

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

BASF AGRO B.V., MERIAL  
LIMITED, and MERIAL SAS

Plaintiffs,

v.

CIPLA LIMITED, PETMEDS R US,  
GENERIC PETMEDS, PETCARE  
PHARMACY, ARCHIPELAGO  
SUPPLIERS, ARROWTARGET  
ENTERPRISES LTD., INHOUSE  
DRUGSTORE, and LISA PERKO,

Defendants.

Civil Case No.

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

Plaintiffs BASF AGRO B.V. (“BASF”), Merial LIMITED (“LIMITED”), and Merial SAS (“SAS”) (with LIMITED and SAS collectively referred to as “MERIAL” and with BASF, LIMITED and SAS collectively referred to as “Plaintiffs”), for their Complaint for Patent Infringement against Defendants CIPLA LIMITED (“CIPLA”), PETMEDS R US (“PETMEDS”), GENERIC PETMEDS (“GENERIC”), PETCARE PHARMACY (“PETCARE”),

ARCHIPELAGO SUPPLIERS (“ARCHIPELAGO”), ARROWTARGET ENTERPRISES LTD (“ARROWTARGET”), INHOUSE DRUGSTORE (“INHOUSE”), and LISA PERKO (“PERKO”) (collectively referred to as “Defendants”) allege as follows:

### **NATURE OF ACTION**

1. This is an action in which Plaintiffs seek damages and injunctive relief under the patent laws of the United States, 35 U.S.C. § 1 et seq., from Defendants’ infringement of BASF’s United States Patent No. 5,232,940 entitled “Derivatives of N-Phenylpyrazoles” (“the ‘940 patent”) and from Defendants’ (with the exceptions of INHOUSE and PERKO) infringement of Merial’s United States Patent No. 6,096,329 entitled “Insecticidal Combination To Control Mammal Fleas, In Particular Fleas On Cats and Dogs” (“the ‘329 patent”). A true and correct copy of the ‘940 patent is attached as Exhibit A. A true and correct copy of the ‘329 patent is attached as Exhibit B.

### **THE PARTIES**

2. BASF is organized under the laws of the Netherlands, with its registered office and principal place of business in (6835 EA) Arnhem, at the Groningensingel 1, the Netherlands.

3. LIMITED is a company limited by shares registered in England and Wales with a registered office in England. LIMITED is domesticated in the State of Delaware, as Merial LLC. LIMITED's United States operational headquarters is located in Duluth, Georgia. Plaintiff LIMITED also has a wholly-owned subsidiary headquartered in Gainesville, Georgia.

4. SAS is a wholly-owned subsidiary of LIMITED. SAS is organized under the laws of France and is a societe par actions simplifiee of France. SAS is headquartered in Lyon, France.

5. On information and belief, CIPLA is incorporated under the laws of India, with its registered office and its principal place of business at Mumbai Central, Mumbai 400 008, India. CIPLA also has an internet presence, and hence a presence in this judicial district by way of its website, [www.cipla.com](http://www.cipla.com). CIPLA is an alien corporation subject to service in any judicial district in the United States and is thus subject to personal jurisdiction in this judicial district. On information and belief, CIPLA has consented to personal jurisdiction in previous litigation in the United States, and is presently a defendant in other patent infringement litigation in the United States. Furthermore, on information and belief, CIPLA has a global presence, including with respect to veterinary products, with its products sold in the United States—including within this judicial district. See website page:

<http://www.cipla.com/globalpresence/globalpresence.htm>. On information and belief, from within the United States—including from within this judicial district—one may contact CIPLA, including its Purchase Department and its Export Department, via CIPLA's website, by providing CIPLA with a name, an email address, a subject and a message. See website pages: (1)

<http://www.cipla.com/contactus/e-mail.htm> and (2)

<http://www.cipla.com/contactus/finalmail.php?mailtype=5> and (3)

<http://www.cipla.com/contactus/finalmail.php?mailtype=12>. On information and belief, CIPLA uses the internet to generate business—both sales and investment—including from within the United States, and including from within this judicial district. CIPLA may be served with process by personally serving it with the summons and Complaint in this action, as permitted by the laws of India and Fed.R.Civ.P. 4(f)(2)(A).

