

JUN 18 2007



ORIGINAL

JAMES N. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

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

TIBER LABORATORIES, LLC,

Plaintiff,

v.

HAWTHORN PHARMACEUTICALS,
INC.

Defendant.

07 - CV - 0069 - WCO
CIVIL ACTION NO.

**COMPLAINT FOR
PATENT INFRINGEMENT**

**DEMAND FOR
JURY TRIAL**

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, 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 Hawthorn 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. Upon information and belief,

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

4. 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

5. 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.

6. The '689 patent was assigned to TIBER, and that assignment has been duly recorded in the United States Patent and Trademark Office. Exhibit B.

7. 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.

8. PediaMed previously 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 trademark Endal. Plaintiff, having acquired the rights to the '689 Patent from PediaMed, re-introduced Endal to the market in April 2007.

CLAIM FOR RELIEF: PATENT INFRINGEMENT

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

10. Defendant offers to sell and sells a product called “DYTAN-HC.”

11. DYTAN-HC, according to the product information sheet included in each package, is a “purple, grape-flavored, sugar-free, alcohol-free suspension for oral administration,” each teaspoon of which contains as active ingredients:

Hydrocodone tannate.....	3.5 mg
Phenylephrine tannate.....	7.5 mg
Diphenhydramine tannate.....	25 mg

12. The product information insert included in each DYTAN-HC package further acknowledges that “Diphenhydramine Tannate is an antihistaminic,” that “Phenylephrine Tannate is a mydriatic and a decongestant” and that “Hydrocodone Tannate is an opioid analgesic and antitussive.” If Defendant’s product information insert is accurate, DYTAN-

HC incorporates or embodies the inventions claimed in the '689 Patent.

13. Plaintiff is informed and believes, and on that basis avers, that Defendant 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 DYTAN-HC.

14. Defendant has manufactured, has had manufactured, offered to sell and sold, and induced others to offer to sell and sell, DYTAN-HC with full knowledge of Plaintiff's rights under the '689 Patent.

15. Plaintiff is informed and believes, and on that basis avers, that Defendant's infringing conduct is willful and will continue unless enjoined by this Court.

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

17. Plaintiff has suffered and continues to suffer damages as a result of Defendant's ongoing infringement of the '689 Patent.

WHEREFORE, Plaintiff prays for entry of judgment:

- (a) that Defendant has infringed at least one claim of the '689 Patent;
- (b) 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 Defendant or any other persons acting in concert with them;

(c) that Defendant be required to account for all sales of DYTAN-HC 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;

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

(e) that this case is exceptional within the meaning of 35 U.S.C. § 285, and that Defendant be ordered accordingly to pay Plaintiff its reasonable fees; and

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

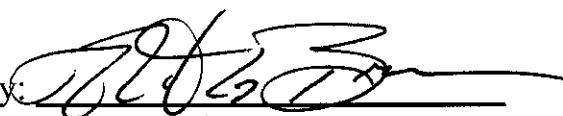
DEMAND FOR JURY TRIAL

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: June 19th, 2007

Respectfully submitted,

GAMBRELL & STOLZ, L.L.P.

By: 
Robert G. Brazier

Georgia Bar No. 078938

rbrazier@gambrell.com

Steven G. Hall

Georgia Bar No. 319308

shall@gambrell.com

Joshua Tropper

Georgia Bar No. 716790

jtroppe@gambrell.com

Attorneys for Plaintiff

TIBER PHARMACEUTICALS, LLC

Monarch Plaza, Suite 1600

3414 Peachtree Road

Atlanta, Georgia 30326

Telephone 404-577 6000

Facsimile 404-221-6501