IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

EATON VETERINARY PHARMACETUICAL, INC., a Delaware corporation, Plaintiff, v. WEDGEWOOD VILLAGE PHARMACY, INC., a New Jersey corporation, Defendant.	)	Case No. 4:15-cv-687

COMPLAINT

Plaintiff Eaton Veterinary Pharmaceutical, Inc. ("Eaton"), through its undersigned attorneys of record, files this Complaint against defendant Wedgewood Village Pharmacy, Inc. and states and alleges as follows:

PARTIES

1. Eaton is a corporation organized and existing under the laws of the State of Delaware, having an address of 711 East Carefree Hwy, Suite 140, Phoenix, Arizona 85085. Eaton possesses all rights, title and interest in U. S. Patent 6,930,127, including the right to sue for infringement.

2. Defendant Wedgewood Village Pharmacy ("Wedgewood") is a corporation organized and existing under the laws of the State of New Jersey. On information and belief Wedgewood has a principal place of business at 405 Heron Drive, #200, Swedesboro, New Jersey 08085.

JURISDICTION AND VENUE

3. This is a patent infringement action brought under the patent laws of the United States, 35 U.S.C. Section 1 *et seq*. Eaton seeks damages for patent infringement and an injunction preventing Wedgewood from inducing or contributing to others' use of Eaton's patented technology without its permission.

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Wedgewood because it has purposefully introduced its products into interstate commerce and sold its infringing products in this State and this district.

6. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise to the claims asserted herein occurred in this district, and Wedgewood has committed acts of infringement in this district.

BACKGROUND

7. This lawsuit stems from the flagrant theft and misuse of valuable intellectual property belonging to Eaton.

8. This intellectual property comprises a patented method of treating various ophthalmic diseases in animals. The patent being infringed is U. S. Patent No. 6,930,127 (the "'127 Patent"). Exhibit A.

9. The invention comprises the administration of a non-aqueous substance to an animal's affected eye to treat ophthalmic disease, wherein the non-aqueous substance contains a chemical called tacrolimus. The amount of tacrolimus in the substance ranges from 0.00001% to about 10.0% by weight of the substance.

10. Wedgewood is a veterinary compounding pharmacy, which prepares pharmaceutical products to meet the needs of a particular animal/patient as prescribed by a doctor of veterinary medicine.

11. On information and belief, Wedgewood employs pharmacists and technicians who have undergone specialized training in veterinary compounding of ophthalmic products.

12. On October 16, 2014, a cease and desist letter along with a copy of the ’127 Patent was sent to Wedgewood. Exhibit B.

13. Defendant was provided detailed information in the ’127 Patent regarding the treatment of chronic eye diseases in dogs.

14. Defendant was provided detailed information in the ’127 Patent regarding the use of tacrolimus in a non-aqueous lubricant vehicle for treatment of chronic eye diseases in dogs.

15. Defendant was provided detailed information in the ’127 Patent regarding the method of administering the tacrolimus compound to the eye of an affected animal.

16. The primary use of the tacrolimus compound disclosed in the ’127 Patent in veterinary medicine is for the treatment of chronic eye diseases in dogs.

17. Defendant actively induces its customers to order the tacrolimus compound disclosed in the ’127 Patent for the treatment of chronic eye diseases in dogs through advertising on its website, direct sales, publications and catalogs.

18. Defendant knew that the tacrolimus compound disclosed in the ’127 Patent was adapted for the particular use of treatment of chronic eye diseases in dogs, and that the ’127 Patent proscribes that use.

Case 4:15-cv-00687-SRB Document 1 Filed 09/09/15 Page 3 of 7

19. On May 8, 2015, a second cease and desist letter was sent to Wedgewood. Exhibit C.

20. On information and belief, when a new prescription for a particular compound is called into Wedgewood, a pharmacist specifically requests information including the disease, the animal to be treated, and the intended use of the compound.

21. On information and belief, when Wedgewood fills a prescription for the tacrolimus compound disclosed in the ’127 Patent, it knows that the tacrolimus compound will be provided and administered in a manner that infringes one or more claims of the ’127 Patent.

22. Use of tacrolimus compound for treatment of chronic eye diseases in dogs is a non-standard prescription, which requires the pharmacist to inquire about the health condition of the pet and is filled for a specific pet.

23. The chronic eye diseases in dogs disclosed in the ’127 patent are chronic conditions that require treatment for the life of the pet.

24. On information and belief, Wedgewood is required to inquire from the veterinarian or the customer the health condition of the pet before filling a prescription for the tacrolimus compound disclosed in the ’127 Patent.

