

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

|                                  |   |                            |
|----------------------------------|---|----------------------------|
| BASF CORPORATION,                | ) |                            |
|                                  | ) |                            |
| Plaintiff,                       | ) |                            |
|                                  | ) |                            |
| v.                               | ) |                            |
|                                  | ) |                            |
| WILLOWOOD, LLC, WILLOWOOD        | ) | Civil Action _____         |
| USA, LLC, WILLOWOOD LIMITED, and | ) |                            |
| GREENFIELDS MARKETING, LIMITED   | ) | <b>JURY TRIAL DEMANDED</b> |
|                                  | ) |                            |
| Defendants.                      | ) |                            |

**COMPLAINT**

Plaintiff BASF Corporation ("Plaintiff" or "BASF"), by and through its undersigned counsel, hereby brings this Complaint against Willowood, LLC, Willowood USA, LLC, Willowood Limited and Greenfields Marketing, Limited (collectively, "Willowood"), and alleges as follows:

**PARTIES**

1. Plaintiff BASF Corporation is a company organized and existing under the laws of Delaware, having a business address at 100 Park Avenue, Florham Park, New Jersey.
2. Upon information and belief, Defendant Willowood, LLC is a limited liability company organized and existing under the laws of the State of Oregon, with its principal place of business at 385 Interlocken Crescent, Broomfield, Colorado 80021.
3. Upon information and belief, Defendant Willowood USA, LLC is a limited liability company organized and existing under the laws of the State of Oregon, with its principal place of business at 385 Interlocken Crescent, Broomfield, Colorado 80021.

4. Upon information and belief, Defendant Willowood Limited is a Hong Kong limited company with its principal place of business at 17th Floor, Seaview Plaza, Shau Kei Wan Road, Shau Kei Wan, New Territories 283, Hong Kong.

5. Upon information and belief, Defendant Greenfields Marketing, Limited is a United Arab Emirates company with its principal place of business at Office M2, BurDubai, Al Hamriya, P.O. Box 115887, Dubai, United Arab Emirates.

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

6. This is a civil action for infringement of United States Patent Nos. 7,816,392 ("the '392 patent") entitled "Crystalline Modifications to Pyraclostrobin" and 6,133,451 entitled "Method For Producing 2-(3-Pyrazolyl-Oxymethylene)Nitrobenzenes" ("the '451 patent") arising under the patent laws of the United States, 35 U.S.C. § 1 et seq.

#### **JURISDICTION AND VENUE**

7. This Court has exclusive jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Willowood USA, LLC, Willowood, LLC, Willowood Limited and Greenfields Marketing, Limited because they have committed acts of patent infringement in the State of Colorado, engaged in systematic and continuous contacts in the State of Colorado, regularly transact business within the State of Colorado, and regularly and purposefully avail themselves of the benefits of the State of Colorado by, among other things, marketing, using, shipping, offering to sell or selling, or causing others to use, offer to sell, or sell, agrochemical products in the State of Colorado, and deriving substantial revenue from such activities.

9. Upon information and belief, Willowood, LLC sought and obtained registrations from the U.S. Environmental Protection Agency ("EPA") for fungicides Willowood Pyrac 2SC and Willowood Pyrac 2EC, which are among the products at issue in this litigation.

10. Upon information and belief, Willowood, LLC holds a registration in the State of Colorado with the Colorado Department of Agriculture for Willowood Pyrac 2EC.

11. Upon information and belief, Willowood USA, LLC and/or Willowood, LLC sell and/or offer for sale Willowood Pyrac 2EC throughout the United States, including in the State of Colorado, directly and/or through distributors such as Agricultural Chemical Solutions, Inc. and Reichman Sales and Service.

12. Upon information and belief, Willowood, LLC also sought and obtained registrations from the EPA for numerous other crop protection products including one or more of the following: Willowood Clomazone 3ME, Willowood Clomazone 5MEG, Willowood Clomazone ME, Willowood Azoxystrobin 2.08SC, Willowood Mesotrione 480SC, Willowood Mesotrione 4SC, Willowood Bifenazate 4SC, Willowood Bifenazate 50WDG, Willowood Metribuzin 4SC, Willowood Metribuzin 75DF, and Willowood Imazethapyr 2SL.