6. On information and belief, PETMEDS is an internet-based business. See website page: [www.petmeds-r-us.com](http://www.petmeds-r-us.com). On information and belief, PETMEDS is a European based company with its shipping and fulfillment center based in Vanuatu. See website page: <http://www.petmeds-r-us.com/FAQs.asp>. On information and belief, PETMEDS has business operations at : Archipelago Suppliers, PO Box 265, Port Vila, Vanuatu, Contact -

[archipelago@vanuatu.com.vu](mailto:archipelago@vanuatu.com.vu). See website page: <http://www.petmeds-r-us.com/Default.asp?ID=2>. On information and belief, PETMEDS also has business operations at Arrowtarget Enterprises Ltd. Andrea Zakou, 4, Ekgomi, P.C. 2404 Nicosia, Cyprus. See website page: <http://www.petmeds-r-us.com/Default.asp>. On information and belief, from within the United States—including from within this judicial district—one may contact PETMEDS by calling the telephone number 215-243-8548. See website page: <http://www.petmeds-r-us.com/Default.asp>. On information and belief, PETMEDS offers CIPLA's fipronil veterinary products (CIPLA PROTEKTOR products) and CIPLA's fipronil and methoprene veterinary products (CIPLA PROTEKTOR PLUS products) for sale into and throughout the United States via the internet, including in and throughout this State and judicial district. See website pages: (1) <http://www.petmeds-r-us.com/Products.asp?L=P> (2) <http://www.petmeds-r-us.com/Products2.asp?Brand=Protektor+Spot+On+for+large+dogs+more+than+20+kgs+%2F+44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=> (3) <http://www.petmeds-r-us.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=> (4) [5](http://www.petmeds-r-</a></p></div><div data-bbox=)

us.com/Products2.asp?Brand=Protektor+Spot+On+for+small+dogs+up+to+10kgs+%2F+22lbs+%28+Generic+Frontline+Plus+%29+%2A&T= and (5)

http://www.petmeds-r-

us.com/Products2.asp?Brand=Protektor+Spray+%28+Generic+Frontline+%29+%2A&T=. A customer in the United States can place a sales order with PETMEDS

and purchase one or more of CIPLA's fipronil veterinary products and/or CIPLA's fipronil and methoprene veterinary products on the PETMEDS website; for

instance, by entering, a billing address, a United States delivery address, and

VISA credit card information. On information and belief, shipping and handling to

the United States is done between 10-28 days. A copy of the foregoing website

pages is attached as Exhibit C. PETMEDS may be served with process by e-mail

to archipelago@vanuatu.com.uv, as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

7. On information and belief, GENERIC is an internet-based business.

See website page: www.generic-petmeds.com. On information and belief,

GENERIC is a European based company with its shipping and fulfillment center

based in Vanuatu. See website page: http://www.generic-petmeds.com/FAQs.asp.

On information and belief, GENERIC has business operations at Archipelago

Suppliers, PO Box 265, Port Vila, Vanuatu, Contact -

archipelago@vanuatu.com.vu. See website page: http://www.generic-

[petmeds.com/Default.asp?ID=2](http://www.generic-petmeds.com/Default.asp?ID=2). On information and belief, GENERIC also has business operations at Arrowtarget Enterprises Ltd. Andrea Zakou, 4, Ekgomi, P.C. 2404 Nicosia, Cyprus. See website page: [http://www.generic-](http://www.generic-petmeds.com/Default.asp)

[petmeds.com/Default.asp](http://www.generic-petmeds.com/Default.asp). On information and belief, from within the United States—including from within this judicial district—one may contact GENERIC by calling the telephone number 215-243-8548. See website page:

<http://www.generic-petmeds.com/Default.asp>. On information and belief, GENERIC offers CIPLA's fipronil veterinary products (CIPLA PROTEKTOR products) and CIPLA's fipronil and methoprene veterinary products (CIPLA PROTEKTOR PLUS products) for sale into and throughout the United States via the internet, including in and throughout this State and judicial district. See website pages: (1) <http://www.generic-petmeds.com/Products.asp?L=P> (2)

<http://www.generic-petmeds.com/Products2.asp?Brand=Protektor+Spot+On+for+large+dogs+more+than+20kgs+%2F+44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=> (3)

<http://www.generic-petmeds.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=> (4)

[http://www.generic-](http://www.generic-petmeds.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=)

petmeds.com/Products2.asp?Brand=Protektor+Spot+On+for+small+dogs+up+to+10kgs+%2F+22lbs+%28+Generic+Frontline+Plus+%29+%2A&T= and (5)

http://www.generic-

petmeds.com/Products2.asp?Brand=Protektor+Spray+%28+Generic+Frontline+%29+%2A&T=. A customer in the United States can place a sales order with

