

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

**UNIVERSITY OF FLORIDA)
BOARD OF TRUSTEES, an)
agency of the State of Florida, and)
FLORIDA FOUNDATION SEED)
PRODUCERS, INC., a not-for-)
profit corporation chartered by)
the State of Florida,)**

Plaintiffs,

) **Civil Action No. _____**

v.

**HARTMANN’S PLANT)
COMPANY,)**

Defendant.

_____)

COMPLAINT

Plaintiffs University of Florida Board of Trustees and Florida Foundation Seed Producers, Inc., through their undersigned counsel, hereby bring this Complaint against Hartmann’s Plant Company. In support thereof, the University of Florida Board of Trustees and Florida Foundation Seed Producers, Inc. respectfully show the Court as follows:

THE PARTIES

1. The University of Florida, located in Gainesville, Florida, is a non-profit educational institution that is consistently ranked among the nation's elite universities. It has more than 4,000 faculty members, many of whom are among the leaders in their respective fields. In 2014, the University of Florida ranked third among public universities in the number of start-up companies created and sixth among public universities in the total number of patent applications filed. The University of Florida has 34 Eminent Scholar chairs, 42 Members of the National Academy of Sciences, National Academy of Engineering, the Institute of Medicine, and the American Academy of Arts and Sciences. The University of Florida generates more than 100,000 Florida jobs, including more than 40,000 employees. The University of Florida is a state-supported institution of higher education.

2. The Florida State Legislature has authorized the University of Florida to perform all things necessary to secure letters of patent and to take any action necessary, including legal action, to protect its intellectual property rights against improper or unlawful use or infringement. The University of Florida Board of Trustees ("Board") is the governing body of the University of Florida. The Board

constitutes a corporation under Florida law and may, among other things, bring a lawsuit.

3. Florida Foundation Seed Producers, Inc. (“Florida Foundation”) is a corporation that was established as a direct support organization (“DSO”) under title XLVIII, Chapter 1004 of the Florida Statutes, Section 1004.28.

4. Florida Foundation, as a DSO, operates exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the University of Florida. Florida Foundation must comply with the rules and conditions prescribed, and its actions are subject to oversight by the University of Florida Board of Trustees. The Chair of the University of Florida Board of Trustees may appoint a representative to the Board of Directors and to the Executive Committee of Florida Foundation.

5. Florida Foundation provides, among other things, a means by which research can be done efficiently, and by which inventions and other discoveries of the University of Florida faculty, staff, and students can be transferred from the laboratory to the general public. Money generated by Florida Foundation, including from licensing patents, flows back to the University of Florida to enhance research and education.

6. Upon information and belief, Hartmann's Plant Company is a corporation organized under the laws of Michigan with its principal place of business located at 310 60th St., Grand Junction, Michigan, 49056.

7. According to Hartmann's Plant Company's president, Daniel P. Hartmann,¹ Hartmann's Plant Company is known worldwide.

JURISDICTION AND VENUE

8. This is an action for patent infringement.

9. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) in that this action involves claims arising under the United States Patent Act, 35 U.S.C. §1 et seq.

10. This is also an action for fraudulent misrepresentation under Florida state law. This Court has subject matter jurisdiction over this claim for relief pursuant to 28 U.S.C. § 1367(a) because this claim for relief is related to the acts and subject matter of the patent infringement claims so as to form part of the same case or controversy, and pursuant to 28 U.S.C. § 1332 based on diversity of citizenship.

¹ See <https://hartmannsplantcompany.com/contact-us/> (identifying Daniel Hartmann as President).

11. Personal jurisdiction exists over Hartmann's Plant Company. Florida's Long-Arm Statute is interpreted as coextensive with due process. Hartmann's Plant Company has had continuous and systematic contacts with the State of Florida for many years. According to Hartmann's Plant Company documents, Hartmann's Plant Company has been promoting, consulting, and distributing plants throughout the world for more than 50 years. Ex. A. Hartmann's Plant Company promotes merchandise in Florida via its website (<https://hartmannsplantcompany.com>) from which Florida citizens may purchase plants, including blueberry plants, directly from Hartmann's Plant Company. Because Hartmann's Plant Company has engaged in substantial and not isolated activity within State of Florida, the exercise of personal jurisdiction over Hartmann's Plant Company comports with due process.