13. Upon information and belief, Willowood, LLC also holds registrations in the State of Colorado with the Colorado Department of Agriculture for crop protection products including one or more of the following: Willowood Lambda-Cy 1EC, Willowood Clethodim 2EC, Willowood Imidacloprid 4SC, Willowood Propicon 3.6EC, Willowood Paraquat 35L, Willowood Ethofumesate 4SC, Willowood Azoxy 2SC, Willowood Oxyflo 2EC, Willowood Glufosinate 280SL, Willowood Clomazone 3ME, Willowood Abamectin 0.15EC, Willowood Azoxyprop Xtra, Willowood Glufosinate 280SL (OT), Willowood Sulfentrazone 4SC,

Willowood Mesotrione 4SC, Willowood Teb 3.6SC, Willowood Pronamide 3.3 SC, and Willowood Pyrac 2EC.

14. Upon information and belief, Willowood USA, LLC and/or Willowood, LLC sell and/or offer for sale one or more of the foregoing crop protection products in the State of Colorado.

15. Upon information and belief, Willowood USA, LLC is the sole member of Willowood, LLC. Upon information and belief, Willowood, LLC is a wholly owned subsidiary of Willowood USA, LLC.

16. Upon information and belief, Willowood USA, LLC is a wholly owned subsidiary of Willowood Limited. Willowood Limited's website includes a document stating that Willowood Limited is an "[i]ntegrated solution provider to the Agro-Chemical Industry," that it has an "extensive sourcing network in Asia," and that its "[m]arketing network extended to" a large number of countries around the world, including the United States. On the same document, Willowood Limited lists Willowood USA, LLC as its "U.S.A. Office" and provides an address, phone and fax numbers and a link for Willowood USA, LLC. A true and correct print-out from Willowood Limited's website is attached to this Complaint as Exhibit A.

17. Upon information and belief, Willowood Limited established and used Willowood USA, LLC and/or Willowood, LLC as a distributor for sales to the United States market.

18. Upon information and belief, Willowood Limited is involved in importing or otherwise supplying crop protection products to Willowood USA, LLC, and/or Willowood, LLC throughout the United States including in the State of Colorado.

19. Upon information and belief, Willowood USA, LLC, Willowood, LLC, and Willowood Limited (1) sought and received approval from various State Departments of Agriculture including the Colorado Department of Agriculture, to sell Willowood Pyrac 2EC, which was obtained through violation of the '392 patent; (2) are offering to sell, selling, using and/or importing Willowood Pyrac 2EC, in violation of the '392 patent, throughout the United States including the State of Colorado; (3) are offering to sell, selling, using and/or importing Willowood Pyrac 2EC in violation of the '451 patent, throughout the United States including the State of Colorado.

20. On September 2, 2016, the EPA issued a registration for Willowood Pyrac 2EC under EPA registration number 87290-64. The active ingredient in Willowood Pyrac 2EC is pyraclostrobin. A true and correct copy of the Willowood Pyrac 2EC Registration as approved by the EPA on September 2, 2016, including the product label, is attached to this Complaint as Exhibit B. An amended product label as approved by the EPA on March 20, 2017 is attached to this Complaint as Exhibit C.

21. The amended product label included in the Willowood Pyrac 2EC Registration (Exhibit C) states that Willowood Pyrac 2EC is "manufactured for: Willowood, LLC" and that "Willowood, LLC or Seller offer this product ... subject to the foregoing Conditions of Sale and Limitation of Warranty and Liability...."

22. On or before December 14, 2017, the Colorado Department of Agriculture approved a registration for Willowood Pyrac 2EC for use as a fungicide in the State of Colorado.

23. Upon information and belief, Willowood USA, LLC, and Willowood, LLC are selling and/or offering to sell Willowood Pyrac 2EC throughout the United States,

including the State of Colorado, directly and/or through distributors such as Agricultural Chemical Solutions, Inc. and Reichman Sales and Service.

24. Upon information and belief, Willowood USA, LLC has acquired or is acquiring a 100% ownership interest in Greenfields Marketing, Limited ("Greenfields").