GENERIC and purchase CIPLA's fipronil veterinary products and/or CIPLA's fipronil and methoprene veterinary products on the GENERIC website; for instance, by entering, a billing address, a United States delivery address, and VISA credit card information. On information and belief, shipping and handling to the United States is done between 10-28 days. A copy of the foregoing website pages is attached as Exhibit D. GENERIC may be served with process by e-mail to archipelago@vanuatu.com.uv, as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

8. On information and belief, PETCARE is an internet-based business. See website page: www.petcare-pharmacy.com. On information and belief, PETCARE is a European based company with its shipping and fulfillment center based in Vanautu. See website page: http://www.petcare-pharmacy.com/FAQs.asp. On information and belief, PETCARE has business operations at Archipelago Suppliers, PO Box 265, Port Vila, Vanuatu, Contact - archipelago@vanuatu.com.vu. See website page: http://www.petcare-

[pharmacy.com/Default.asp?ID=2](http://www.petcare-pharmacy.com/Default.asp?ID=2). On information and belief, PETCARE also has business operations at Arrowtarget Enterprises Ltd. Andrea Zakou, 4, Ekgomi, P.C. 2404 Nicosia, Cyprus. See website page: [http://www.petcare-](http://www.petcare-pharmacy.com/Default.asp)

[pharmacy.com/Default.asp](http://www.petcare-pharmacy.com/Default.asp). On information and belief, from within the United States—including from within this judicial district—one may contact PETCARE by calling the telephone number 215-243-8548. See website page:

<http://www.petcare-pharmacy.com/Default.asp>. On information and belief,

PETCARE offers CIPLA's fipronil veterinary products (CIPLA PROTEKTOR products) and CIPLA's fipronil and methoprene veterinary products (CIPLA PROTEKTOR PLUS products) for sale into and throughout the United States via the internet, including in and throughout this State and judicial district. See

website pages: (1) <http://www.petcare-pharmacy.com/Products.asp?L=P> (2)

[http://www.petcare-](http://www.petcare-pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+large+dogs+more+than+20kgs+%2F+44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=)

[pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+large+dogs+more+than+20kgs+%2F+44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=](http://www.petcare-pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+large+dogs+more+than+20kgs+%2F+44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=) (3)

[http://www.petcare-](http://www.petcare-pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=)

[pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=](http://www.petcare-pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=) (4)

[http://www.petcare-](http://www.petcare-pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+medium+dogs+10%2D20kg+%2F+22%2D44lbs+%28+Generic+Frontline+Plus+%29+%2A&T=)

pharmacy.com/Products2.asp?Brand=Protektor+Spot+On+for+small+dogs+up+to+10kgs+%2F+22lbs+%28+Generic+Frontline+Plus+%29+%2A&T= and (5)

http://www.petcare-

pharmacy.com/Products2.asp?Brand=Protektor+Spray+%28+Generic+Frontline+%29+%2A&T=. A customer in the United States can place a sales order with

PETCARE and purchase CIPLA's fipronil veterinary products and/or CIPLA's

fipronil and methoprene veterinary products on the PETCARE website; for

instance, by entering, a billing address, a United States delivery address, and VISA

credit card information. On information and belief, shipping and handling to the

United States is done between 10-28 days. A copy of the foregoing website pages

is attached as Exhibit E. PETCARE may be served with process by e-mail to

archipelago@vanuatu.com.uv, as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

9. The allegations in paragraphs 6 through 8 of this Complaint are incorporated herein by reference as if set forth in their entirety. On information and belief, ARCHIPELAGO owns, controls, operates, or does business as defendants PETMEDS, GENERIC and PETCARE. ARCHIPELAGO may be served with process by e-mail to archipelago@vanuatu.com.uv, as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

10. The allegations in paragraphs 6 through 8 of this Complaint are incorporated herein by reference as if set forth in their entirety. On information and belief, ARROWTARGET owns, controls, operates, or does business as defendants PETMEDS, GENERIC and PETCARE. ARROWTARGET may be served with process by e-mail to [archipelago@vanuatu.com.uv](mailto:archipelago@vanuatu.com.uv), as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