12. The Court has personal jurisdiction over Hartmann's Plant Company based on Hartmann's Plant Company committing a tortious act within Florida, and on the business dealings between Hartmann's Plant Company and Florida Foundation. Hartmann's Plant Company purposefully directed its activities at the residents of Florida, and, in particular, Florida Foundation by entering into multiple patent license agreements with Florida Foundation between 2000 and 2003. Hartmann's Plant Company engaged in communications with Florida Foundation in connection with these agreements during the time period when these

agreements were in force, as well as after the agreements terminated. Hartmann's Plant Company obtained patented blueberry varieties from the University of Florida pursuant to these license agreements and paid Florida Foundation royalties for Hartmann's Plant Company's sales of Florida Foundation's patented blueberry plants. Florida Foundation's causes of action arise directly from Hartmann's Plant Company's Florida-related activities. Hartmann's Plant Company thus has sufficient minimum contacts with the State of Florida and with this district to establish personal jurisdiction.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because a substantial part of the events giving rise to this lawsuit occurred in this district.

FACTUAL BACKGROUND

A. The Patented Blueberry Plant Varieties

14. Florida Foundation was formed in 1943 as the Florida Crop Improvement Association to promote plant varieties, including blueberry varieties, developed by the Florida Agricultural Experiment Station, an agricultural research program of the University of Florida's Institute of Food and Agricultural Sciences. The University of Florida, in cooperation with Florida Foundation, began a research program to develop new types of blueberry plants (also known as

cultivars) adapted for production in the warmer areas of the Sunbelt states. As part of this program, Paul Lyrene, Professor Emeritus of Horticultural Sciences, developed novel varieties of blueberries patented by Florida Foundation.

15. The University of Florida and Florida Foundation spent thousands of hours and millions of dollars to develop these new “low-chill,” southern high-bush varieties of blueberries. These varieties offer advantages over traditional varieties, including providing fruit earlier in the year, high fruit quality, higher fruit yields, and varying degrees of resistance to several blueberry diseases. Because the “low-chill,” southern high-bush varieties’ fruit is available earlier in the year, growers typically receive higher prices for their fruit. Consumers also benefit by having access to fresh blueberries earlier in the year. The development of these varieties has helped create jobs in Florida and in other places by, among other things, expanding the “pick-your-own” enterprises to new geographic areas and providing fruit picking jobs during a time of year when fruit pickers were often idle.

16. The United States recognized the novelty of these plants by awarding patents on them.

A. On November 10, 1998, U.S. Plant Patent No. PP10,675, entitled “Low-Chill Highbush Blueberry ‘Star’” (“the ’675 patent”), was duly and legally issued to inventor Paul Lyrene. A true and correct copy of the ’675 patent is attached as Exhibit B.

- B. On March 13, 2001, U.S. Plant Patent No. PP11,807, entitled “Blueberry Plant Named ‘Jewel’” (“the ’807 patent”), was duly and legally issued to inventor Paul Lyrene. A true and correct copy of the ’807 patent is attached as Exhibit C.
- C. On October 23, 2001, U.S. Plant Patent No. PP12,165, entitled “Blueberry Plant Called ‘Emerald’” (“the ’165 patent”), was duly and legally issued to inventor Paul Lyrene. A true and correct copy of the ’165 patent is attached as Exhibit D.
- D. On July 16, 2002, U.S. Plant Patent No. PP12,783, entitled “Blueberry Plant Named ‘Windsor’” (“the ’783 patent”), was duly and legally issued to inventor Paul Lyrene. A true and correct copy of the ’783 patent is attached as Exhibit E.
- E. On July 30, 2002, U.S. Plant Patent No. PP12,816, entitled “Blueberry Plant Called ‘Millennia’” (“the ’816 patent”), was duly and legally issued to inventor Paul Lyrene. A true and correct copy of the ’816 patent is attached as Exhibit F.
- F. On November 25, 2008, U.S. Plant Patent No. PP19,503, entitled “‘Snowchaser’ Southern Highbush Blueberry” (“the ’503 patent”), was duly and legally issued to inventor Paul Lyrene. A true and correct copy of the ’503 patent is attached as Exhibit G.

