

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

MERIAL LIMITED

Plaintiff,

v.

BOEHRINGER INGELHEIM
VETMEDICA, INC.

Defendant.

Civil Case No. 3:08-cv-116 (CDL)

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff MERIAL LIMITED (“MERIAL”), for its Complaint for Patent Infringement against Defendant BOEHRINGER INGELHEIM VETMEDICA, INC. (“BIV”) alleges as follows:

NATURE OF ACTION

1. This is an action in which Plaintiff seeks damages and injunctive relief under the patent laws of the United States, 35 U.S.C. § 1 et seq., from Defendant’s infringement of MERIAL’s United States Patent No. 6,224,882 entitled “Insect Cells or Fraction as Adjuvant for Antigens” (“the ‘882 patent”). A true and correct copy of the ‘882 patent is attached as Exhibit A.

THE PARTIES

2. MERIAL is a company limited by shares registered in England and Wales with a registered office in England. MERIAL is domesticated in the State of Delaware, as Merial LLC. MERIAL's United States operational headquarters is located in Duluth, Georgia. Additionally Plaintiff MERIAL also has a wholly-owned vaccine plant headquartered in Athens, Georgia.

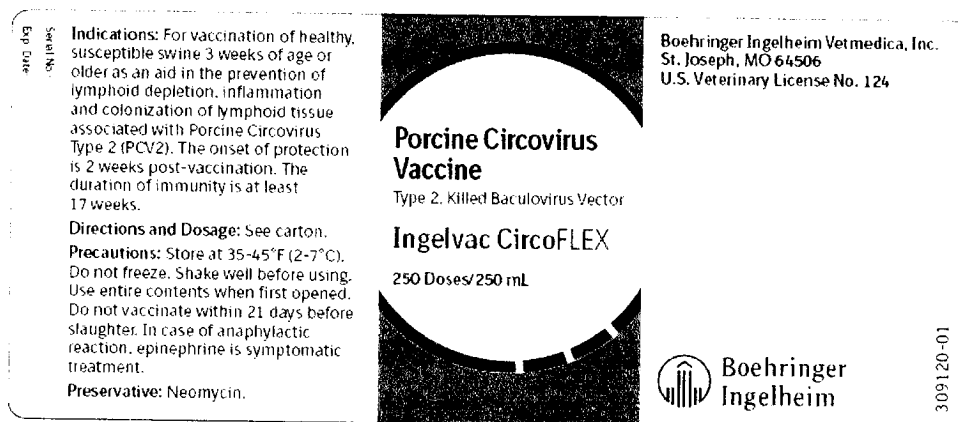
3. On information and belief, BIV is a Delaware Corporation with its principal place of business at 2621 North Belt Highway, St. Joseph, MO 64506.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under Title 28, United States Code, §§ 1331 and 1338(a).

5. On information and belief, BIV offers for sale, causes to be offered for sale, sells, causes to be sold through its agents, uses, causes to be used, or causes to be made, veterinary products – including infringing products – in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over the Defendant by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '882 patent, or by virtue of the Defendant's systematic and continuous contact with this State and judicial district, including through its internet presence in this

State and judicial district by website pages such as: (1) <http://www.bi-vetmedica.com/> (2) http://www.bi-vetmedica.com/products/products_swine_list.html (3) http://www.bi-vetmedica.com/product_sites/CircoFLEX/documents/circoflex_rp.pdf and (4) http://www.bi-vetmedica.com/product_sites/CircoFLEX/reference.html, especially as website page (3), *supra*, provides *inter alia*:



Boehringer Ingelheim Vetmedica, Inc.
2621 North Belt Highway • St. Joseph, MO 64506-2002
Information 800-325-9167 • Sales Service 800-325-9167 • Fax 816-236-2717
www.bi-vetmedica.com

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and website page (4), *supra*, provides, *inter alia*:

Contact Information For INGELVAC® CircoFLEX™ (top)

Boehringer Ingelheim Vetmedica, Inc.
2621 North Belt Highway
St. Joseph, MO 64506
800-821-7467 Information
800-325-9167 Sales
816-236-2717
email: judy.lucher@boehringer-ingelheim.com
internet: <http://www.bi-vetmedica.com>

whereby one may contact BIV, including its Sales Department for the purchase of infringing products.

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

BACKGROUND FACTS COMMON TO ALL COUNTS

7. Merial is one of the world's leading animal healthcare companies. Merial develops, produces and sells veterinary pharmaceuticals and vaccines for livestock, pets and wildlife. The United States Patent and Trademark Office duly and legally issued the '882 patent on May 1, 2001. Merial is the owner of the '882 patent by virtue of the assignment recorded at the US Patent & Trademark Office at Reel 021912 and Frame 0488 on December 3, 2008.