11. On information and belief, INHOUSE is an internet-based business. See website page: [www.inhousedrugstore.co.uk](http://www.inhousedrugstore.co.uk). On information and belief, INHOUSE processes and ships orders from the South Pacific. See website page <http://www.inhousedrugstore.co.uk/faq.html>. On information and belief, INHOUSE may be contacted from within the United States—including from within this judicial district—by calling 1-800-868-9064 from 6 pm EST to Midnight EST. See website pages: (1) <http://www.inhousedrugstore.co.uk/faq.html> and (2) <http://www.inhousedrugstore.co.uk/>. On information and belief, INHOUSE may also be contacted by sending a facsimile to 800-544-0470. See website page: <http://www.inhousedrugstore.co.uk/faq.html>. On information and belief, INHOUSE offers CIPLA's fipronil veterinary products (CIPLA PROTEKTOR products) for sale into and throughout the United States via the internet, including

in and throughout this State and judicial district. See website page:

<http://www.inhousedrugstore.co.uk/pet-care/protektor.html>. A customer in the United States can place a sales order with INHOUSE and purchase CIPLA's fipronil veterinary products on the INHOUSE website; for instance, by entering, a billing address, a United States delivery address, and VISA, MASTERCARD, or AMERICAN EXPRESS credit card information. On information and belief, shipping and handling to the United States is done between 7-14 days. On information and belief, a payment by money order to INHOUSE is made payable to LISA PERKO, PO Box 337, Port Vila, Vanuatu. See website page <http://www.inhousedrugstore.co.uk/faq.html>. A copy of the foregoing website pages is attached as Exhibit F. INHOUSE may be served with process by facsimile to 1-800-544-0470, as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

12. The allegations in paragraph 11 of this Complaint are incorporated herein by reference as if set forth in their entirety. On information and belief, PERKO owns, controls, operates or does business as defendant INHOUSE. PERKO may be served with process by facsimile to 1-800-544-0470, as permitted by Fed.R.Civ.P. 4(h)(2) and 4(f)(3).

**JURISDICTION AND VENUE**

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

14. On information and belief, CIPLA offers for sale, causes to be offered for sale, sells, or causes to be sold through its agents, medical and veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over CIPLA by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '940 patent and/or the '329 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

15. On information and belief, PETMEDS offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over PETMEDS by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '940 patent and/or the '329 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

16. On information and belief, GENERIC offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over GENERIC by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '940 patent and/or the '329 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

17. On information and belief, PETCARE offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals or vaccines in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over PETCARE by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '940 patent and/or the '329 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

18. On information and belief, ARCHIPELAGO offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over ARCHIPELAGO by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the

infringement of the '940 patent and/or the '329 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

19. On information and belief, ARROWTARGET offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over ARROWTARGET by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '940 patent and/or the '329 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

20. On information and belief, INHOUSE offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over INHOUSE by virtue of its actions and those of its agents which directly infringe or which induce or contribute to the infringement of the '940 patent within this State and judicial district, or its systematic and continuous contact with this State and judicial district.

21. On information and belief, PERKO offers for sale, causes to be offered for sale, sells, or causes to be sold veterinary pharmaceuticals in this judicial district and is thereby doing business in this judicial district. This Court has personal jurisdiction over PERKO by virtue of her actions and those of her agents which directly infringe or which induce or contribute to the infringement of the '940 patent within this State and judicial district, or her systematic and continuous contact with this State and judicial district.

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

**BACKGROUND FACTS COMMON TO ALL COUNTS**

23. Until introduction of Merial's FRONTLINE® and FRONTLINE® PLUS products, flea and tick control on household pets—cats or dogs—was a problem. Fipronil is the active ingredient in Merial's FRONTLINE® products, and an active ingredient in Merial's FRONTLINE® PLUS products. Methoprene is an additional active ingredient in Merial's FRONTLINE® PLUS products. Merial's FRONTLINE® and FRONTLINE® PLUS products are recommended for eliminating existing flea and tick infestations as they provide gentle, long-lasting, fast-acting, waterproof flea and tick control. They are among

the world's most successful animal health products, and they are the world's best selling flea and tick treatment for dogs and cats.

24. MERIAL's FRONTLINE® and FRONTLINE® PLUS products are covered by the '940 patent, and MERIAL's FRONTLINE PLUS product is also covered by the '329 patent. The '940 patent generally concerns chemical compounds known as derivatives of n-phenylpyrazoles, including the compound fipronil. The United States Patent and Trademark Office duly and legally issued the '940 patent on August 3, 1993. The '940 patent is assigned to BASF. LIMITED is the exclusive licensee under the '940 patent in the veterinary field.