25. Upon information and belief, Greenfields has engaged in systematic and continuous contacts in the State of Colorado, regularly transacts business within the State of Colorado, and regularly and purposefully avail itself of the benefits of the State of Colorado by, among other things, marketing, shipping, offering to sell and/or selling, or causing others to use, offer to sell, or sell, Greenfields agrochemical technical products for use in the formulation of end-use products for distribution in the State of Colorado, and deriving substantial revenue from such activities.

26. Upon information and belief, Greenfields holds the following pesticide technical product registrations in the EPA: Clomazone Technical, Azoxystrobin Technical, Mesotrione Technical, GM Bifenazate Technical, Metribuzin Technical, Imazethapyr Technical, and Lactofen Technical. Upon information and belief, Greenfields has been or is involved in importing or otherwise supplying pesticide technical products to pesticide end-use product formulators for formulating pesticide end-use products for distribution throughout the United States, including in the State of Colorado, and derives substantial revenue from these activities.

27. Upon information and belief, Greenfields sought approval from the EPA to market and sell pyraclostrobin technical product ("Willowood Pyraclostrobin Technical") to formulators for formulating end-use products for distribution throughout the United States, including in Colorado.

28. On August 18, 2016, the EPA issued a registration for Willowood Pyraclostrobin Technical under EPA registration number 89966-4 ("Willowood Technical Registration") to Greenfields. A true and correct copy of the Willowood Technical Registration dated August 18, 2016, including the product label, is attached to this Complaint as Exhibit D. The active ingredient for Willowood Pyraclostrobin Technical is pyraclostrobin.

29. Upon information and belief, the ownership of EPA registration number 89966-4 was transferred from Greenfields to Willowood USA, LLC on June 27, 2017 and upon transfer, the registration was assigned EPA registration number 93088-1. Upon information and belief, the product label remains the same as the one approved by the EPA on August 18, 2016.

30. The product label included in the Willowood Technical Registration (Exhibit D) states that Willowood Pyraclostrobin Technical contains "99.0%" of pyraclostrobin, is "[m]anufactured for: Greenfields Marketing, Ltd." and is "For Use In Formulating Fungicides Only."

31. This Court may also exercise jurisdiction over Willowood Limited pursuant to Fed. R. Civil P. 4(k)(2) because (i) Plaintiff's claims arise under federal law; (ii) Willowood Limited is a foreign defendant not subject to general jurisdiction in the courts of any state, and (iii) Willowood Limited has sufficient contacts with the United States as a whole, including but not limited to supplying agrochemical products for sale throughout the United States, such that this Court's exercise of jurisdiction over Willowood Limited satisfies due process.

32. This Court may also exercise jurisdiction over Greenfields pursuant to Fed. R. Civil P. 4(k)(2) because (i) Plaintiff's claims arise under federal law; (ii) Greenfields is a

foreign defendant not subject to general jurisdiction in the courts of any state, and (iii) Greenfields has sufficient contacts with the United States as a whole, including but not limited to supplying agrochemical technical products for use in formulating end-use products for distribution throughout the United States, such that this Court's exercise of jurisdiction over Greenfields satisfies due process.

33. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

**BASF'S INTELLECTUAL PROPERTY**  
**INCLUDING THE '392 and '451 PATENTS**

34. BASF and its affiliated companies are in the business of researching, developing, testing, and/or selling numerous types of products and technologies in the agrochemical field.

35. BASF and its affiliated companies have spent substantial resources researching and ultimately developing pyraclostrobin, a break-through fungicidal chemical for use (1) in disease control and plant health in a variety of plants, (2) as a seed treatment for disease control and plant health in a variety of crops, and (3) as a drench for soil borne disease control and improved plant health in production ornamentals. Since its first commercial introduction, BASF and its affiliated companies have manufactured, marketed, and sold pyraclostrobin end-use products under various brands, including Insignia<sup>®</sup> fungicide, Insignia<sup>®</sup> SC Intrinsic<sup>™</sup> brand fungicide, Cabrio<sup>®</sup> EG fungicide, Headline<sup>®</sup> Fungicide, Stamina<sup>®</sup> fungicide seed treatment, and Empress<sup>™</sup> Intrinsic<sup>™</sup> brand fungicide. These products have been widely adopted and commercially successful.