8. The '882 patent concerns compositions that contain insect cells or fractions thereof, as well as methods and kits for making and using such compositions. The insect cells or fractions thereof can have an adjuvant effect. An adjuvant improves the immune response to the antigen – the primary immunogenic compound – in a vaccine. Prior to the '882 patent, it had been assumed that after using insect cells in the recombinant production of an antigen, a complete isolation of the antigen from the insect cells was necessary for the antigen to be of practical utility, i.e. so that it could be used in human or veterinary vaccines. Before the

'882 patent it had not been known or appreciated that insect cells or fractions thereof, such as those from *S. frugiperda* and other *Lepidopteran* insect species, preferably obtainable by infection with a recombinant insect virus, such as a recombinant baculovirus, can be effective as an adjuvant for antigens in vaccines.

9. The allegations of paragraphs 5 of this Complaint are incorporated herein by reference as if set forth in their entirety. On information and belief, BIV makes, uses, offers to sell, sells, causes to be sold, or causes the making or the use of veterinary vaccines containing insect cell fractions, including vaccines respectively called "INGELVAC® CircoFLEX" and "Ingelvac® CircoFLEX-MycoFLEX™ Combo Pack." The Ingelvac® CircoFLEX-MycoFLEX™ Combo Pack is a kit which includes the BIV Ingelvac CircoFLEX® vaccine that contains insect cell fraction(s) and the BIV Ingelvac MycoFLEX® vaccine which the user mixes together and administers as a single-dose. On information and belief, BIV offers to sell, sells, causes to be sold, or causes the making or the use of veterinary vaccines containing insect cell fractions, including the INGELVAC® CircoFLEX and Ingelvac® CircoFLEX-MycoFLEX™ Combo Pack products, throughout the United States, including in this State and judicial district, including via the internet.

10. In December 2008, a representative of MERIAL informed a representative of BIV that MERIAL owned the '882 patent and that MERIAL

believes that BIV makes, uses, offers to sell, sells, causes to be sold, or causes the making or use of veterinary products that infringed, induced, and/or contributed to the infringement of the '882 patent. MERIAL requested that BIV cease and desist its infringing activities, but BIV refused.

11. The '882 patent provides MERIAL with the right to exclude others from making, using, selling, and offering for sale veterinary vaccines containing insect cell fractions. The veterinary vaccines containing insect cell fractions of BIV, including those under the INGELVAC® CircoFLEX and Ingelvac® CircoFLEX-MycoFLEX™ Combo Pack names, are within one or more claims of the '882 patent. BIV is not licensed by MERIAL under the '882 patent.

COUNT ONE

MERIAL'S CLAIM FOR INFRINGEMENT OF UNITED STATES PATENT NO. 6,224,882

12. The allegations in paragraphs 1 through 11 of this Complaint are incorporated herein by reference as if set forth in their entirety.

13. On information and belief, BIV infringes, contributes to the infringement of, and/or induces infringement of one or more claims of the '882 patent.

14. On information and belief, BIV has had notice of the '882 patent, and its infringement of the '882 patent has been deliberate and willful.

15. As a direct result of BIV's '882 patent infringing acts, MERAL has suffered and continues to suffer damage and irreparable harm.

16. MERAL has no adequate remedy at law for BIV's infringing acts. Unless and until these infringing acts are enjoined by this Court, MERAL will continue to be damaged and irreparably harmed.

WHEREFORE MERAL prays that this Court:

- (a) Enter a judgment that BIV has infringed, either directly, or indirectly by contribution or inducement, one or more claims of the '882 patent;
- (b) Preliminarily and permanently enjoin BIV, and those in privity with it and those acting in concert with it from further acts of direct infringement, contributory infringement and inducement of infringement of the '882 patent;
- (c) Award MERAL damages adequate to compensate it for BIV's infringement of the '882 patent;
- (d) Declare that BIV's infringement of the '882 patent has been willful;
- (e) Treble the award of damages pursuant to 35 U.S.C. § 284 and in view of the willful nature of BIV's infringement;
- (f) Declare this to be an exceptional case pursuant to 35 U.S.C. § 285;

- (g) Award Plaintiff its attorneys' fees, costs and expenses in this action;
and
- (h) Award Plaintiff prejudgment interest, and such further relief as the
Court deems just and proper.

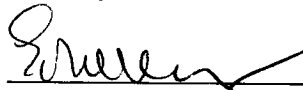
JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all issues so triable in this action.

Respectfully submitted, this 8th day of December 2008.

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Duluth, GA 30096-4640
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Fax: (678) 638-3350

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