49. The '329 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

50. An actual and justiciable case or controversy exists between Plaintiff and Merial concerning the invalidity of the '329 patent, which requires a declaration of rights by this Court.

51. Plaintiff is entitled to a judicial determination and declaration that one or more claims of the '329 patent is invalid.

WHEREFORE, Plaintiff FidoPharm, Inc. requests that the Court enter a judgment in its favor and against Merial as follows:

- A. The Court enter judgment that FidoPharm's New PetArmor® Plus Products do not infringe any valid and enforceable claim of the '329 patent under 35 U.S.C. § 271(a), nor has FidoPharm induced infringement under 35 U.S.C. § 271(b), or contributorily infringed under 35 U.S.C. § 271(c) any valid and enforceable claim of the '329 patent;
- B. The Court enter judgment for FidoPharm that the claims of the '329 patent are invalid;
- C. The Court enjoin Merial, and its affiliates, subsidiaries, officers, directors, agents, counsel, servants, employees, and all persons in active concert or participation with any of them, from attempting to enforce the '329 Patent against FidoPharm, or against its parent, subsidiaries or customers by reason of the sale or use of FidoPharm's New PetArmor® Plus Products;
- D. Find this case to be an exceptional case pursuant to 35 U.S.C. § 285 and award FidoPharm its attorneys' fees and expenses;
- E. Award FidoPharm its costs; and
- F. Grant FidoPharm such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff FidoPharm, Inc. hereby demands a trial by jury of all issues triable of right by a jury.

ASHBY & GEDDES

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