36. To protect its intellectual property, BASF applied for and obtained patents directed to the pyraclostrobin chemical compound, polymorphs of pyraclostrobin, various processes for manufacturing the pyraclostrobin chemical compound and polymorphs, and synergistic mixtures comprising pyraclostrobin and one or more agrochemical actives, including the '392 patent and the '451 patent.

37. On October 19, 2010, the '392 patent, titled "Crystalline Modifications to Pyraclostrobin," was duly and legally issued by the United States Patent and Trademark Office ("USPTO"). A true and correct copy of the '392 patent is attached to this Complaint as Exhibit E. BASF is the exclusive licensee of the '392 patent and has the right to bring suit for infringement and to recover for all past, present and future damages.

38. The '392 patent describes various forms of pyraclostrobin, including crystalline modifications I, II, III and IV. The claims of the '392 patent are directed to crystalline modification IV, as well as compositions based on the same, and processes for making and a method of using the same for controlling phytopathogenic fungi.

39. Claim 1 of the '392 patent is directed to crystalline modification IV of pyraclostrobin showing at least three of five enumerated reflexes in an X-ray powder diffractogram measured at 25 °C. Claim 2 depends from claim 1, further adding the limitation that the crystalline modification IV possesses a melting point in the range from 62 to 72 °C. Claim 3 depends from claim 1, further adding the limitation that the pyraclostrobin content is at least 98% by weight.

40. The '392 patent discloses that crystalline modification IV is particularly suitable for preparing crop protection compositions and for preparing aqueous suspension

concentrates. *See, e.g.*, '392 patent at 10:55-58. The advantages associated with the use of crystalline modification IV include, but are not limited to, the surprising improvement in the storage stability of suspension concentrates if they are prepared using crystalline modification IV as compared to using another form of pyraclostrobin. *See, e.g., id.* at 22:25 – 25:40.

41. On October 17, 2000, the '451 patent, titled "Method for Producing 2-(3-Pyrazolyl-Oxymethylene) Nitrobenzenes," was duly and legally issued by the USPTO. A true and correct copy of the '451 patent is attached as Exhibit F. BASF is the exclusive licensee of the '451 patent and has the right to bring suit for infringement and to recover for all past, present and future damages.

42. The '451 patent describes processes for preparing 2-(3-pyrazolyloxymethylene) nitrobenzene derivatives (Formula I), which include an intermediate for preparing pyraclostrobin. The claims of the '451 patent are directed to these processes.

43. Claim 1 of the '451 patent is directed to a process for preparing 2-(3-pyrazolyloxymethylene) nitrobenzene derivatives (Formula I) by (i) brominating an o-nitrotoluene (Formula II) to form an o-nitrobenzyl bromide (Formula III) in the presence of a nonpolar, aprotic solvent, and (ii) subsequently reacting the resulting solution of Formula III with a 3-hydroxypyrazole (Formula IV) in the presence of a base, wherein the solution of Formula III resulting from the bromination step (i) is reacted further with Formula IV, in the solvent used, directly without intermediate isolation of Formula III.

44. The '451 patent discloses that the claimed process is particularly "industrially applicable" because it avoids the "difficult operating and safety problems in

handling [Formula] III," which include "lachrymatory and mucosal irritant effect of [Formula] III and the thermal instability of [Formula] III." *See, e.g.*, '451 patent at 2:24-44.

45. The '451 patent discloses that the claimed process is particularly "industrially applicable" also because "[s]urprisingly, the novel process provides the required compound [Formula] I in good yield and in excellent purity." *See id.* at 2:51-3:21.

### **BASF'S REGULATORY REGISTRATIONS**

46. On September 30, 2002, BASF received a registration from the EPA for its pyraclostrobin technical product ("BASF Pyraclostrobin Technical") under EPA Registration No. 7969-185 for use in fungicide formulations. The active ingredient in BASF Pyraclostrobin Technical is pyraclostrobin.

