UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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CONNOLLY, BOVE & LODGE
FILED 4/14/64
SERVED

CHARLES PFIZER & COMPANY., INC.,
a corporation,

Plaintiff,

-vs-

INTERNATIONAL DRUG TRADING, INC.,
et al.,

Defendants.

Civil Action No. 24280

Patent No. 2,699,054

AFFIDAVIT OF N. S. COHEN, PRESIDENT OF INTERNATIONAL DRUG TRADING, INC., A MICHIGAN CORPORATION, IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION.

Now comes N.S. COHEN, and being first duly sworn, deposes and says as follows:

1. That he is a citizen of the United States, a resident of the City of Detroit and President of International Drug Trading, Inc., a Michigan corporation.

2. That he is trained in the field of chemistry and holds a Bachelor of Science in the field of Chemistry from the University of Illinois and has taught Bacteriology at the Detroit Institute of Technology. Your deponent has also engaged in research in the field of micro-biology at Wayne State University.

3. That he has at all times during the last 15 years engaged in the pharmaceutical and cosmetic business and has at various times been employed as a Sales Representative by leading U.S. and Canadian pharmaceutical firms.

4. That defendant INTERNATIONAL DRUG TRADING, INC., has been associated since January, 1963 with defendant SENECA LABORATORIES, LTD., a Canadian corporation.

5. That defendant SENECA LABORATORIES, LTD. has been engaged in the pharmaceutical business in Canada since approximately 1952. Defendant, SENECA LABORATORIES, LTD., owns and operates plant facilities in Downsview, Ontario, Canada and processes a full line of pharmaceutical products and markets those products throughout Canada and exports them to various countries around the world.

6. All tetracyclene products sold by International Drug Trading, Inc. are capsulated in Seneca's facilities in Downsview and said facilities have been inspected and approved for that purpose by the U.S. Food and Drug Administration, and all tetracyclene products sold by International Drug Trading, Inc. in the United States are inspected and approved for sale by the United States Food and Drug Administration in Washington, D.C.

7. Affiant is informed and believes that rights claimed by plaintiff under U.S. Patent 2,699,054 purportedly covering the drug tetracyclene are unenforceable for the reasons set forth in the Affirmative Defenses which appear in defendant International Drug Trading, Inc.'s Answer to the Bill of Complaint in this cause and more particularly by virture of the opinions, findings and conclusions of law set forth in the opinion of the United States Federal Trade Commission in The Matter of Charles Pfizer & Company., Inc., et al., in F.T.C. Docket #7211, a full copy of which Opinion is attached to this Affidavit and made a part hereof.

The said Opinion of the Federal Trade Commission is the result of investigations, hearings and testimony taken by and before the Federal Trade Commission beginning July 28, 1958. These proceedings comprise 11,000 pages of testimony, including the testimony of several of the most reknowned American scientists

in the field of antibiotics, 8,000 pages of exhibits and approximately 4,000 pages of briefs. The gravamen of the prosecution's position in these proceedings was (1) that plaintiff had conspired with others to fix the prices on the broad spectrum antibiotics throughout the United States and (2) that plaintiff herein, Charles Pfizer & Co., Inc. had procured the patent on the antibiotic tetracyclene by misrepresentation in the Patent Office.*

8. On August 8, 1963, the Commission filed a unanimous Opinion which at page 3 thereof held as follows:

> "We hold that Pfizer by making certain representations and misrepresentations and withholding other information prevented the Patent Examiner from making an accurate appraisal of the patentability of tetracyclene. Misrepresentations and the intentional withholding of material information to obtain a commercially valuable patent is an unfair method of competition and an unfair act or practice. We hold that Pfizer engaged in such an unfair method of competition and unfair act or practice.*

9. Affiant is informed and believes that under these circumstances, plaintiff Charles Pfizer & Co., Inc. is not entitled to the further benefit of its patent monopoly covering tetracyclene.

10. Affiant is informed and believes that the Military Medical Supply Agency, a purchasing agency for all the armed forces, and a branch of the United States Department of Defense, has purchased tetracyclene outside of the United States for several years and in clear contravention of plaintiff's alleged patent, for the reason that the purchasing agents of said Military Medical Supply Agency have found that plaintiff and others consistently refused to quote competitive prices on tetracyclene.

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* The plaintiff Chas. Pfizer & Co., Inc., is also presently under Criminal Indictment for violations of The United States Anti-Trust Laws growing out of these same activities, said indictment being in the United States Federal Court, Southern District of New York.

11. The vast profits described by plaintiff in the affidavits supporting the Motion for Preliminary Injunction have been the direct result of plaintiff's price fixing activities and a direct result of plaintiff's improper acquisition of the patent covering tetracyclene.

12. Defendant International Drug Trading, Inc., and other small American pharmaceutical companies are able and have been supplying tetracyclene to the medical profession and to the public at a cost to the consumer approximately 300% lower than plaintiff's currently effective price for the identical tetracyclene product.

N. S. COHEN (LS)

Subscribed and sworn to before me
this 13th day of October, 1964.

Notary Public, Wayne County, Michigan
My Commission Expires: 10-8-67

SUSAN ANN LAAB
Notary Public, Wayne County, Mich.
My Commission Expires Oct. 8, 1967