

**FILED**

AUG 16 2005

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

Jeffrey L. Light  
Patients not Patents,  
1712 Eye St., NW  
Suite 915  
Washington, DC 20006

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PATIENTS NOT PATENTS, INC.  
1712 Eye St., NW  
Suite 915  
Washington, DC 20006

Plaintiff,

vs.

MEDIMPEX UNITED, INC.  
940 Pennsylvania Blvd. #F  
Feasterville, PA 19053-7834,

) Case No.:

CASE NUMBER 1:05CV01644

JUDGE: Henry H. Kennedy

DECK TYPE: General Civil

DATE STAMP: 08/16/2005

COMPLAINT (PATENT FALSE MARKING)

THE PARTIES

1. Plaintiff Patients not Patents, Inc. ("PNP") is a nonprofit corporation organized under the laws of the District of Columbia. The stated mission of PNP is to "educate the public about the influence of intellectual property rights on the availability of health care; and to reduce barriers to obtaining health care."

2. Defendant Medimpex United, Inc. is a corporation organized under the laws of the state of Pennsylvania with its principal office or place of business at 940 Pennsylvania Blvd. #F, Feasterville, PA 19053-7834.

1 3. Defendant sells home testing kits, nutritional supplements, and weight  
2 loss products both retail and wholesale.

3  
4 JURISDICTION AND VENUE

5 4. This complaint is filed and these proceedings are instituted under 35  
6 U.S.C. § 292 (2005) to recover civil penalties for violations of that  
7 section.

8 5. This court has jurisdiction over the Defendant and over the subject  
9 matter of this jurisdiction pursuant to 28 U.S.C. §§ 1338(a), 1335 and  
10 1331 (2005).

11 6. Venue is properly based in this District under 28 U.S.C. §§ 1391 and  
12 1395 (2005).

13  
14 DEFENDANT'S COURSE OF CONDUCT

15 7. Beginning in about 2003 and ending in 2004, Defendant advertised a  
16 product branded as Xalex Weight Management Gel ("Xalex gel").

17 8. At times relevant to this Complaint, Defendant furnished advertising  
18 copy to the public in connection with Xalex gel through websites owned  
19 or controlled by Defendant. These sites include, but are not limited  
20 to: www.meditests.com, www.mrstest.com, www.vitabig.com, www.tests-  
21 shop.com, www.docself.com, www.detoks.com, www.drugstate.com,  
22 www.mistertest.com, www.testself.com, www.onlytests.com, www.qtest.us,  
23 and www.best-home-test.com.

24 9. At times relevant to this Complaint, the word "patent" or the like  
25 appeared on websites owned or controlled by Defendant. These sites

1 include, but are not limited to: www.meditests.com ("Weight management  
 2 gel Xalex(TM) is a new patented weight loss product . . ."),  
 3 www.mrstest.com and www.drugstate.com ("New Invisible Patch -  
 4 Xalex(TM)weight management gel from the Originator of LePatch has the  
 5 special patented PharmaDur(TM) gel system!"), www.docself.com  
 6 ("Xalex(TM) gel becomes dry, silky in 2-3 minutes, and is  
 7 unnoticeable, with its patented PharmaDur(TM) gel system"), and  
 8 www.mistertest.com (" . . . Xalex(TM), brand new patented slimming  
 9 product . . .").

10 10. The websites www.meditests.com and www.mistertest.com tend to mislead  
 11 the public into believing that Xalex gel as a whole or the active  
 12 ingredient or ingredients contained therein, or both, are patented.

13 11. The websites www.mrstest.com, www.drugstate.com, and www.docself.com  
 14 tend to mislead the public into believing that Xalex gel effects  
 15 weight loss through the action of a patented delivery system.

16 12. At times relevant to this Complaint, Defendant sold or offered for  
 17 sale Xalex gel to consumers in the District of Columbia, through one  
 18 or more of the web pages listed in paragraph 8.

19 13. At times relevant to this Complaint, and through the means described  
 20 in paragraphs 9 through 11, Defendant advertised Xalex gel as patented  
 21 with knowledge of falsehood.

#### 22 23 THE PRODUCT AT ISSUE

24 14. The ingredients listed on the label or labeling of Xalex gel are:

25 Aqueous Herbal Solutions (*Fucus vesiculosus*, *Paullina cupana* (Guarana)

1 and L-Carnitine) 83.0%

2 Pharmadur(TM) Polymer (BSI) 1.5%

3 Xanthum Gum 0.5%

4 Ethoxy Diglycol 3.0%

5 Germaben II 1.0%

6 Theophylline anhydrous 0.5%

7 Alcohol, SD 40 10.0%

8 15. The instructions on the label or labeling of Xalex gel state, "Just  
9 apply up to 18 drops of New Invisible Patch - XALEX(TM) weight  
10 management gel at [sic] any areas of your dry, warm skin and keep it  
11 all day long."

12  
13 THE '243 PATENT

14 16. US Patent 5,942,243 was issued Aug. 24, 1999 to Polytherapeutics, Inc.

15 The patent is entitled, "Mucoadhesive Compositions for Administration  
16 of Biologically Active Agents to Animal Tissue."

17 17. Polytherapeutics, Inc. has marketed the drug delivery system of the  
18 '243 patent under the name "PharmaDur."

19 18. All of the claims of the '243 patent are directed to a "mucoadhesive  
20 hydrophilic drug delivery system."

21 19. Xalex gel is intended to be used according to the directions recited  
22 in paragraph 15, and is not intended for use on mucosal tissue.

23 20. Xalex gel does not embody the claims of the '243 or any other US  
24 patent.

25 STANDING

1 21. Plaintiff brings this action under 35 USC § 292(b), which provides  
2 that any person may sue for civil monetary penalties for false  
3 marking.  
4

5 STATUTE OF LIMITATIONS

6 22. There is a five year statute of limitations for bringing a false  
7 marking claim. 28 USC § 2462 (2005), Arcadia Machine & Tool, Inc. v  
8 Sturn, Ruger & Co., 786 F2d 1124, 1125 (Fed. Cir. 2005).  
9

10 CAUSE OF ACTION

11 23. Defendant has violated 35 USC § 292(a) by advertising in connection  
12 with Xalex gel, the word "patent" (or similar words), for the purpose  
13 of deceiving the public.

14 24. Xalex Weight Management Gel is an unpatented article for the purposes  
15 of 35 USC § 292(a).

16 25. Defendant committed five separate offenses through five distinct web  
17 pages, as described in paragraph 9, and incorporated herein by  
18 reference.  
19

20 PRAYER FOR RELIEF

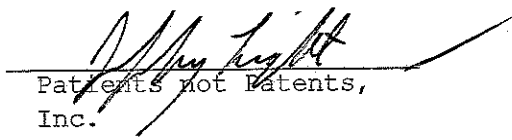
21 WHEREFORE, Plaintiff requests this Court, pursuant to 35 U.S.C. § 292 and  
22 its own equitable powers, to:

23 26. Enter judgment against the Defendant and in favor of the Plaintiff for  
24 the violations alleged in this complaint;  
25

1 27. Order defendant to pay a civil monetary fine of \$2,500, of which  
2 \$1,250 will be awarded to the Plaintiff and \$1,250 will be awarded to  
3 the United States.

4 28. Enjoin Defendant from using the word "patent" or the like in  
5 connection with advertisements for Xalex gel, or importing that the  
6 same is patented.

7  
8 Dated this 16<sup>th</sup> day of August, 2005

9  
10   
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