25. The '329 patent generally relates to formulations containing a compound that is a derivative of an n-phenylpyrazole, e.g., fipronil, and an insect growth regulator, e.g., methoprene. The United States Patent and Trademark Office duly and legally issued the '329 patent on August 1, 2000. The '329 patent is assigned to SAS. LIMITED is the exclusive licensee under the '329 patent.

26. The allegations of paragraph 5 of this Complaint are incorporated herein by reference as if set forth in their entirety. On information and belief, CIPLA makes, offers to sell, sells, causes to be sold, or causes the use of veterinary products containing fipronil, as well as veterinary products that contain fipronil and methoprene, including such products respectively called "PROTEKTOR" and

“PROTEKTOR PLUS”. On information and belief, CIPLA makes, offers to sell, and sells veterinary products containing fipronil, including such products called “PROTEKTOR” to third parties, including without limitation PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, INHOUSE, and PERKO, which in turn offer to sell and sell such products throughout the United States via the internet, including into and throughout this State and judicial district. On information and belief, CIPLA makes, offers to sell, and sells veterinary products containing fipronil and methoprene, including such products called “PROTEKTOR PLUS” to third parties, including without limitation PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, and ARROWTARGET, which in turn offer to sell and sell such products throughout the United States via the internet, including into and throughout this State and judicial district. See, e.g., website pages: (1) <http://www.cipla.com/whatsnew/news.htm#23apr07>, (2) <http://www.cipla.com/admin.php?mode=cat&action=disp&id=121> and (3) <http://www.cipla.com/admin.php?mode=cat&action=disp&id=158>; a copy of each of which, together with a copy of the website pages recited in paragraph 5 of this Complaint, are attached as Exhibit G. On information and belief, at least one product in CIPLA’s line of “PROTEKTOR” and PROTEKTOR PLUS veterinary products is covered by at least one claim in BASF’s ‘940 patent; and, on

information and belief, at least one product in CIPLA's line of PROTEKTOR PLUS veterinary products is covered by at least one claim in MERIAL's '329 patent.

27. In June 2007, representatives of BASF and LIMITED informed CIPLA's representatives that CIPLA was selling and offering to sell products to PETMEDS, GENERIC, PETCARE, and INHOUSE (which have been and continue to offer these products for sale into and throughout the United States via the internet) that CIPLA's actions infringed, induced, and/or contributed to the infringement of the '940 and '329 patents. BASF and LIMITED requested that CIPLA cease and desist its infringing activities, but CIPLA refused.

28. The '940 patent provides BASF and LIMITED with the right to exclude others from making, using, selling, and offering for sale fipronil-veterinary products. The fipronil-veterinary products of CIPLA, including those under the PROTEKTOR name, are within one or more claims of the '940 patent. CIPLA is not licensed by BASF or LIMITED under the '940 patent. Additionally, PETMEDS, GENERIC, PETCARE, ARHIPELAGO, ARROWTARGETS, INHOUSE and PERKO are not licensed by BASF or LIMITED under the '940 patent.

29. On information and belief, CIPLA makes, offers to sell, sells, causes to be sold or causes the use of veterinary products containing fipronil and methoprene, including products called “PROTEKTOR PLUS” or “PROTEKTOR PLUS SPOT ON,” which, on information and belief, CIPLA makes, offers to sell, and sells to third parties, including without limitation PETMEDS, GENERIC, PETCARE, ARCHIPELAGO and ARROWTARGET, which in turn offer to sell and sell such products throughout the United States via the internet, including into and throughout this State and judicial district. On information and belief, at least one product in CIPLA’s line of “PROTEKTOR PLUS” and “PROTEKTOR PLUS SPOT ON” veterinary products is covered by at least one claim in MERIAL’s ‘329 patent.

30. The ‘329 patent provides LIMITED and SAS with the right to exclude others from making, using, selling, and offering for sale veterinary formulations containing fipronil and methoprene. CIPLA’s products that contain fipronil and methoprene, including those under the name PROTEKTOR PLUS or PROTEKTOR PLUS SPOT ON, are within one or more claims of the ‘329 patent. CIPLA is not licensed by SAS or LIMITED under the ‘329 patent. Additionally, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, are not licensed by SAS or LIMITED under the ‘329 patent.

**COUNT ONE**

**BASF'S AND LIMITED'S CLAIM FOR INFRINGEMENT OF UNITED STATES PATENT NO. 5,232,940 BY ALL DEFENDANTS**

31. The allegations in paragraphs 1 through 30 of this Complaint are incorporated herein by reference as if set forth in their entirety.

