

1 René P. Tatro (SBN 078383)  
2 Juliet A. Markowitz (SBN 164038)  
3 TATRO TEKOSKY SADWICK LLP  
4 333 S. Grand Avenue, Suite 4270  
5 Los Angeles, CA 90071  
6 Telephone: (213) 225-7171  
7 Facsimile: (213) 225-7151  
8 E-mail: [rtatro@ttsmlaw.com](mailto:rtatro@ttsmlaw.com)  
9 [jmarkowitz@ttsmlaw.com](mailto:jmarkowitz@ttsmlaw.com)

6 Raymond N. Nimrod (*pro hac vice* pending)  
7 Matthew D. Robson (*pro hac vice* pending)  
8 QUINN EMANUEL URQUHART & SULLIVAN LLP  
9 51 Madison Ave., 22<sup>nd</sup> Floor  
10 New York, NY 10010  
11 Telephone: (212) 849-7000  
12 Facsimile: (212) 849-7100  
13 E-mail: [raynimrod@quinnemanuel.com](mailto:raynimrod@quinnemanuel.com)  
14 [matthewrobson@quinnemanuel.com](mailto:matthewrobson@quinnemanuel.com)

12 Attorneys for Plaintiff Pharmavite LLC

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 PHARMAVITE LLC, a California limited  
16 liability company,

17 Plaintiff,

18 v.

19 BAUSCH & LOMB INCORPORATED,  
20 a New York corporation, and PF  
21 CONSUMER HEALTHCARE 1 LLC, a  
22 Delaware corporation;

22 Defendants.

Case No. 2:21-CV-09507

**PHARMAVITE LLC'S COMPLAINT  
FOR:**

- (1) **MONOPOLIZATION**  
(15 U.S.C. § 2);
- (2) **ATTEMPTED  
MONOPOLIZATION**  
(15 U.S.C. § 2);
- (3) **CONSPIRACY TO  
MONOPOLIZE** (15 U.S.C. § 2);  
and
- (4) **DECLARATORY  
JUDGMENT—NON-  
INFRINGEMENT, PATENT  
INVALIDITY, AND PATENT  
MISUSE** (28 U.S.C. § 2201 *et seq.*)

**JURY TRIAL DEMANDED**

1 Plaintiff Pharmavite LLC (“Pharmavite”) hereby alleges as follows against  
2 defendants Bausch & Lomb Incorporated (“Bausch & Lomb”) and PF Consumer  
3 Healthcare 1 LLC (“PF Consumer Healthcare 1”) (collectively, “Defendants”):

#### 4 **NATURE OF THE ACTION**

5 1. This case concerns Defendants’ attempts to monopolize the eye health  
6 supplement market and to keep competing products, including Pharmavite’s Nature  
7 Made® Vision supplement, off the market. Defendants have done so by filing a sham  
8 patent infringement lawsuit against Pharmavite; making false and misleading claims  
9 about Bausch & Lomb’s PreserVision® products, including making unlawful disease  
10 claims; and/or misusing and misrepresenting the scope of Defendants’ United States  
11 Patent No. 8,603,522 (“the ’522 Patent”).

12 2. Pharmavite brings this action asserting claims for monopolization,  
13 attempted monopolization, and conspiracy to monopolize in violation of 15 U.S.C. § 2.

14 3. Pharmavite also brings this action for a declaratory judgment that (a) it  
15 does not infringe, either directly or indirectly, any claim of the ’522 Patent; (b) the  
16 claims of the ’522 Patent are invalid for failure to comply with the requirements for  
17 patentability set forth in Title 35 of the United States Code and related judicial  
18 doctrines, including without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112 and/or  
19 obviousness-type double patenting; and (c) the claims of the ’522 Patent are  
20 unenforceable due to at least patent misuse. This action is necessary to resolve an  
21 actual, justiciable, and continuing controversy between Pharmavite and Defendants  
22 regarding the non-infringement, invalidity, and unenforceability of the ’522 Patent.

#### 23 **THE PARTIES**

24 4. Plaintiff Pharmavite LLC is a California limited liability company with its  
25 principal place of business in West Hills, California.

26 5. On information and belief, defendant Bausch & Lomb is a corporation  
27 organized and existing under the laws of New York, with a principal place of business at  
28 1400 North Goodman Street, Rochester, NY 14609. On information and belief,

1 Bausch & Lomb conducts business within the State of California and has a registered  
2 agent in California.

3 6. On information and belief, defendant PF Consumer Healthcare 1 is a  
4 limited liability company organized and existing under the laws of Delaware and having  
5 a place of business at 1209 Orange Street, Corporation Trust Center, Wilmington, DE,  
6 19801. On information and belief, PF Consumer Healthcare 1 conducts business  
7 within the State of California and has a registered agent in California.

### 8 JURISDICTION AND VENUE

9 7. This Court has subject matter jurisdiction over this action pursuant to 28  
10 U.S.C. §§ 2201-2202, 1331-1332, 1338(a), and 1367(a), and the doctrine of pendent  
11 jurisdiction.

12 8. Pharmavite's claims arose in this District, and Pharmavite or its agents may  
13 be found or transact affairs in this District. In addition, on information and belief,  
14 Bausch & Lomb has conducted business in this District by marketing, selling,  
15 advertising, and promoting its product called PreserVision®, and Defendants have  
16 conducted business in this District by misusing the '522 Patent and expired United  
17 States Patent No. 6,660,297 ("the '297 Patent"), thereby causing, or likely to cause, harm  
18 to Pharmavite in this District. Defendants have further filed a patent infringement  
19 lawsuit lacking any good faith basis in an unquestionably improper venue (the U.S.  
20 District Court for the District of Delaware) against Pharmavite, causing Pharmavite  
21 harm in this District. On information and belief, Bausch & Lomb has attempted to and  
22 has willfully and unlawfully maintained a monopoly in the eye health supplement market  
23 throughout the United States, including in this District, and PF Consumer Healthcare 1  
24 has conspired with Bausch & Lomb to do so, causing Pharmavite injury in this District  
25 and attempting to exclude Pharmavite's Nature Made® Vision supplement from the U.S.  
26 market, including in this District. Accordingly, on information and belief, Defendants  
27 are subject to personal jurisdiction in California.

