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JAMES N. HATTEN, Clerk  
By: Vicki Douglas  
Deputy Clerk

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

_____	)
TIBER LABORATORIES, LLC,	)
	)
Plaintiff,	)
	)
v.	)
	)
CYPRESS PHARMACEUTICALS,	)
INC., and G&S ENTERPRISES,	)
INC., d/b/a GREAT SOUTHERN	)
LABORATORIES,	)
	)
Defendants.	)
_____	)

CIVIL ACTION NO.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

**2:07-CV 014**

Plaintiff Tiber Laboratories, LLC, avers:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Tiber Laboratories, LLC, is a limited liability company organized and existing pursuant to the laws of the State of Georgia, with its principal place of business in Suwanee, Forsyth County, Georgia.
2. This action for patent infringement arises under the patent statutes of the United States, 35 U.S.C. §§ 1 *et seq.*, and is therefore within the subject matter jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331, 1332(a)(1) and 1338(a).
3. Defendant Cypress Pharmaceuticals, Inc., is a corporation organized and existing pursuant to the laws of the State of Mississippi, with its principal

place of business in Madison, Mississippi. Defendant Cypress has sold, and offered for sale, infringing products within Forsyth County, Georgia. Cypress's contacts with this District are continuous and systematic, making it subject to both general and specific personal jurisdiction in this Court.

4. Defendant G&S Enterprises, Inc., doing business as Great Southern Laboratories ("Great Southern"), is a corporation organized and existing pursuant to the laws of the State of Texas, with its principal place of business in Houston, Texas. Defendant Great Southern has manufactured infringing products that are sold and offered for sale within Forsyth County, Georgia.

5. Venue is proper in this Division of this Court pursuant to 28 U.S.C. § 1391(b)(2) and (3) and L.R. 3.1(B)(3).

**U.S. PATENT NO. 6,979,689**

6. United States Patent No. 6,979,689 (the "689 Patent"), entitled "Compositions and methods for treating upper respiratory congestion," was duly and validly issued on December 27, 2005, to the inventors Gilbert R. Gonzales, Thomas P. Jennings and Norman D. Schlesinger, and originally assigned to PediaMed Pharmaceuticals, Inc. Exhibit A.

7. The '689 patent has recently been assigned to TIBER, and that assignment has been duly recorded in the United States Patent and Trademark

Office. Exhibit B.

8. The '689 patent is directed to a composition of diphenhydramine as an antihistamine, an antitussive (cough suppressant) and a decongestant to treat upper respiratory and oral pharyngeal congestion and related symptoms in a patient.

9. TIBER's assignor, PediaMed, marketed and sold a prescription-only oral pharmaceutical product for the treatment of upper respiratory and oral pharyngeal congestion and related symptoms, covered by the '689 Patent, under the registered trademark "Endal" as "Endal HD Syrup." Plaintiff, having acquired the rights to the '689 Patent from PediaMed, promptly began taking steps to introduce a TIBER-branded Endal HD Syrup to the market.

**CLAIM FOR RELIEF: PATENT INFRINGEMENT**

10. Plaintiff incorporates the averments of ¶¶ 1-9 of this Complaint and incorporates them here by this reference as if repeated in full.

11. Defendant Great Southern manufactures, and Defendant Cypress offers to sell and sells a product called "Hydro-DP."

12. Hydro-DP, according to the product information sheet included in each package, is a "cherry flavored, sugar-free, alcohol-free syrup for oral administration," each teaspoon of which contains the following active

ingredients:

Diphenhydramine hydrochloride.....	12.5 mg
Phenylephrine hydrochloride.....	7.5 mg
Hydrocodone bitartrate.....	2 mg

13. The product information insert included in each Hydro-DP package further acknowledges that “Diphenhydramine hydrochloride is an antihistaminic,” that “Phenylephrine hydrochloride is a midriatic and a decongestant” and that “Hydrocodone bitartrate is an opioid analgesic and antitussive.” If Defendants’ product information insert is accurate, Hydro-DP incorporates or embodies the inventions claimed in the ‘689 Patent.

14. Plaintiff is informed and believes, and on that basis avers, that Defendant Cypress has induced and is actively inducing others to directly infringe one or more of the claims of the ‘689 Patent by encouraging others to sell and offer to sell Hydro-DP.

15. Defendants have manufactured, offered to sell and sold, and induced others to offer to sell and sell, Hydro-DP with full knowledge of Plaintiff’s rights under the ‘689 Patent.

16. Plaintiff is informed and believes, and on that basis avers, that Defendants’ infringing conduct is willful and will continue unless enjoined by this Court.

17. Defendants' infringement of the '689 Patent has caused and will cause irreparable injury to Plaintiff for which there is no adequate remedy at law.

18. Plaintiff has suffered and continues to suffer damages as a result of Defendants' ongoing infringement of the '689 Patent.

**WHEREFORE**, Plaintiff prays for entry of judgment:

(a) that Defendant Cypress has infringed at least one claim of the '689 Patent;

(b) that Defendant Great Southern has infringed at least one claim of the '689 Patent;

(c) that a temporary restraining order and preliminary and permanent injunctions issue, pursuant to 35 U.S.C. § 283, against further infringement of the '689 Patent by Defendants or any other persons acting in concert with them;

(d) that Defendants be required to account for all sales of Hydro-DP since the issuance of the '689 Patent, and be ordered to compensate Plaintiff in an amount up to three times the amount found adequate to compensate Plaintiff for the infringement, pursuant to 35 U.S.C. § 284;

(e) that Defendants be ordered to pay Plaintiff's costs, expenses and prejudgment interest as provided by 35 U.S.C. § 284;

(f) that this case is exceptional within the meaning of 35 U.S.C. § 285,

and that Defendants be ordered accordingly to pay Plaintiff its reasonable fees;  
and

(g) such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands, pursuant to Rule 38 of the Federal rules of Civil Procedure, a trial by jury of all issues triable of right by a jury.

DATED: February 20, 2006

Respectfully submitted,

GAMBRELL & STOLZ, L.L.P.

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