

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

FILED

JAN 23 2002

MONSANTO COMPANY,
Plaintiff

VERSUS

LIONEL R. HUNT and
JOHN W. HUNT, III,
Defendants

*
*
*
*
*
*
*
*
*

CASE NO. **7:02-CV-11-F1**

DAVID W. DANIEL, CLERK
US DISTRICT COURT, EDNC
BY  DEP. CLERK

* * * * *

COMPLAINT

COMES NOW the plaintiff, Monsanto Company (hereinafter "Monsanto"), by and through its undersigned counsel, and for its Complaint at law against Lionel R. Hunt and John W. Hunt, III (referred to collectively as "the Hunts" or "defendants"), makes the following allegations:

PLAINTIFF

1. Monsanto is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri. It is authorized to do and is doing business in Nebraska and this judicial district.

DEFENDANT

2. The defendant, Lionel R. Hunt, is an individual who has attained the age of majority and is a resident and domiciliary of Robeson County, North Carolina.

3. The defendant, John W. Hunt, III, is an individual who has attained the age of majority and is a resident and domiciliary of Robeson County, North Carolina

JURISDICTION AND VENUE

4. Subject matter jurisdiction is conferred upon this court pursuant to 28 U.S.C. § 1331, in that one or more of Monsanto's claims arise under the laws of the United States, as well as 28 U.S.C. § 1338, granting district courts original jurisdiction over any civil action regarding patents.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400, in that the defendants reside in this judicial district and a substantial part of the events giving rise to this claim for patent infringement occurred in this judicial district.

GENERAL ALLEGATIONS

6. Monsanto is in the business of developing, manufacturing, licensing and selling agricultural biotechnology, agricultural chemicals and other agricultural products. After the investment of substantial time, expense and expertise, Monsanto developed plant biotechnology that involves the transfer into crop seed a gene that causes the plant to be resistant to glyphosate based herbicides such as Roundup Ultra®¹ and/or Touchdown®.²

7. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready®³ soybeans.

8. Roundup Ultra® is a non-selective herbicide manufactured by Monsanto, which will cause severe injury or death to soybean varieties that do not contain the Roundup Ready® technology.

¹ Roundup Ultra® is a registered trademark of Monsanto Company.

² Touchdown® is registered trademark of Syngenta.

³ Roundup Ready® is a registered trademark of Monsanto Company.

9. Monsanto's Roundup Ready® technology is protected by U. S. Patent Numbers 5,633,435 and 5,352,605 which are attached hereto as Exhibits "A" and "B." These patents were issued and assigned to Monsanto prior to the events giving rise to this action.

10. Monsanto placed the required statutory notice that its Roundup Ready® technology was patented on the labeling of all bags containing Roundup Ready® soybean seed. In particular, each bag of Roundup Ready® soybean seed is marked with notice of U.S. Patent Nos. 5,633,435 and 5,352,605.

11. Monsanto licenses the use of Roundup Ready® seed technology to soybean producers at the retail marketing level through a limited use license agreement, commonly referred to as a Technology Agreement.

12. All authorized purchasers of Roundup Ready® soybeans are required to pay a license fee (otherwise referred to as a "technology fee") for each commercial unit of seed purchased.

13. Defendants planted brown bag soybeans during the 2001 growing season.

14. The fields planted with brown bag soybeans were later sprayed over-the-top with a herbicide. The herbicide symptomology exhibited by the crop and weeds was consistent with a glyphosate based herbicide such as Roundup Ultra®.

15. Under the terms of the Monsanto Technology Agreement, a purchaser/licensee is prohibited from saving, selling, reselling, or otherwise transferring any seed produced from the purchased seed for use as planting seed. The only permissible use of the patent protected seed allowed by the Monsanto Technology Agreement is to market the crop derived therefrom as a grain commodity.

16. Monsanto does not authorize the planting of saved (brown bag) Roundup Ready® soybeans.

17. Upon information and belief, Defendants planted saved Roundup Ready® soybeans in 2001 in contravention of Monsanto's patent rights.

18. Upon information and belief, Defendants knowingly, intentionally, and willfully planted saved Roundup Ready® soybeans without authorization from Monsanto and used such soybeans in violation of Monsanto's patent rights in those soybeans.

COUNT ONE - PATENT INFRINGEMENT - PATENT NO. 5,633,435

19. Each and every allegation set forth in the above numbered paragraphs is hereby incorporated by reference just as if it was explicitly set forth hereunder.