47. On October 3, 2007, BASF received a registration from the EPA for its "BAS 500 F Crystalline" product ("BAS 500 F Crystalline") under EPA Registration No. 7969-258 for use in fungicide formulations. The active ingredient in BAS 500 F Crystalline is pyraclostrobin.

48. Beginning on September 30, 2002 and over the next 10 years, BASF has received several registrations from the EPA for its end-use products comprising pyraclostrobin as the sole fungicidal ingredient under EPA Registration Nos. 7969-184 (Insignia<sup>®</sup> fungicide), 7969-290 (Insignia<sup>®</sup> SC Intrinsic<sup>™</sup> brand fungicide), 7969-187 (Cabrio<sup>®</sup> EG fungicide), 7969-186 (Headline<sup>®</sup> fungicide), 7969-266 (Stamina<sup>®</sup> fungicide seed treatment), and 7969-355 (Empress<sup>™</sup> Intrinsic<sup>™</sup> brand fungicide).

49. BASF has applied for and received numerous registrations from state authorities throughout the United States for its end-use products described in Paragraph 35 above.

#### **WILLOWOOD'S REGULATORY REGISTRATIONS**

50. On August 18, 2016, the EPA issued Willowood Technical Registration for Willowood Pyraclostrobin Technical under EPA registration number 89966-4 to Greenfields (Exhibit D). *See* Paragraph 28 above.

51. Upon information and belief, the ownership of the Willowood Technical Registration has been transferred from Greenfields to Willowood USA, LLC and, upon transfer, the registration received EPA registration number 93088-1. *See* Paragraph 29 above. Upon information and belief, the product label included in the Willowood Technical Registration (Exhibit D) states that the Willowood Pyraclostrobin Technical "may only be used to formulate fungicide end-use products...."

52. On May 24, 2016, the EPA issued a registration for Willowood Pyrac 2SC under EPA registration number 87290-63 ("Willowood Pyrac 2SC Registration"). A true and correct copy of the Willowood Pyrac 2SC Registration as approved by the EPA on May 24, 2016, including the product label, is attached to this Complaint as Exhibit G. An amended product label as approved by the EPA on April 25, 2017 is attached to this Complaint as Exhibit H. Both product labels state that Willowood Pyrac 2SC is for use in disease control and plant health in a variety of crops.

53. Upon information and belief, the active ingredient in Willowood Pyrac 2SC includes the same form of pyraclostrobin that is in Willowood Pyraclostrobin Technical.

54. On September 2, 2016, the EPA approved the Willowood Pyrac 2EC Registration under EPA registration number 87290-64. *See* Paragraph 20 above. The product label included in the Willowood Pyrac 2EC Registration, as updated on March 20, 2017 (Exhibits B and C), states that Willowood Pyrac 2EC is for use in disease control and plant health in a variety of crops.

55. Willowood has been seeking registrations of its Willowood Pyrac 2EC with numerous state regulatory authorities. Upon information and belief, all of Willowood's applications for registrations of its Willowood Pyrac 2EC with state authorities were submitted on or after September 2, 2016. Willowood has received registrations for Willowood Pyrac 2EC at least in thirty (30) states including Colorado.

56. Willowood Pyrac 2EC comprises pyraclostrobin as the active ingredient.

57. At the time Willowood received the Willowood Pyrac 2EC Registration, other than the Willowood Pyraclostrobin Technical, BASF was the only registered source of a pyraclostrobin technical product for use in fungicide formulations.

58. Upon information and belief, Willowood uses Willowood Pyraclostrobin Technical for formulating Willowood Pyrac 2EC.

59. Upon information and belief, Willowood Pyraclostrobin Technical has no substantial use other than for formulating Willowood Pyrac 2EC or Willowood Pyrac 2SC.

60. The EPA registrations for Willowood Pyrac 2EC and Willowood Pyraclostrobin Technical require the registrants to satisfy the data requirements pursuant to, *inter alia*, 7 U.S.C. § 136a(c). Willowood is seeking to satisfy its data requirements by compensating BASF, the original data submitter, for the use of BASF's data on pyraclostrobin.

