

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

INTERVET INC.,  
29160 Intervet Lane  
Millsboro, DE 19966

*Plaintiff,*

v.

MERIAL LIMITED  
27 Knightsbridge  
London SW1X 7QT  
United Kingdom

*Defendant.*

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Intervet, Inc. (“Intervet”), hereby brings this action for declaratory judgment against Defendant Merial Limited (“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 US headquarters at 29160 Intervet Lane, Millsboro, Delaware.
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, and incorporated under the laws of the State of Delaware as Merial LLC. Merial’s North American Operational Headquarters is located in Duluth, Georgia. Merial is currently the Defendant in two actions filed by Intervet which are active and pending in this judicial district, C.A. Nos. 1:06-cv-00658-HHK and 1:07-cv-00559-HHK. On information and belief, Merial Limited also sells and/or offers for sale veterinary pharmaceuticals or vaccines in this judicial district.

### **NATURE OF THE ACTION**

3. This is an action for a declaratory judgment of patent noninfringement and invalidity. This is a declaratory judgment action seeking a determination that the manufacture, importation, use, offer for sale, or sale of Intervet's Circumvent® PCV does not infringe any claim of U.S. Patent No. 6,224,882 ("the '882 patent") under 35 U.S.C. § 271, and that the claims of the '882 patent are invalid under 35 U.S.C. §§ 101 *et seq.*

### **JURISDICTION AND VENUE**

4. 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.

5. 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.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c). As mentioned above, Merial is currently the Defendant in two active and pending actions filed by Intervet in this judicial district, C.A. Nos. 1:06-cv-00658-HHK and 1:07-cv-00559-HHK. On information and belief, Merial also has conducted continuous and systematic commercial activity in this judicial district.

### **BACKGROUND**

7. The parties are currently involved in two litigations before this Court involving Circumvent® PCV, Intervet's vaccine against Porcine Circovirus. Porcine Circovirus is 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. PMWS normally affects piglets between 6 and 14 weeks of age. Symptoms include chronic wasting, respiratory distress, diarrhea, poor coordination and jaundice. There is no effective treatment for this virus and mortality rates are high. As a result, PMWS can have significant economic consequences.

8. 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; 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 for preventing, treating and controlling diseases in pigs. Intervet has developed a vaccine, Circumvent® PCV (formerly known as Porcine Circovirus Vaccine, Type 2, Killed Baculovirus Vector), that can be used to immunize pigs from PMWS.

9. In October of 2007, the USDA issued to Intervet a full license for its Circumvent® PCV vaccine.

10. On information and belief, the '882 patent was recently assigned to Merial from a third party on December 3, 2008, while the related cases, C.A. Nos. 1:06-cv-00658-HHK and 1:07-cv-00559-HHK, were pending in this judicial district.

**EXISTENCE OF AN ACTUAL CONTROVERSY**

11. 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 Circumvent® PCV infringes one or more claims of the '882 patent.

12. 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 Circumvent® PCV, then called Intervet's Porcine Circovirus Vaccine, Type 2, Killed Baculovirus Vector. The 05-cv-3168 action was dismissed on April 27, 2006.

13. On April 11, 2006, Intervet filed a complaint for declaratory judgment in this Court against Merial Limited, Merial SAS, the Queen's University of Belfast, and the University of Saskatchewan (1:06-cv-00658-HHK) that Intervet did not infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '601 patent by making, using, selling, offering to sell, causing to be sold, or causing the use of Circumvent® PCV, then called Intervet's Porcine Circovirus Vaccine Type 2 (the Queen's University of Belfast and the University of Saskatchewan were later dismissed from the suit). That action is still active and pending before this Court.

14. On March 20, 2007, Intervet filed a complaint for declaratory judgment in this Court against Merial Limited and Merial SAS (1:07-cv-00559-HHK) that Intervet did not infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of United States Patent No. 7,192,594 ("the '594 patent") by making, using, selling, offering to sell,

causing to be sold, or causing the use of Circumvent® PCV, then called Intervet's Porcine Circovirus Vaccine Type 2. That action is also still active and pending before this Court.

15. On December 10, 2008, Merial filed suit in the United States District Court for the Middle District of Georgia (3:08-cv-121 (CDL)) against Intervet alleging that Intervet infringes, contributes to the infringement of, and/or induces the infringement of one or more claims of the '882 patent by making, using, selling, offering to sell, causing to be sold, or causing the use of Circumvent® PCV. In addition, Merial requested injunctive relief. A true copy of the complaint filed by Merial Limited, along with the '882 patent, is attached as Exhibit A.

16. As set forth in paragraphs 13-15, all of the ongoing actions involve allegations by Merial that Intervet's manufacture and sale of its Circumvent® PCV product infringes the claims of the '601, '594, and '882 patents. All of the cases have and/or will involve discovery as to the method of manufacture and composition of Circumvent® PCV. The cases will involve overlapping discovery.

17. Intervet denies infringement of the '882 patent and disputes its validity.

**FIRST COUNT  
DECLARATORY JUDGMENT OF PATENT NONINFRINGEMENT**

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

19. Intervet has not at any time infringed, induced others to infringe, and/or committed acts of contributory infringement of any of the claims of the '882 patent either literally or under the doctrine of equivalents.

**SECOND COUNT  
DECLARATORY JUDGMENT OF PATENT INVALIDITY**

20. Intervet hereby restates and realleges the allegations set forth in paragraphs 1 through 19 and incorporates them by reference.

21. The claims of the '882 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, and 112.

**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF requests that the Court enter judgment:

- (a) Declaring that Plaintiff does not infringe any claim of the '882 patent;
- (b) Declaring invalid the claims of the '882 patent;
- (c) Finding that, pursuant to 35 U.S.C. § 285 and/or other applicable laws,

Defendant's conduct renders this an exceptional case and that Plaintiff 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: December 11, 2008:

Respectfully submitted,



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