25. On information and belief, Defendant has filled thousands of prescriptions for the tacrolimus compound disclosed in the ’127 patent for treatment of chronic eye diseases in dogs.

26. In complete disregard for Eaton’s intellectual property rights, Defendant willfully infringed Eaton’s ’127 Patent by using the patented technology or inducing and contributing to others’ use of the patented technology, knowing they did not have the right to do so.

27. Defendant's actions have infringed and continue to infringe Eaton's '127 Patent.

28. On information and belief, on February 21, 2014, Wedgewood was sent a warning letter from the Food and Drug Administration for violations of the Federal Food, Drug, and Cosmetic Act.

29. Accordingly, at a minimum, Eaton seeks a reasonable royalty, together with such other and further relief is available under 35 U.S.C. § 285.

COUNT I: PATENT INFRINGEMENT

30. Eaton incorporates by reference the foregoing allegations as if fully set forth herein.

31. Defendant customers directly infringe one or more claims of the '127 Patent by performing all of the steps of one or more claims of the '127 Patent.

32. Defendant advertises, sells and offers to sell the tacrolimus compound set forth in the '127 Patent for the express purpose claimed in the '127 Patent.

33. Defendant actively and knowingly provides the tacrolimus compound set forth in the '127 Patent to its customers for the express purpose claimed in the '127 Patent.

34. Defendant has committed and is continuing to commit acts of infringement of the '127 Patent under 35 U.S.C. § 271(b) by inducing its customers to use a method that infringes one or more claims of the '127 Patent.

35. Eaton has been damaged as a direct result of Defendant inducing its customers to use a method that infringes one or more claims of the '127 Patent.

36. Eaton will continue to be damaged unless further infringement is enjoined.

37. Eaton is entitled under 35 U.S.C. § 284 to an award of damages adequate to compensate Eaton for Defendant inducing its customers to use a method that infringes one or more claims of the '127 Patent.

38. Eaton is entitled to lost profits or, in the alternative, a reasonable royalty for the infringement and use made of the invention of the ’127 Patent by Defendant and its customers, all together with interest and costs.

COUNT II: WILLFUL INFRINGEMENT

39. Eaton incorporates by reference his foregoing allegations as if fully set forth herein.

40. Wedgewood had actual notice of the ’127 Patent and Eaton’s infringement allegations.

41. Wedgewood’s past and continuing infringement of the ’127 Patent has been deliberate and willful.

42. Wedgewood’s conduct warrants an award of treble damages pursuant to 35 U.S.C. § 284. Moreover, this is an exceptional case as set forth in 35 U.S.C. § 285 warranting an award of attorneys’ fees.

DEMAND FOR JURY TRIAL

Eaton demands trial by jury on all issues so triable. Eaton designates Kansas City, Missouri as the place of trial.

PRAYER FOR RELIEF

WHEREFORE, Eaton respectfully prays that this Honorable Court enter relief as follows:

A. A judgment that Wedgewood has induced infringement of the ’127 Patent;

B. A judgment and order permanently restraining and enjoining Wedgewood and its officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all those acting in concert with or under or through them, from using any methods or selling any

product that infringe one or more claims of the Patent, either directly or indirectly;

C. A judgment and order requiring Wedgewood to pay damages to Eaton adequate to compensate it for Defendant's wrongful infringing acts in accordance with 35 U.S.C. § 284;

D. A judgment and order requiring Wedgewood to pay treble damages in view of its willful and deliberate infringement of the '127 Patent;

E. A finding in favor of Eaton that this is an exceptional case under 35 U.S.C. § 285 and an award of Eaton its costs, including reasonable attorneys' fees and other expenses incurred in connection with this action;

F. A judgment and order requiring Defendant to pay Eaton pre-judgment interest under 35 U.S.C. § 284 and post-judgment interest under 28 U.S.C. § 1961 on all damages awarded; and

H. Such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

<u>/s/ James J. Kernell</u>
James J. Kernell, MO Bar No. 48850
Kyle D. Donnelly, MO Bar No. KS-000879
ERICKSON, KERNELL, DERUSSEAU
& KLEYPAS, LLC
8900 State Line Road, Suite 500
Leawood, Kansas 66206
Telephone: 913-549-4700
Facsimile: 913-549-4646
E-Mail: jjk@kcpatentlaw.com
kdd@kcpatentlaw.com

Attorneys for Plaintiff
Eaton Veterinary Pharmaceutical, Inc.