**ACTS GIVING RISE TO THIS ACTION**

61. Upon information and belief, Willowood directed Analytical & Regulatory Chemistry, Inc. ("ARC") to conduct physical and chemical characterization of pyraclostrobin technical product on Willowood's behalf in or around 2015. Upon information and belief, Willowood supplied Willowood Pyraclostrobin Technical to ARC in or around 2015. Upon information and belief, ARC is based in Sumter, South Carolina and tested Willowood Pyraclostrobin Technical in the United States in or around 2015 under Willowood's direction.

62. ARC's study of Willowood Pyraclostrobin Technical resulted in the preparation of an unpublished study report titled "Physical and Chemical Characteristics of Pyraclostrobin Technical" in 2015. Upon information and belief, Willowood submitted the unpublished study report (identified by document number 49750305) in support of its request for registration of Willowood Pyraclostrobin Technical. Upon information and belief, the submission of the unpublished study report, among other documents, resulted in EPA's approval of Willowood Technical Registration.

63. Upon information and belief, Willowood directed ARC to conduct physical and chemical characterization of Willowood Pyrac 2SC on Willowood's behalf in or around 2015. Upon information and belief, Willowood supplied Willowood Pyrac 2SC to ARC in or around 2015. Upon information and belief, ARC tested Willowood Pyrac 2SC in the United States in or around 2015 under Willowood's direction.

64. ARC's study of Willowood Pyrac 2SC resulted in the preparation of unpublished study reports titled (i) "Product Chemistry and Composition, Description of the Materials Used, Description of the Formulation Process, Discussion of the Formation of

Impurities, Certified Limits, and Analytical Methods to Verify Certified Limits for Willowood Pyrac 2SC," (ii) "Physical and Chemical Characteristics of Willowood Pyrac 2 SC: Final Report," and (iii) "Storage Stability and Corrosion Characteristics of Willowood Pyrac 2 SC: Final Report." Upon information and belief, Willowood submitted the unpublished study reports (identified by document numbers 49846401, 49846402 and 49846403, respectively) in support of its request for registration of Willowood Pyrac 2SC. Upon information and belief, the submission of the unpublished study report, among other documents, resulted in EPA's approval of Willowood Pyrac 2SC Registration.

65. Since July 15, 2016, BASF has engaged in ongoing communications with Willowood about Willowood Technical Registration, Willowood Technical Pyraclostrobin and Willowood's end-use pyraclostrobin products in relation to the claims of the '392 patent. Willowood has had actual knowledge of the '392 patent, including BASF's accusations of infringement, no later than July 15, 2016.

66. In a letter dated November 18, 2016, Willowood stated that "Willowood's testing of the technical pyraclostrobin used to make its Pyrac 2SC has not demonstrated to Willowood's satisfaction that it avoids the claim limitations of the '392 Patent."

67. To date, BASF has not received a sample of the technical product used in making Willowood Pyrac 2SC despite the fact that BASF has made multiple requests for samples since July 15, 2016, and further despite the fact that Willowood, in a letter dated August 26, 2016, stated that Willowood would provide samples of its Pyrac 2SC product and pyraclostrobin technical to BASF if Willowood determined from their testing that, in their opinion, their products do not meet the requirements of the '392 patent.

68. In a letter dated April 3, 2017, Willowood stated that "this letter will inform you that Willowood intends to begin selling Pyrac 2EC in the United States, effective immediately."

69. Upon information and belief, the pyraclostrobin technical Willowood uses to produce Willowood Pyrac 2EC is identical with Willowood Pyraclostrobin Technical approved by the EPA under the Willowood Technical Registration.

70. Given the fact that (i) Willowood has had a reasonable opportunity to conduct its investigations but has failed to provide either samples or testing results; (ii) Willowood's testing as of November 18, 2016 had not demonstrated to Willowood's satisfaction that its pyraclostrobin technical used to make Willowood Pyrac 2SC avoids the claim limitations of the '392 patent; (iii) Willowood owns only one EPA registration for pyraclostrobin technical (*i.e.*, Willowood Technical Registration) and has not acquired a license to rely on the registration held by the only other holder of EPA registration for pyraclostrobin technical (*i.e.*, BASF), and (iv) crystalline modification IV, as claimed in the '392 patent, is particularly suitable for making crop protection products (*see e.g.*, paragraph 40), upon information and belief, the pyraclostrobin technical used in making Willowood Pyrac 2EC meets all of the limitations of at least one claim of the '392 patent, including claims 1-3.