28 9. Venue in this District is appropriate under 28 U.S.C. § 1391.

## FACTUAL BACKGROUND

### A. The Parties' Dietary Supplements

10. Pharmavite manufactures, largely in California, Nature Made® brand vitamins and dietary supplements. Nature Made® vitamins and dietary supplements are “The #1 Pharmacist Recommended Vitamin and Mineral Supplement Brand.” Among Pharmavite’s dietary supplements is a product called Nature Made® Vision AREDS 2 (“Nature Made® Vision supplement”), which helps support an individual’s healthy vision and eye function.

11. Defendant Bausch & Lomb has a line of “eye vitamin and mineral supplements” called PreserVision®. PreserVision® packaging states that the supplements contain the AREDS 2 Formula, as shown in Figures 1, 2, and 3 below (true and correct copies of the PreserVision® products taken from the PreserVision.com website, <https://www.preservision.com/eyecare-professionals/the-areds-formula/>, on December 8, 2021):

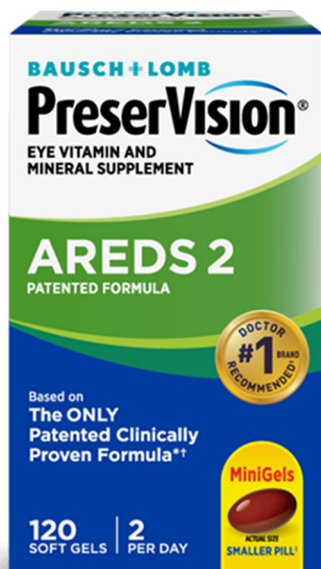


Figure 1

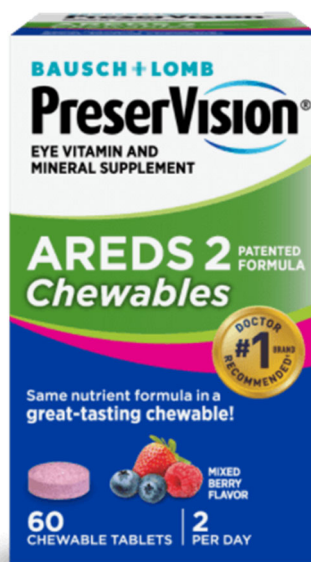


Figure 2

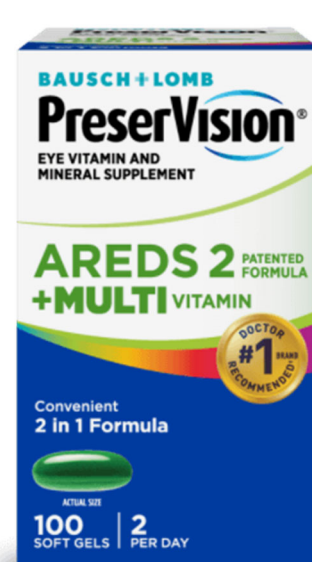


Figure 3

12. The AREDS 2 Formula is a combination of vitamins and minerals—*i.e.*, vitamin C, vitamin E, copper, zinc, lutein, and zeaxanthin—in specific amounts that the National Eye Institute (“NEI”) of the United States Department of Health and Human

1 Services' National Institutes of Health ("NIH") studied in a clinical trial known as  
2 AREDS 2.

3 13. Bausch & Lomb's PreserVision® AREDS 2 products directly compete  
4 with Pharmavite's Nature Made® Vision supplement.

5 **B. Defendants' Patents**

6 14. Defendants claim to be joint owners of the '522 Patent, entitled  
7 "Nutritional Supplement to Treat Macular Degeneration." Attached as Exhibit A is the  
8 form and content of the '522 Patent. Pharmavite does not concede the truth or  
9 admissibility of any statement made within the '522 Patent.

10 15. The '522 Patent is a continuation of an abandoned patent application,  
11 which in turn is a continuation of the now-expired '297 Patent, which, on information  
12 and belief, also had been owned jointly by Defendants. Attached as Exhibit B is the  
13 form and content of the '297 Patent. Pharmavite does not concede the truth or  
14 admissibility of any statement made within the '297 Patent.

15 16. The enforceable term of a United States patent begins on the date the  
16 patent issues and ends 20 years from the date on which the application for the patent  
17 was filed, absent certain exceptions. The application for the '297 Patent was filed on  
18 March 23, 2001, and the patent issued on December 9, 2003. Thus, the enforceable  
19 term of the '297 Patent ended March 23, 2021.

20 17. The expired '297 Patent included "composition" claims, which Defendants  
21 have previously alleged cover the AREDS 2 formulation itself. For patents claiming a  
22 composition, anyone using or selling the claimed composition in the United States  
23 during the patent's enforceable term can be held liable as an infringer. The owner of a  
24 valid composition patent is therefore able to prevent the sale of the claimed  
25 composition in the United States, regardless of how the composition is to be used.

26 18. Thus, during the enforceable term of the '297 Patent, Bausch & Lomb  
27 could assert the patent to exclude any competing AREDS 2 formulation from the  
28 market, to the extent the '297 Patent was valid and covered the AREDS 2 formula.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.