17. Each of the ’675 patent, the ’807 patent, the ’165 patent, the ’783 patent, the ’816 patent, and the ’503 patent (collectively, “the Asserted Patents”) is assigned to Florida Foundation. Florida Foundation is thus the owner of each of the Asserted Patents and has the right to enforce the Asserted Patents and sue infringers, including for past damages.

18. Each of the Asserted Patents is valid. The ’807 patent, the ’165 patent, the ’783 patent, the ’816 patent, and the ’503 patent remain enforceable. The ’675

patent (“Star”) has expired; thus, Plaintiffs seek only past damages for the infringement of the ’675 patent.

B. Florida Foundation’s Licensing Program and Hartmann’s Plant Company’s Licenses to Florida Foundation’s Patents.

19. Growers recognize the value of Florida Foundation’s low-chill, southern high-bush blueberries. One way this value was recognized is through licenses. Florida Foundation has more than 100 licenses in force covering one or more of the Asserted Patents.

20. These licenses are typically limited in their geographic scope. In the United States, for example, although the licenses are generally non-exclusive, the licenses typically do not permit the licensee to sell or otherwise distribute plants in certain states. Florida Foundation’s foreign licenses are often exclusive, but also are limited in geographic scope to a single country or group of countries. Such geographic segmentation is important to the licensees and to the value of the licenses.

21. Hartmann’s Plant Company first became a Florida Foundation licensee in 2000, when it obtained a license to propagate and sell ‘Emerald’ blueberry plants. Hartmann’s Plant Company also licensed other Florida Foundation blueberry plants, including Star and Millennia, in 2001. Pursuant to

those licenses, Hartmann's Plant Company began propagating patented blueberry plants from Florida Foundation at least as early as 2001. Hartmann's Plant Company agreed to pay Florida Foundation an up-front license fee and royalties based on Hartmann's Plant Company's sales of the patented plants.

22. In 2002, Hartmann's Plant Company sought permission from Florida Foundation to sell patented blueberry plants in South America. Florida Foundation declined Hartmann's Plant Company's request for permission to sell patented blueberry plants to growers in certain South American countries because Florida Foundation already had an established network of licensees covering those countries. In 2002, Hartmann's Plant Company also expressed interest to Florida Foundation about an exclusive license for sales in China.

23. In April 2003, Hartmann's Plant Company signed new licenses for, among others, the Star, Emerald, and Millennia blueberry varieties. In addition, Hartmann's Plant Company licensed the Jewel and Windsor patented blueberry varieties for the first time. These 2003 licenses are collectively referred to in this Complaint as the "2003 Licenses."

24. The 2003 Licenses permitted Hartmann's Plant Company to distribute the patented plants in only a specified portion of the United States. The 2003 Licenses required Hartmann's Plant Company to use plants supplied or produced

under the agreement only for the purposes set forth in each agreement, and indicated that Florida Foundation retained all rights, titles and ownership of the plant material being provided to Hartmann's Plant Company.

25. The 2003 Licenses also required that the name assigned to the patented variety (*e.g.*, Star, Emerald, Jewel, Windsor, etcetera) shall remain with the plant and be non-assignable to another type. Hartmann's Plant Company also agreed to protect the patented plants from unauthorized propagation, to give notice to buyers that further plant multiplication was prohibited, and, upon termination of the agreement, to sell the patented plants it has on hand provided that it pays royalties on the plants that it sells.