71. On information and belief, Willowood incorporated, referenced to, or otherwise relied on the ARC study report of Willowood Pyraclostrobin Technical for each of its applications to state authorities to register Willowood Pyrac 2EC, each of which were submitted after Willowood received notice of BASF's infringement allegations concerning the '392 patent.



72. Willowood has knowledge of the '451 patent, including BASF's accusations of infringement, no later than September 15, 2017.

73. In a letter dated October 3, 2017, Willowood conceded that the process used in making its Willowood Pyraclostrobin Technical involves the formation and subsequent use of Formula III as recited in the '451 patent. Upon information and belief, the process used in making Willowood Pyraclostrobin Technical involves the bromination of Formula II to Formula III in the presence of a nonpolar, aprotic solvent as recited in claim 1 of the '451 patent.

74. Upon information and belief, the process used in making Willowood Pyraclostrobin Technical involves the reaction of Formula III with Formula IV in the presence of a base as recited in claim 1 of the '451 patent.

75. BASF acquired a commercial sample of Willowood Pyrac 2EC, which was offered for sale in the United States. BASF tested the sample for impurities. The testing revealed that Willowood Pyrac 2EC contains an impurity identified by the name methyl N-methoxy N-(2-methylphenyl)carbamate and CAS No. 151827-82-6 ("MMC"). The presence of MMC evidences that process used in making Willowood Pyraclostrobin Technical involves the reaction of Formula III with Formula IV, wherein the solution of Formula III resulting from the bromination step is reacted further with Formula IV, in the solvent used, directly without intermediate isolation of Formula III as recited in claim 1 of the '451 patent.

76. Upon information and belief, Willowood has imported, offered to sell, sold or used in the United States a product containing pyraclostrobin that is made by the process claimed in the '451 patent.

**COUNT I**

**(Willowood's Infringement of the '392 patent)**

77. BASF re-allege paragraphs 1-76 as if fully set forth herein.

78. The '392 patent is valid and enforceable.

79. Upon information and belief, Willowood Pyraclostrobin Technical meets each and every claim limitation of at least claims 1, 2 and 3. *See* paragraph 70 above.

80. Upon information and belief, Willowood Pyrac 2SC meets each and every claim limitation of claims 1, 2 and 3. *See* paragraphs 53 and 70 above.

81. Willowood has infringed at least claims 1-3 of the '392 patent in violation of 35 U.S.C. § 271(a) by importing Willowood Pyraclostrobin Technical into the United States, making the same in the United States, using the same in the United States and/or supplying the same to ARC for purposes of testing in support of Willowood's EPA applications for registration of pyraclostrobin, and by making, using, offering to sell, selling and/or importing Willowood Pyrac 2EC based on the resulting EPA registrations.

82. Willowood has infringed at least claims 1-3 of the '392 patent in violation of 35 U.S.C. § 271(a) by importing Willowood Pyrac 2SC into the United States, making the same in the United States, using the same in the United States and/or supplying the same to ARC for purposes of testing in support of Willowood's EPA applications for registration of pyraclostrobin, and by making, using, offering to sell, selling and/or importing Willowood Pyrac 2EC based on the resulting EPA registrations.

83. Willowood has infringed and continues to infringe at least claims 1-3 of the '392 patent in violation of 35 U.S.C. § 271(a) by submitting applications to state authorities

to register Willowood Pyrac 2EC incorporating, referencing, or otherwise relying on the ARC study report of Willowood Pyraclostrobin Technical for each of its applications to state authorities to register Willowood Pyrac 2EC, each of which were submitted after Willowood received notice of BASF's infringement allegations concerning the '392 patent, and by making, using, offering to sell, selling and/or importing Willowood Pyrac 2EC based on the resulting state registrations.

