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

CHAS. PFIZER & CO., INC., Plaintiff, v. INTERNATIONAL DRUG TRADING, INC., SENECA LABORATORIES LIMITED, NORMAN S. COHEN, LEONARD FRANK WINEBERG and TMCO PHARMACEUTICALS, INC., Defendants.	Civil Action No. 24280 Consolidated With Civil Action No. 25,272 Patent No. 2,699,054

SUPPLEMENTAL AFFIDAVIT OF
THOMAS S. LODGE

STATE OF DELAWARE)
) SS.:
COUNTY OF NEW CASTLE)

THOMAS S. LODGE being duly sworn deposes and says:

1. I am a member of the Bar of the State of Delaware and a partner in the firm of Connolly, Bove & Lodge, counsel for plaintiff, Chas. Pfizer & Co., Inc., and I am familiar with the facts and background of these consolidated cases.

2. I make this supplemental affidavit in further support of plaintiff's Motion for Preliminary Injunction filed herein on April 8, 1964, and also in response to the affidavit of defendant, Norman S. Cohen, filed herein on April 14, 1964.

3. In paragraph 6 of his affidavit, defendant Cohen states that defendant Seneca capsulates its tetracycline products in its plant in Canada. What he does not give is the source of supply of Seneca's bulk tetracycline. In paragraph 3 of my earlier affidavit, filed herein on April 8, 1964, I stated that Seneca buys its bulk tetracycline from Italian manufacturers who are not

licensees of plaintiff under the patent in suit. I can now inform this Court that Seneca purchases its bulk tetracycline from the firm of Leo Industrie Chimiche Farmaceutiche ("Leo"), in Rome, Italy.

4. Leo is one of the Italian firms found by the Supreme Court of New York County, New York, to have purchased secret cultures and processes for the manufacture of antibiotics, including tetracycline, from individuals found by that Court to have stolen said cultures and processes from American Cyanamid Company.

5. Attached hereto as Exhibits A and B, respectively, are certified copies of the Opinion and Findings of Fact of Judge Aurelio of the Supreme Court of New York County in the case of American Cyanamid Company v. Sidney Martin Fox and Kim Laboratories, Inc., Index No. 5545-1962. The Court's attention is respectfully directed to Findings 25(a), (b), (c), 27 and 34 pertaining to the acquisition by Leo of American Cyanamid's stolen secret tetracycline data.

6. In paragraph 7 of his affidavit, defendant Cohen makes reference to and attaches the Opinion of the Federal Trade Commission in F.T.C. Docket No. 7211. He implies that Opinion precludes plaintiff from prosecuting the instant action to enforce its patent in suit.

7. Cohen failed, however, to mention or attach the prior Decision of Federal Trade Commission Hearing Examiner Robert L. Piper, dated October 31, 1961. The Hearing Examiner filed his well-reasoned Decision after protracted hearings extending over many months, during which he had the first-hand opportunity not only to examine the numerous witnesses produced by the parties, but also to observe their demeanor and to assess their straightforwardness and credibility. His decision completely absolves

plaintiff herein of any wrongdoing, including the commission of any fraud before the United States Patent Office in obtaining the patent in suit. He further found that plaintiff was neither guilty of unclean hands in the steps taken by it to enforce its patent, nor had it conspired with others to restrain and monopolize trade in broad spectrum antibiotics including tetracycline. A copy of this Decision is attached hereto as Exhibit C.

8. Contrary to the assertion of Cohen in paragraph 11 of his affidavit, the affidavits of Messrs. Smith and Weber, filed herein on April 8, 1964, do not describe the "vast profits" of plaintiff from the sale of its patented tetracycline. What they do show is the tremendous importance of tetracycline in the pharmaceutical and medical field, and the enormous cost to plaintiff in discovering and developing tetracycline and other life-saving drugs.

9. With respect to paragraph 12 of Cohen's affidavit, the aforementioned improper acquisition by Leo of the stolen American Cyanamid know-how on the manufacture of tetracycline poignantly explains how defendant International Drug Trading, Inc. can so drastically undersell plaintiff in the sale of the tetracycline capsules it purchases from defendant Seneca.

10. I am advised that defendant International Drug now has an office in The Washington Boulevard Building in Detroit. However, its financial structure is far from sound as evidenced by the annual report it filed in the Circuit Court of Wayne County, Michigan, in which it listed the value of its total assets at $1,000. The same figure represented its paid-in stock in the report, and as I stated in an affidavit filed herein on February 14, 1964, none of the issued stock in the corporation (1,000 shares) had been issued for cash but for "contracts and certain preincorporation work."

11. On information and belief, Seneca's financial condition is heavily unbalanced. Its working capital is limited and it has for some time experienced difficulty in timely meeting its obligations. Information received indicates that some creditors of the corporation have had to put their claims against it in the hands of collectors.

Thomas S. Lodge

Thomas S. Lodge

SWORN TO and subscribed before me, this 29th day of May, 1964.

Dorothy M. Nadeau

Notary Public