32. On information and belief, CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, INHOUSE and PERKO infringe, contribute to the infringement of, and/or induce infringement of one or more claims of the '940 patent.

33. On information and belief, CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, INHOUSE, and PERKO have had notice of the '940 patent, and their infringement of the '940 patent has been deliberate and willful.

34. As a direct result of CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's, ARROWTARGET's, INHOUSE's, and PERKO's '940 patent infringing acts, BASF and LIMITED have suffered and continue to suffer damage and irreparable harm.

35. BASF and LIMITED have no adequate remedy at law for CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's, ARROWTARGET's, INHOUSE's, and PERKO's infringing acts. Unless and

until these infringing acts are enjoined by this Court, BASF and LIMITED will continue to be damaged and irreparably harmed.

**COUNT TWO**

**LIMITED'S AND SAS' CLAIM FOR INFRINGEMENT OF  
UNITED STATES PATENT NO. 6,096,329 BY  
DEFENDANTS CIPLA, PETMEDS, GENERIC, PETCARE,  
ARCHIPELAGO, AND ARROWTARGET**

36. The allegations in paragraphs 1 through 30 of this Complaint are incorporated herein by reference as if set forth in their entirety.

37. On information and belief, CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, and ARROWTARGET infringe, contribute to the infringement of, and/or induce infringement of one or more claims of the '329 patent.

38. On information and belief, CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, and ARROWTARGET have had notice of the '329 patent, and their infringement of the '329 patent has been deliberate and willful.

39. As a direct result of CIPLA's, PETMEDS' GENERIC's, PETCARE's, ARCHIPELAGO's, and ARROWTARGET's '329 patent infringing acts, LIMITED and SAS have suffered and continue to suffer damage and irreparable harm.

40. LIMITED and SAS have no adequate remedy at law for CIPLA's, PETMEDS' GENERIC's, PETCARE's, ARCHIPELAGO's, and ARROWTARGET's infringing acts. Unless and until these infringing acts are enjoined by this Court, LIMITED and SAS will continue to be damaged and irreparably harmed.

**WHEREFORE** BASF, LIMITED and SAS, individually and collectively, pray that this Court:

- (a) Enter a judgment that any or all of CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, INHOUSE, and PERKO have infringed, either directly, or indirectly by contribution or inducement, one or more claims of the '940 patent;
- (b) Enter a judgment that any or all of CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, and ARROWTARGET have infringed, either directly, or indirectly by contribution or inducement, one or more claims of the '329 patent;
- (c) Preliminarily and permanently enjoin any or all of CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, INHOUSE, PERKO, and those in privity with them and those acting in concert with them from further acts of direct

infringement, contributory infringement and inducement of infringement of the '940 patent;

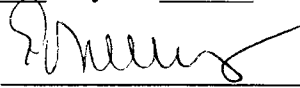
- (d) Preliminarily and permanently enjoin any or all of CIPLA, PETMEDS, GENERIC, PETCARE, ARCHIPELAGO, ARROWTARGET, and those in privity with them and those acting in concert with them from further acts of direct infringement, contributory infringement and inducement of infringement of the '329 patent;
- (e) Award BASF and LIMITED damages adequate to compensate each of them for each of CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's, ARROWTARGET's, INHOUSE's, and PERKOS's infringement of the '940 patent;
- (f) Award LIMITED and SAS damages adequate to compensate each of them for each of CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's, and ARROWTARGET's infringement of the '329 patent;
- (g) Declare that any or all of CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's, ARROWTARGET's, INHOUSE's, and PERKOS's infringement of the '940 patent has been willful;

- (h) Declare that any or all of CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's, and ARROWTARGET's infringement of the '329 patent has been willful;
- (i) Treble the award of damages pursuant to 35 U.S.C. § 284 and in view of the willful nature of any or all of CIPLA's, PETMEDS', GENERIC's, PETCARE's, ARCHIPELAGO's ARROWTARGET's, and PERKO's infringement;
- (j) Declare this to be an exceptional case pursuant to 35 U.S.C. § 285;
- (k) Award Plaintiffs their attorneys' fees, costs and expenses in this action; and
- (l) Award Plaintiffs prejudgment interest, and such further relief as the Court deems just and proper.

### **JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury of all issues so triable in this action.

Respectfully submitted, this 13<sup>th</sup> day of November 2007.



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