26. On January 22, 2004, Hartmann's Plant Company informed Florida Foundation that Hartmann's Plant Company was terminating the licenses. Ex. H. Hartmann's Plant Company further stated that it "will be liquidating the Florida plant cultivars when sales are complete we will issue a payment of royalties for 2003 and 2004." *Id.* Florida Foundation accepted Hartmann's Plant Company's "cancellation of Windsor, Star, . . . , Millennia, Jewel, and Emerald blueberry licenses" on February 6, 2004. Ex. I. Florida Foundation further reminded Hartmann's Plant Company that it had six months to sell the plant material it had on hand and noted the royalties Hartmann's Plant Company owed to Florida

Foundation. *Id.* In August 2004, Florida Foundation again reminded Hartmann's Plant Company of this six-month time period to sell the plants and the outstanding royalties. Hartmann's Plant Company made its "final" royalty payment to Florida Foundation in November 2004 and, at that time, provided a list of the plants it had sold. Exs. J, K, and L.

27. Thus, as of October 2004, Florida Foundation had no reason to believe that Hartmann's Plant Company possessed any of Florida Foundation's patented blueberry plants or patented plant materials.

C. Hartmann's Plant Company's Infringement and Other Bad Acts

28. Upon information and belief, Hartmann's Plant Company did not liquidate Florida Foundation's patented blueberry plants in 2004 as required. Instead, Florida Foundation recently learned that Hartmann's Plant Company continued to propagate, offer for sale, and sell the patented blueberry plants without authorization for many years after 2004.

29. For example, Florida Foundation recently became aware that on or about January 28, 2011, Hartmann's Plant Company sold and shipped nearly

100,000 blueberry plants to Bionest.² Nearly 50,000 of these plants (*i.e.*, 25,000 Jewel, 14,760 Snowchaser, and 10,165 Emerald) infringed Florida Foundation's patents. *Id.* According to Hartmann's Plant Company invoice, Bionest paid \$86,200.00 for the infringing plants. *Id.*

30. The invoice also indicates that Bionest paid royalties to Hartmann's Plant Company. The invoice includes line items for "ROYALTY-JEWELL", "ROYALTY-SNOWCHASER," and "ROYALTY-EMERALD." *Id.* The "royalty" was \$0.30 per plant for a total of \$14,977.50. *Id.* On information and belief, this royalty was charged in effort to lead Bionest to believe that Hartmann's Plant Company was licensed to make these sales.

31. On or about January 28, 2011, Teri Young, Secretary of Hartmann's Plant Company, certified a U.S. Department of Homeland Security Bureau of Customs and Border Protection Certificate of Origin, naming Bionest as the recipient of the 96,000 blueberry plants. Ex. N. On or about January 27, 2011, the U.S. Department of Agriculture issued a Phytosanitary Certificate for 96,000 blueberry plants, naming Hartmann's Plant Company as the exporter, Allegan County, Michigan USA as the Place of Origin, and Bionest as the consignee. Ex. O. On or about February 3, 2011 and February 9, 2011, Spanish authorities,

² Hartmann's Plant Company's invoice identifies this company as S.A.T. N H-0023 Bionest, V.A.T. ID-N: ES V-21340302, Carretera Elmonte-El Rocio, 21730 Almonte (Huelva) Spain. Ex. M.

including the Spanish Ministry of Environment and Agriculture (*Ministerio de Medio Ambiente y Medio Rural y Marino*), issued plant importation authorization certificates for the 96,000 blueberry plants, including specifically 25,000 Jewel, 14,760 Snowchaser, and 10,165 Emerald plants. Ex. P.

32. Hartmann's Plant Company made other infringing sales to Bionest as well, including sales on or about December 16, 2005; March 1, 2012; and March 5, 2013.

33. Hartmann's Plant Company also made infringing sales to Mr. Juan Marquez Agromolinillo in Huelva, Spain on at least four occasions: December 16, 2005; May 1, 2006; March 8, 2006; and January 24, 2007. The patented plants sold included at least the Millennia, Star, Windsor, and Emerald varieties. Hartmann's Plant Company also charged Mr. Agromolinillo royalties in addition to the sales price.

