

1 Juanita Brooks (SBN 75934)  
 Dina Grinshpun (SBN 212625)  
 2 FISH & RICHARDSON P.C.  
 12390 El Camino Real  
 3 San Diego, California 92130-2081  
 Telephone: (858) 678-5070  
 4 Facsimile: (858) 678-5099

5 Karen I. Boyd (SBN 189808)  
 FISH & RICHARDSON P.C.  
 6 500 Arguello Street, Suite 500  
 Redwood City, CA 94063  
 7 Telephone: (650) 839-5070  
 Facsimile: (650) 839-5071  
 8

Attorneys for Plaintiffs  
 9 UNITHER PHARMA, INC.,  
 THE BOARD OF TRUSTEES OF THE  
 10 LELAND STANFORD JUNIOR UNIVERSITY,  
 and NEW YORK MEDICAL COLLEGE  
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12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN JOSE DIVISION

15 UNITHER PHARMA, INC., THE BOARD  
 OF TRUSTEES OF THE LELAND  
 16 STANFORD JUNIOR UNIVERSITY, and  
 NEW YORK MEDICAL COLLEGE,

17 Plaintiffs and Counter-Defendants,  
 18

19 v.

20 ADVANCED NUTRITIONAL  
 BIOSYSTEMS, INC. dba SCITEC  
 NUTRITION,  
 21

22 Defendant and Counter-Claimant.

Case No. CV 03-0415 JW and Related Case  
 No. CV 02-05284 JW

**FIRST AMENDED COMPLAINT FOR  
 PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

23 Plaintiffs Unither Pharma, Inc., the Board of Trustees of the Leland Stanford Jr. University,  
 24 and New York Medical College hereby allege as follows:

**THE PARTIES**

26 1. Unither Pharma, Inc. (“Unither”) is incorporated under the laws of the state of  
 27 Delaware, and has a regular and established place of business at 1110 Spring Street, Silver Spring,  
 28 Maryland 20910. Unither is the successor in interest of Cooke Pharma, Inc. (“Cooke Pharma”),

1 which was incorporated under the laws of the state of California and located at the same address as  
2 Unither.

3 2. The Board of Trustees of the Leland Stanford Jr. University (“Stanford”) is a body  
4 having corporate powers under the laws of the state of California with a location in Stanford,  
5 California.

6 3. New York Medical College (“NYMC”) is a body having corporate powers under the  
7 laws of the state of New York with a location in Valhalla, New York.

8 4. Upon information and belief, Advanced Nutritional Biosystems, Inc. dba Scitec  
9 Nutrition (“ANB”) is incorporated under the laws of the state of Florida, and has a regular and  
10 established place of business in Orlando, Florida, and a mailing address of P.O. Box 532079,  
11 Orlando, Florida 32853.

#### 12 **JURISDICTION AND VENUE**

13 5. This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1338(a), in  
14 which the district courts have original and exclusive jurisdiction of any civil action for patent  
15 infringement.

16 6. This Court has personal jurisdiction over Defendant because Defendant ANB has  
17 and continues to purposely avail themselves to this jurisdiction by continuing to do business in this  
18 judicial district.

19 7. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c) and 1400 because  
20 Defendant ANB resides in this judicial district.

#### 21 **GENERAL ALLEGATIONS**

22 8. Stanford is the assignee of certain patents related to the use of L-arginine in treating  
23 vascular disorders and improving vascular function and physical performance. These patents  
24 include U.S. Patent No. 5,428,070 (“the ’070 patent,” attached as “Exhibit A”), issued June 27,  
25 1995, U.S. Patent No. 5,891,459 (“the ’459 patent,” attached as “Exhibit B”), issued April 6, 1999,  
26 U.S. Patent No. 6,117,872 (“the ’872 patent,” attached as “Exhibit C”), issued September 12, 2000,  
27 and U.S. Patent No. 6,646,006 (“the ’006 patent,” attached as “Exhibit D”), issued November 11,  
28 2003.

1           9.       NYMC is the assignee of U.S. Patent No. 5,217,997 (“the ’997 patent,” attached as  
2 “Exhibit E”), issued June 8, 1993, related to the use of L-arginine in treating high vascular  
3 resistance disorders.

4           10.       Stanford and Cooke Pharma entered into agreements under which Stanford granted  
5 Cooke Pharma an exclusive license under the ’872, ’070, ’459, and ’006 patents for the use and sale  
6 of amino acid–based dietary supplements or pharmaceuticals to enhance the level of endogenous  
7 nitric oxide in the vascular system. Under the same agreements, Stanford provided Cooke Pharma  
8 with a right to institute actions and recover damages for infringement of the ’872, ’070, ’459, and  
9 ’006 patents and the right to join Stanford as a plaintiff in any such action. Unither is the successor  
10 in interest to all rights granted by Stanford to Cooke Pharma under the agreements.

11           11.       NYMC and Cooke Pharma entered into an agreement under which NYMC granted  
12 Cooke Pharma an exclusive worldwide license under the ’997 patent for the manufacture, use, and  
13 sale of amino acid–based functional foods, dietary supplements, medical foods, or pharmaceuticals.  
14 Under the same agreement, NYMC provided Cooke Pharma with a right to institute actions and  
15 recover damages for infringement of the ’997 patent and the right to join NYMC as a plaintiff in  
16 any such action. Unither is the successor in interest to all rights granted to Cooke Pharma under  
17 that agreement.

18           12.       Unither manufactures and sells products containing L-arginine designed to improve  
19 vascular health, improve human sexual performance, and treat erectile dysfunction, which are  
20 covered by the ’872, ’070, ’459, ’006, and ’997 patents.

21           13.       Upon information and belief, RZB, Inc. (“RZB”) formally owned the assets of and  
22 did business as Scitec Nutrition until October 2001, at which time the Scitte Nutrition business  
23 activities were assigned or otherwise transferred to ANB.

24           14.       Upon information and belief, Defendant ANB competes with Unither and  
25 manufactures and sells at least two products, Effergin™ and MyoMax™ Ten-in-One Formula, that  
26 contain L-arginine as the active ingredient.









**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the following relief:

- a. That this Court adjudge and declare that Defendant ANB has infringed, induced and/or contributed to the infringement of the '997, '872, '070, '459, and '006 patents;
- b. That this Court adjudge and declare that Defendant ANB has violated Plaintiffs' provisional rights under the '006 patent;
- c. That this Court preliminarily enjoin Defendant ANB, its officers, directors, employees, agents, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert with them from infringing, actively inducing infringement or contributing to infringement of the '997, '872, '070, '459, and '006 patents;
- d. That this Court permanently enjoin Defendant ANB, its officers, directors, employees, agents, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert with them from infringing, actively inducing infringement and/or contributing to infringement of the '997, '872, '070, '459, and '006 patents;
- e. That this Court award to Plaintiffs damages adequate to compensate them for Defendant ANB's acts of infringement, inducement of and/or contributions to infringement of the '997, '872, '070, '459, and '006 patents, together with interest thereon;
- f. That this Court award to Plaintiffs reasonable royalties for Defendant ANB's violation of Plaintiffs' provisional rights under the '006 patent;
- g. That this Court award treble damages against Defendant ANB for its willful infringement, inducement of and/or contribution to infringement of the '997, '872, '070, '459, and '006 patents;
- h. That this Court order Defendant ANB to pay Plaintiffs their reasonable attorneys' fees for this action;



