

# ARCHEMICA DEFLECTS INFRINGEMENT CLAIMS

Wilmington, Delaware February 3, 2001

## Major Italian Chemical Manufacturer Overcomes Great Lakes' Primary Allegation

A Federal jury in Wilmington, Delaware today found the process currently employed by the Archemica Corporation not to infringe the claims of the patent of its arch rival Great Lakes. Great Lakes had accused Archemica of infringing its '481 patent, a process for making *tic-d*, an intermediate chemical used in the production of Nelfinavir, one of several drugs used in the treatment of HIV.

Archemica was producing *tic-d* in 1997, using a process similar to that described in the Great Lakes '481 patent which issued in the United States on December 24, 1996. At trial, Archemica admitted that its 1997 process infringed, but asserted that its new process did not. The defendant further claimed that the patent was invalid because it was obvious to one of ordinary skill in the art. Archemica argued that the patented process was readily discernable from prior work in the field and it only took a quick trip to the library and a few confirmatory experiments for the inventors to settle on the claimed process.

Recognizing the potential for a claim of willful infringement, Archemica ceased its production of *tic-d* and returned to the laboratory. Archemica had not been satisfied with what was known as the Allen Process, after one of the '481's inventors, because the purity of the product was not high enough to fully satisfy the world's only two consumers, Agouron Pharmaceuticals, Inc. and Hoffman-LaRoche AG.

Archemica's scientists went to work on the problem and came up with a solution that increased the quality of the product and produced *tic-d* in a way that the jury found was different from that described in the claims of the '481 patent. Three essential changes were made in the Allen Process: first, the raw material was lowered to -70 degrees Celsius, as compared to the -20 degrees Celsius described in the patent; second, a critical solvent was changed during the process, whereas the patent claims did not call for such a change; and third, two vessels were used in the process, not one, as described in the patent claims. Great Lakes' lawyers argued that these differences were minor, that changing the solvent and using two instead of one vessel did not substantially change the process, and that while the difference in the cooling might appear substantial, no significant chemical activity took place until the materials reached -20 degrees Celsius.

Archemica explained that each of their improvements to the process allowed for the reduction of impurities to levels that the Allen Process could not attain. Thus, the Archemica innovations altered the Allen Process significantly and test results confirmed the more effective production of purer *tic-d* by Archemica.

The jury agreed with Archemica, returning a finding of no infringement by Archemica's improved 1999 process after a day and a half of deliberations. Great Lakes' '481 patent was deemed valid and Archemica was ordered to pay \$1 million after admitting that its 1997 process infringed. However, Archemica will be able to continue using its new process for producing *tic-d* and will continue to compete with Great Lakes. Great Lakes' plan to eliminate the competition has failed.

Litigation Strategies, Ltd. provided pre-trial jury research and strategic consultation to defense counsel Frank Porcelli and William Marsden, of Fish & Richardson.



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- Witness Preparation
- Demonstrative Exhibits

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