34. Upon information and belief, these sales represent only a small fraction of the illegal sales made by Hartmann's Plant Company to Spanish growers. Based on Hartmann's Plant Company's previous desire to sell the patented plants to South American and Chinese growers, and based on Hartmann's Plant Company's representation to Florida Foundation that its wide exposure to the

world made a major supplier of new blueberry plants, it is likely that Hartmann's Plant Company has made sales to growers in other countries as well.

35. None of Hartmann's Plant Company's sales of Florida Foundation's patented blueberry plants since October 2004 were authorized.

PATENT INFRINGEMENT

A. HARTMANN'S PLANT COMPANY'S INFRINGEMENT OF FLORIDA FOUNDATION'S PATENTS

Count 1: Infringement of the '675 Patent (Star)

36. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 35 above as if fully set forth herein.

37. Hartmann's Plant Company has infringed the '675 patent by practicing the claim of the '675 patent in asexually reproducing, using, offering for sale, and/or selling the blueberry plant known as Star and/or the fruit thereof. Hartmann's Plant Company has infringed the '675 patent by at least growing the patented plants (*i.e.*, the cultivars) in the United States and offering for sale and selling the patented plants from the United States to growers around the world, including specifically Spanish growers. As discussed further below, Hartmann's Plant Company's conduct has irreparably harmed Florida Foundation.

38. Hartmann's Plant Company's has had knowledge of the '675 patent since at least 2001, when it first licensed the '675 patent from Florida Foundation. Since Hartmann's Plant Company terminated the license agreement in 2004, Hartmann's Plant Company has been aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '675 patent and that the '675 patent is valid. Despite Hartmann's Plant Company's knowledge of that risk, Hartmann's Plant Company continued to asexually reproduce, use, offer for sale, and/or sell the blueberry plant known as Star and/or the fruit thereof. As such, Hartmann's Plant Company willfully and deliberately infringed the '675 patent in wanton disregard of Florida Foundation's rights.

Count 2: Infringement of the '807 Patent (Jewel)

39. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 38 above as if fully set forth herein.

40. Hartmann's Plant Company has infringed and continues to infringe the '807 patent by practicing the claim of the '807 patent in asexually reproducing, using, offering for sale, and/or selling the blueberry plant known as Jewel and/or the fruit thereof. Hartmann's Plant Company is infringing the '807 patent by at least growing the patented plants (*i.e.*, the cultivars) in the United States and

offering for sale and selling the patented plants from the United States to growers around the world, including specifically Spanish growers. As discussed further below, Hartmann's Plant Company's conduct has irreparably harmed Florida Foundation.

41. Hartmann's Plant Company has had knowledge of the '807 patent since at least 2003, when it first licensed the '807 patent from Florida Foundation. Since Hartmann's Plant Company terminated the license agreement in 2004, Hartmann's Plant Company has been aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '807 patent and that the '807 patent is valid. Despite Hartmann's Plant Company's knowledge of that risk, Hartmann's Plant Company has continued to, and still is continuing to, asexually reproduce, use, offer for sale, and/or sell the blueberry plant known as Jewel and/or the fruit thereof. As such, Hartmann's Plant Company willfully and deliberately infringed and is infringing the '807 patent in wanton disregard of Florida Foundation's rights.

Count 3: Infringement of the '165 Patent (Emerald)

42. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 41 above as if fully set forth herein.

43. Hartmann's Plant Company has infringed and continues to infringe the '165 patent by practicing the claim of the '165 patent in asexually reproducing, using, offering for sale, and/or selling the blueberry plant known as Emerald and/or the fruit thereof. Hartmann's Plant Company is infringing the '165 patent by at least growing the patented plants (*i.e.*, the cultivars) in the United States and offering for sale and selling the patented plants from the United States to growers around the world, including specifically Spanish growers. As discussed further below, Hartmann's Plant Company's conduct has irreparably harmed Florida Foundation.