84. BASF has been, and continues to be, damaged by Willowood's infringement of the '392 patent as a result of (i) the improper head start Willowood realized in developing Willowood Pyraclostrobin Technical, supporting its application for Willowood Technical Registration, and obtaining such registration before the expiration of the '392 patent; (ii) the improper head start Willowood realized in developing Willowood Pyrac 2SC, supporting its application for Willowood Pyrac 2SC Registration, and obtaining such registration before the expiration of the '392 patent, and (iii) the improper head start Willowood realized in developing Willowood Pyrac 2EC, supporting its application for Willowood Pyrac 2EC Registration, and obtaining such registration and numerous state registrations before the expiration of the '392 patent. The amount of damages to be determined at trial.

85. BASF has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Willowood's infringement of the '392 patent is enjoined by this Court.

86. Upon information and belief, Willowood's infringement of the '392 patent has been willful.

**COUNT II**

**(Willowood's Infringement of the '451 patent)**

87. BASF re-allege paragraphs 1-86 as if fully set forth herein.

88. The '451 patent is valid and enforceable.

89. Upon information and belief, the process Willowood uses, by itself or through a third-party it owns or controls, to manufacture an intermediate having the structure identified as Formula I in the '451 patent, meets each and every limitation of at least claim 1.

90. Willowood has infringed at least claim 1 of the '451 patent in violation of 35 U.S.C. § 271(g) by importing Willowood Pyrac 2EC into the United States, offering to sell, selling and/or using the same in the United States.

91. BASF has been and continues to be damaged by Willowood's infringement of the '451 patent in an amount to be determined at trial.

92. BASF has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Willowood's infringement of the '451 patent is enjoined by this Court.

93. Upon information and belief, Willowood's infringement of the '451 patent has been willful.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff BASF respectfully requests that this Court enter judgment that:

A. Willowood's importation of Willowood Pyraclostrobin Technical into the United States, making the same in the United States, supplying the same to ARC, and/or

directing ARC to conduct testing on the same on Willowood's behalf constituted infringement of the '392 patent by Willowood under 35 U.S.C. § 271(a) ;

B. Willowood's importation of Willowood Pyrac 2SC into the United States, making the same in the United States, supplying the same to ARC, and/or directing ARC to conduct testing on the same on Willowood's behalf constituted infringement of the '392 patent by Willowood under 35 U.S.C. § 271(a);

C. Willowood's submissions of applications to register Willowood Pyrac 2EC with state regulatory authorities constituted infringement of the '392 patent by Willowood under 35 U.S.C. § 271(a);

D. Willowood's importation of Willowood Pyrac 2EC into the United States, offering to sell, selling and/or using the same constitutes infringement of the '392 patent by Willowood under 35 U.S.C. § 271(a);

E. Willowood's importation of Willowood Pyrac 2EC into the United States, offering to sell, selling and/or using the same constitutes infringement of the '451 patent by Willowood under 35 U.S.C. § 271(g);

F. Willowood and its officers, directors, agents, employees, affiliates, divisions, subsidiaries, parents and all others acting in concert or privity with them, be permanently enjoined from further acts of infringement of the '392 patent and '451 patent pursuant to 35 U.S.C. § 283;

G. Willowood and its officers, directors, agents, employees, affiliates, divisions, subsidiaries, parents and all others acting in concert or privity with them, be permanently enjoined from making, using, selling, offering for sale, or importing its

pyraclostrobin products described in EPA registrations numbers 87290-63, 87290-64, 89966-4, and 930881, and in all related registrations with state regulatory authorities.

H. Plaintiff be awarded all damages or other monetary relief adequate to compensate BASF for Willowood's infringement of the '392 patent and '451 patent pursuant to at least 35 U.S.C. § 284, including, but not limited to, pre-judgment and post-judgment interest, compensatory damages and royalties for future damages in an amount to be determined by the Court;

I. This case is exceptional under 35 U.S.C. § 285;

J. Plaintiff be awarded the attorney fees, costs, and expenses that they incur prosecuting this action; and

K. Plaintiff be awarded such other and further relief as this Court deems just and proper.

Dated: February 1, 2018

Respectfully submitted,

/s/ Frederick J. Baumann

Frederick J. Baumann

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