

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WYETH, )  
)  
Plaintiff, )  
)  
v. ) Civil Action No. \_\_\_\_\_  
)  
INTERVET, INC., d/b/a ) JURY TRIAL DEMANDED  
INTERVET/SCHERING-PLOUGH )  
ANIMAL HEALTH, and )  
BOEHRINGER INGELHEIM )  
VETMEDICA, INC., )  
)  
Defendants. )

**COMPLAINT**

Wyeth, by and through the undersigned counsel, asserts this action for patent infringement against Defendants Intervet, Inc., d/b/a Intervet/Schering-Plough Animal Health (“Intervet”) and Boehringer Ingelheim Vetmedica, Inc. (“BI”) and alleges as follows:

**PARTIES**

1. Plaintiff Wyeth is a corporation organized and existing under the laws of Delaware and has its headquarters at 5 Giralda Farms, Madison, NJ 07940.
2. Upon information and belief, Intervet is a corporation organized and existing under the laws of Delaware, with a principal place of business in Millsboro, Delaware.
3. Upon information and belief, BI is a corporation organized and existing under the laws of Delaware, with a principal place of business in St. Joseph, Missouri.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. §§ 1331 and 1338(a), because it arises under the patent laws of the United States, Title 35 of the United States Code.

5. This Court has personal jurisdiction over the Defendants because (i) both Defendants are incorporated in Delaware and knowingly transact business in this judicial district; (ii) Defendant Intervet maintains its principal place of business in Delaware; and (iii) the conduct of both Defendants is causing injury to Plaintiff in Delaware.

6. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b), in that the Defendants reside and transact business in this judicial district.

### **THE PATENTS**

7. On October 20, 2009, U.S. Patent No. 7,604,808, entitled “Circovirus Sequences Associated with Piglet Weight Loss Disease,” was lawfully issued (the “’808 patent”). A true and accurate copy of the ’808 patent is attached hereto as **Exhibit A**.

8. Wyeth is the assignee of the ’808 patent, which relates to a vaccine and its components to prevent piglet weight loss disease and other Porcine Circovirus-associated diseases (“PCVAD”).

9. Wyeth is the assignee of the ’808 patent, which relates to a vaccine and its components to prevent piglet weight loss disease and other PCVAD.

10. Wyeth has developed, and currently manufactures and markets, a Porcine Circovirus Vaccine, Type 2, under the trade name Suvaxyn<sup>®</sup> PCV2 One Dose that is used to immunize piglets from PCVAD. Suvaxyn<sup>®</sup> PCV2 One Dose is covered by the claims of the ’808 patent.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Infringement of the ’808 Patent by Intervet**

11. Plaintiff realleges, and incorporates herein by reference, the allegations of paragraphs 1 through 10 of this Complaint as if fully set forth herein.

12. Upon information and belief, Intervet is an animal health company in the business of, among other things, developing, manufacturing, marketing, distributing, and selling veterinary vaccines and pharmaceutical products. In particular, Intervet produces products for preventing, treating, and controlling diseases in pigs, including diseases associated with Porcine Circovirus. Intervet has developed, and currently manufactures and markets, a Porcine Circovirus Vaccine, Type 2, under the trade names Circumvent<sup>®</sup> PCV and Porcilis<sup>®</sup> that are used to immunize piglets from PCVAD.

13. Intervet has infringed, and continues to infringe, the '808 patent, either directly or under the doctrine of equivalents, by making, using, offering to sell, or selling products that infringe the '808 patent, including Intervet's Circumvent<sup>®</sup> PCV and Porcilis<sup>®</sup> PCV vaccines.

14. Upon information and belief, Intervet has actively induced, and continues to induce, others to infringe the '808 patent.

15. Upon information and belief, Intervet's infringement of the '808 patent has been, and continues to be, willful, deliberate and objectively reckless. Intervet's willful conduct provides a basis for this Court to award enhanced damages pursuant to 35 U.S.C. § 284 and makes this an exceptional case within the meaning of 35 U.S.C. § 285.

16. Intervet's infringing conduct has caused, is causing, and will continue to cause substantial injury and damage to the plaintiff.

COUNT TWO  
Infringement of the '808 Patent by BI

17. Plaintiff realleges, and incorporates herein by reference, the allegations of paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. Upon information and belief, BI is an animal health company in the business of, among other things, manufacturing, marketing, distributing, importing and/or selling veterinary

vaccines and pharmaceutical products. BI currently manufactures and markets a Porcine Circovirus Vaccine, Type 2, under the trade name Ingelvac CircoFLEX,<sup>®</sup> which is used to immunize piglets from PCVAD.

19. BI has infringed, and continues to infringe, the '808 patent, either directly or under the doctrine of equivalents, by making, using, importing, offering to sell, and/or selling products that infringe the '808 patent, including BI's Ingelvac Circoflex<sup>®</sup> vaccine.

20. Upon information and belief, BI has actively induced, and continues to induce, others to infringe the '808 patent.

21. Upon information and belief, BI's infringement of the '808 patent has been, and continues to be, willful, deliberate, and objectively reckless. BI's willful conduct provides a basis for this Court to award enhanced damages pursuant to 35 U.S.C. § 284 and makes this an exceptional case within the meaning of 35 U.S.C. § 285.

22. BI's infringing conduct has caused, is causing, and will continue to cause substantial injury and damage to the plaintiff.

### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiff respectfully requests:

A. That the Court determine that Intervet has infringed, and is infringing, one or more claims of the '808 patent;

B. That the Court determine that BI has infringed, and is infringing, one or more claims of the '808 patent;

C. That the Court determine the amount of damages to the plaintiff caused by Intervet's infringement and enter judgment for the plaintiff in that amount, plus interest and costs;

D. That the Court determine the amount of damages to the plaintiff caused by BI's infringement and enter judgment for the plaintiff in that amount, plus interest and costs;

E. That the Court determine that Intervet's infringement has been willful and deliberate and award up to treble damages to the plaintiff pursuant to 35 U.S.C. § 284;

F. That the Court determine that BI's infringement has been willful and deliberate and award up to treble damages to the plaintiff pursuant to 35 U.S.C. § 284;

G. That, after trial, the Court enter a permanent injunction, enjoining Intervet, its officers, directors, agents, servants and employees, and all persons in active concert or participation with them, from infringing the '808 patent;

H. That, after trial, the Court enter a permanent injunction, enjoining BI, its officers, directors, agents, servants and employees, and all persons in active concert or participation with them, from infringing the '808 patent; and


I. That the Court determine that this case is exceptional, within the meaning of 35 U.S.C. § 285, and order Intervet and BI to pay plaintiff's reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

J. That the Court grant such other and further relief as it deems appropriate.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38, the plaintiff hereby respectfully requests a jury trial on all issues triable of right by a jury.

ASHBY & GEDDES



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