44. Hartmann's Plant Company has had knowledge of the '165 patent since at least 2000, when it first licensed the application that issued as the '165 patent from Florida Foundation. Since Hartmann's Plant Company terminated its 2003 License Agreement for the '165 patent in 2004, Hartmann's Plant Company has been aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '165 patent and that the '165 patent is valid. Despite Hartmann's Plant Company's knowledge of that risk, Hartmann's Plant Company has continued to, and still is continuing to, asexually reproduce, use, offer for sale, and/or sell the blueberry plant known as Emerald and/or the fruit thereof. As such, Hartmann's Plant Company willfully

and deliberately infringed and is infringing the '165 patent in wanton disregard of Florida Foundation's rights.

Count 4: Infringement of the '783 Patent (Windsor)

45. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 44 above as if fully set forth herein.

46. Hartmann's Plant Company has infringed and continues to infringe the '783 patent by practicing the claim of the '783 patent in asexually reproducing, using, offering for sale, and/or selling the blueberry plant known as Windsor and/or the fruit thereof. Hartmann's Plant Company is infringing the '783 patent by at least growing the patented plants (*i.e.*, the cultivars) in the United States and offering for sale and selling the patented plants from the United States to growers around the world, including specifically Spanish growers. As discussed further below, Hartmann's Plant Company's conduct has irreparably harmed Florida Foundation.

47. Hartmann's Plant Company has had knowledge of the '783 patent since at least 2003, when it licensed the '783 patent. Since Hartmann's Plant Company terminated its 2003 License Agreement for the '783 patent in 2004, Hartmann's Plant Company has been aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of

the '783 patent and that the '783 patent is valid. Despite Hartmann's Plant Company's knowledge of that risk, Hartmann's Plant Company has continued to, and still is continuing to, asexually reproduce, use, offer for sale, and/or sell the blueberry plant known as Windsor and/or the fruit thereof. As such, Hartmann's Plant Company willfully and deliberately infringed and is infringing the '783 patent in wanton disregard of Florida Foundation's rights.

Count 5: Infringement of the '816 Patent (Millennia)

48. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 47 above as if fully set forth herein.

49. Hartmann's Plant Company has infringed and continues to infringe the '816 patent by practicing the claim of the '816 patent in asexually reproducing, using, offering for sale, and/or selling the blueberry plant known as Millennia and/or the fruit thereof. Hartmann's Plant Company is infringing the '816 patent by at least growing the patented plants (*i.e.*, the cultivars) in the United States and offering for sale and selling the patented plants from the United States to growers around the world, including specifically Spanish growers. As discussed further below, Hartmann's Plant Company's conduct has irreparably harmed Florida Foundation.

50. Hartmann's Plant Company has had knowledge of the '816 patent since at least 2001, when it licensed the application that later issued as the '816 patent. Since Hartmann's Plant Company terminated its 2003 License Agreement for the '816 patent in 2004, Hartmann's Plant Company has been aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '816 patent and that the '816 patent is valid. Despite Hartmann's Plant Company's knowledge of that risk, Hartmann's Plant Company has continued to, and still is continuing to, asexually reproduce, use, offer for sale, and/or sell the blueberry plant known as Millennia and/or the fruit thereof. As such, Hartmann's Plant Company willfully and deliberately infringed and is infringing the '816 patent in wanton disregard of Florida Foundation's rights.

Count 6: Infringement of the '503 Patent (Snowchaser)

51. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 50 above as if fully set forth herein.

52. Hartmann's Plant Company has infringed and continues to infringe the '503 patent by practicing the claim of the '503 patent in asexually reproducing, using, offering for sale, and/or selling the blueberry plant known as Snowchaser and/or the fruit thereof. Hartmann's Plant Company is infringing the '503 patent by at least growing the patented plants (*i.e.*, the cultivars) in the United States and

offering for sale and selling the patented plants from the United States to growers around the world, including specifically Spanish growers. As discussed further below, Hartmann's Plant Company's conduct has irreparably harmed Florida Foundation.