20. On May 27, 1997, United States Patent No. 5,633,435 was duly and legally issued to plaintiff for an invention of Glphosate-Tolerant-5-Enolpyruvylshikimate-3-Phosphate Synthases and since that date, plaintiff has been and still is the owner of that patent. This invention relates to plant molecular biology, and it specifically covers, among other things, the progeny of Roundup Ready® soybeans and the application of glyphosate to a glyphosate tolerant crop. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by U. S. Patent No. 5,633,435 on the labeling of all bags containing Roundup Ready® soybean seed.

21. The conduct of the defendants as set forth above constitutes the use of patented invention within the United States during the term of Patent No. 5, 633,435, all in violation of 35 U.S.C. §271. Accordingly, Monsanto has a right of civil action pursuant to 35 U.S.C. §281.

22. The defendants have infringed and may still continue to infringe U. S. Patent No. 5,633,435 by making, selling, offering for sale, using or otherwise transferring Roundup Ready®

soybeans embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

23. Pursuant to 35 U.S.C. § 283, Monsanto is entitled to injunctive relief in accordance with the principals of equity to prevent the further infringement of rights secured by its patents.

24. Pursuant to 35 U.S.C. §284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to the infringer. Further, in light of defendants' knowing, willful and deliberate infringement of Monsanto's patent rights, damages should be trebled pursuant to 35 U.S.C. §284. Monsanto is also entitled to reimbursement of its attorneys' fees pursuant to 35 U.S.C. §285 because this is an exceptional case.

COUNT TWO - PATENT INFRINGEMENT - PATENT NO. 5,352,605

25. Each and every material allegation set forth in the above numbered paragraphs is hereby incorporated by reference just as if it were explicitly set forth hereunder.

26. On October 4, 1994, United States Patent No. 5,352,605 was duly and legally issued to plaintiff for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, plaintiff has been and still is the owner of that patent. This invention is in the fields of genetic engineering and plant biology.

27. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by U.S. Patent No. 5,352,605 on the labeling of all bags containing Roundup Ready® soybean seed.

28. Defendants' conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent No. 5,352,605, all in violation

of 35 U.S.C. § 271, and Monsanto therefore has a right of civil action against the defendants pursuant to 35 U.S.C. § 281.

29 The defendants have and may still be infringing that patent by making, selling, offering for sale, using, or otherwise transferring Roundup Ready® soybeans embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

30. Pursuant to 35 U.S.C. § 283, Monsanto is entitled to injunctive relief in accordance with the principles of equity to prevent the infringement of rights secured by its patents.

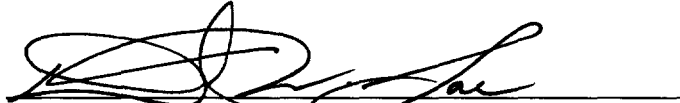
31. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to the infringer. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 284 in light of defendants' knowing, willful, deliberate and conscious infringement of the patent rights at issue.

32. The infringing activities of defendant bring this case within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, thus Monsanto requests the award of reasonable attorney's fees.

WHEREFORE, Monsanto Company prays that process and due form of law issue to Lionel R. Hunt and John W. Hunt, III, requiring them to appear and answer, all and singular, the allegations of this Complaint and that, after due proceedings are had, there be judgment entered in favor of Monsanto Company, and against the defendants, providing the following remedies to Monsanto:

- a. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for defendants' patent infringement;
- b. Trebling of damages awarded Monsanto for the willful infringement of its patents, together with reasonable attorneys' fees;
- c. Entry of an order prohibiting defendants from planting, transferring or selling the infringing articles to a third party;
- d. Entry of a permanent injunction to prevent defendants from using, cleaning or planting any of Monsanto's proprietary seed biotechnology without express written authorization from Monsanto; and
- e. Such other relief as the Court may deem appropriate.

Respectfully submitted, this the 22nd day of January, 2002.



James T. Williams, Jr. (N.C. State Bar # 4759)
David W. Sar (N.C. Bar #23533)

OF COUNSEL:

BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD, L.L.P. *Attorneys for Monsanto Company*
2000 Renaissance Plaza
230 North Elm Street
Greensboro, North Carolina 27401
Telephone: (336) 373-8850
Facsimile: (336) 378-1001

Miles P. Clements, T.A. (La. #4184)
Wayne K. McNeil (La. #20956)
Joel E. Cape (La. #26001)
Camille R. Jackson (La. #26485)
FRILOT, PARTRIDGE, KOHNKE & CLEMENTS, L.C.
3600 Energy Centre, 1100 Poydras St.
New Orleans, LA 70163-3600
Telephone: (504) 599-8000
Facsimile: (504) 599-8100