53. Upon information and belief, Hartmann's Plant Company has had knowledge of the '503 patent since at least 2008 when the '503 patent issued. Hartmann's Plant Company has actual knowledge of the '503 patent as of the date of this Complaint. Thus, since at least the date of this Complaint and, upon information and belief since at least the '503 patent's issue date, there is an objectively high likelihood that Hartmann's Plant Company knew that its actions constituted, and continue to constitute, infringement of the '503 patent and that the '503 patent was valid. Despite Hartmann's Plant Company's knowledge of that risk, Hartmann's Plant Company continued to, and still is continuing to, asexually reproduce, use, offer for sale, and/or sell the blueberry plant known as Snowchaser and/or the fruit thereof. As such, Hartmann's Plant Company willfully and deliberately infringed and is infringing the '503 patent in wanton disregard of Florida Foundation's rights at least as of the date of this Complaint.

B. HARTMANN'S PLANT COMPANY'S INFRINGEMENT IRREPARABLY HARMS FLORIDA FOUNDATION.

54. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 through 53 above as if fully set forth herein.

55. Hartmann's Plant Company's infringement set forth in Counts 1- 6 above damaged Florida Foundation both monetarily and non-monetarily. Monetary damages include reasonable royalties and/or lost profits for Hartmann's infringing propagation and sales of the patented plants.

56. But monetary damages are only a portion of the total damage caused by Hartmann's Plant Company's infringement. Once a grower has plant material from the patented blueberry plants, the patented blueberry varieties can be easily grown and replicated. That is one reason why each of the 2003 License Agreements required Hartmann's Plant Company to keep a continuous inventory of the plant materials it had, and to provide Florida Foundation detailed records of the sales and disposal of patented plants and plant materials. The 2003 License Agreements further provided Florida Foundation the right to inspect Hartmann's Plant Company's records and propagation facilities to verify the accuracy of the records, including inspecting the stocks of plant materials. Failure to keep the required records automatically canceled the Agreement. In addition, the 2003

License required Hartmann's Plant Company to give notice to buyers (growers) that further plant multiplication of the patented plants was prohibited.

57. Hartmann's Plant Company's previous sales to Spanish growers and, upon information and belief, other growers have irreparably harmed Florida Foundation and continue to do so. Hartmann's Plant Company provided tens of thousands of infringing plants to at least Bionest and Agromolinillo in Spain. Florida Foundation only recently learned of these sales. Those growers could continue to propagate the plants and sell them to other growers further distributing the patented plants into world, thereby increasing the likelihood of future unauthorized sales of the patented plants by other non-licensed entities. The larger the amount of illicitly distributed patented plant material that exists in the world, the more difficult it is for Florida Foundation to license and maintain control of its intellectual property. This constitutes immediate and actual irreparable harm. In addition, each illicit sale harms Florida Foundation's licensees, which, in turn, harms Florida Foundation's licensing program by diluting the value and prestige of the licenses.

58. Hartmann's Plant Company's continued asexual reproduction of the patented plants also irreparably harms Florida Foundation because Hartmann's Plant Company will, based upon past conduct, continue to sell these illegally

propagated plants to third-party growers thereby further increasing the risk that Florida Foundation will lose the ability to control the patented varieties that it worked so hard to develop, protect, and license. Such harm is actual and immediate. As the attached invoice demonstrates, Hartmann's Plant Company has no regard for Florida Foundation's intellectual property and thus will continue to asexually reproduce and sell the patented blueberry plants unless it is enjoined from doing so.

ADDITIONAL STATE LAW CLAIM

Count 7: Fraudulent Misrepresentation

59. Florida Foundation repeats and re-alleges the allegations of Paragraphs 1 - 58 above as if fully set forth herein.

60. After the 2003 Licenses were terminated, Hartmann's Plant Company represented to Florida Foundation that it would "be liquidating the Florida patented cultivars" and that it would issue a payment of royalties "[w]hen sales are complete." Ex. H. In October of 2004, when Hartmann's Plant Company had no authority to possess, propagate, market or sell Florida Foundation's patented plants, Hartmann's Plant Company represented to Florida Foundation that it was making its "final" payment. Ex. J. Hartmann's Plant Company made this representation in furtherance of its fraudulent scheme, and with the intention of misleading Florida

Foundation into concluding that there was no need to conduct an independent investigation into whether Hartmann's Plant Company unlawfully retained possession of the patented plants.

61. Hartmann's Plant Company knew that its representations were false because at that time it still had Florida Foundation's patented plants in its possession and planned to illegally propagate, market, and sell those plants throughout the world. In fact, Florida Foundation recently discovered that in 2005 Hartmann's Plant Company sold and shipped 10,000 Star blueberry plants and 5,000 Millenia blueberry plants to Agromolinillo (Ex. Q), and 10,000 Star blueberry plants and 13,520 Emerald blueberry plants to Bionest. Ex. R. Hartmann's made additional sales of patented plants to Agromolinillo and Bionest on several other occasions further confirming that its earlier representations were false.

62. Hartmann's Plant Company made the misrepresentations of fact with the intention that Florida Foundation rely on them. Florida Foundation reasonably relied on Hartmann's Plant Company's misrepresentations of fact and as a result made no effort after the 2003 Licenses were terminated to independently verify that Hartmann's Plant Company did not have possession of any patented plants.

63. As a result of Florida Foundation's reasonable reliance on Hartmann's Plant Company's misrepresentations of fact communicated after the 2003 Licenses were terminated, Florida Foundation suffered damages and Hartmann's Plant Company continued to illegally and unlawfully propagate, market and sell Florida Foundation's patented blueberries.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Florida Foundation respectfully requests the Court to:

1. Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;

2. Find Hartmann's Plant Company has infringed Florida Foundation's U.S. Patent Nos. PP10,675; PP11,807; PP12,165; PP12,783; PP12,816, and PP19503, by asexually reproducing, using, selling, and/or offering to sell Florida Foundation's blueberry plants known as Star, Jewel, Emerald, Windsor, Millennia, and Snowchaser;

3. Enter a preliminary and permanent injunction enjoining defendant Hartmann's Plant Company, its officers, servants, employees, agents, attorneys, all parent and subsidiary corporations, all assignees and successors in interest, and those persons in active concert or participation with Hartmann's Plant Company, including distributors and customers, from asexually reproducing, using, offering for sale, selling, exchanging, or transferring the Jewel, Emerald, Windsor, Millennia, and Snowchaser blueberry plants claimed in the Asserted Patents and the fruit thereof without legal authorization;

4. Award damages to Florida Foundation as a result of Hartmann's Plant Company's infringement in accordance with 35 U.S.C. § 284, together with pre-judgment and post-judgment interest;

5. Award a trebling of said damages and/or reasonable royalty on account of the willful nature of the infringement, pursuant to 35 U.S.C. § 284;

6. Find Hartmann's Plant Company made fraudulent representations to Florida Foundation in violation of Florida law;

7. Award actual and punitive damages in an amount to be determined at trial for the violation of Florida law;

8. Declare this an “exceptional case” pursuant to 35 U.S.C. § 285 and award Plaintiff its attorney’s fees and any other appropriate relief; and

9. Award Plaintiff any such other relief that this Court deems just and proper.

Dated: February 5, 2016

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE
Professional Association

By s/John A. DeVault, III

John A. DeVault, III

Florida Bar No. 0103979

Primary: jad@bedellfirm.com

Secondary: ghw@bedellfirm.com

Courtney K. Grimm

Florida Bar No. 953740

Primary: cgrimm@bedellfirm.com

Secondary: mam@bedellfirm.com

Patrick P. Coll

Florida Bar No. 84670

Primary: ppc@bedellfirm.com

Secondary: jbam@bedellfirm.com

The Bedell Building

101 East Adams Street

Jacksonville, Florida 32202

Telephone: (904) 353-0211

Facsimile: (904) 353-9307

-and-

DENTONS US LLP

Mark C. Nelson (pro hac vice pending)

mark.nelson@dentons.com

Steven M. Geiszler (pro hac vice pending)

steven.geiszler@dentons.com

2000 McKinney Ave., Ste. 1900

Dallas, Texas 75201

Telephone: (214) 259-0900

*Counsel for Plaintiffs University of Florida Board of
Trustees and Florida Foundation Seed Producers, Inc.*