

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

BASF PLANT SCIENCE, LP,

Plaintiff,

v.

**COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH
ORGANISATION,**

Defendant.

C.A. No. 2:17-cv-00503-HCM-LRL

Patent Case

Jury Trial Demanded

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff BASF Plant Science, LP brings this action against Defendant Commonwealth Scientific and Industrial Research Organisation ("CSIRO") for a Declaratory Judgment of Invalidity of United States Patent Nos. 7,807,849; 8,106,226; 8,288,572; 8,575,377; 8,853,432; and 9,458,410. Plaintiff alleges as follows:

THE PARTIES

1. BASF Plant Science, LP ("BASF Plant Science") is a Delaware registered limited partnership, having a principal place of business at 100 Park Avenue, Florham Park, New Jersey.

2. On information and belief, CSIRO is an Australian entity with a principal place of business at CSIRO Black Mountain Science and Innovation Park, Clunies Ross Street, Acton, ACT, Australia 2601.

JURISDICTION AND VENUE

3. This action arises under the Declaratory Judgment Act and the patent laws of the United States, 35 U.S.C. § 101 *et seq.* This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

4. CSIRO is subject to personal jurisdiction in this District pursuant to 35 U.S.C. §

293 because it is a patentee of the Patents-in-Suit as identified below, and on information and belief, have not filed in the Patent and Trademark Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the Patents-in-Suit (as defined herein) or rights thereunder.

5. CSIRO is not immune from the present suit under the Foreign Sovereign Immunities Act ("FSIA"). 28 U.S.C. §§ 1602, *et seq.* At a minimum, CSIRO has engaged in commercial activity in the United States, such that the commercial activity exception set forth in 28 U.S.C. § 1605(a) applies. Specifically, CSIRO is the assignee of the Patents-in-Suit and has engaged in the commercial activity of obtaining patents in the United States. Further, as detailed below, CSIRO expressly authorized its commercial business partner and proxy agent, Nuseed Americas, Inc. ("Nuseed Americas"), to enforce its patents by proffering a license to BASF Plant Science. Such activities constitute commercial activity within the meaning of the FSIA.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391, at least because CSIRO is subject to personal jurisdiction in this District.

BACKGROUND FACTS

Patents-in-Suit

7. United States Patent No. 7,807,849 ("the '849 Patent") is entitled "Synthesis of Long-Chain Polyunsaturated Fatty Acids by Recombinant Cells," and was issued by the United States Patent Office on October 5, 2010. The assignee identified on the face of the '849 Patent is CSIRO. A copy of the '849 Patent is attached as Exhibit A.

8. United States Patent No. 8,106,226 ("the '226 Patent") is entitled "Synthesis of Long-Chain Polyunsaturated Fatty Acids by Recombinant Cells," and was issued by the United States Patent Office on January 31, 2012. The '226 Patent is a continuation of the '849 Patent.

The assignee identified on the face of the '226 Patent is CSIRO. A copy of the '226 Patent is attached as Exhibit B.

9. United States Patent No. 8,288,572 ("the '572 Patent") is entitled "Synthesis of Long-Chain Polyunsaturated Fatty Acids by Recombinant Cells," and was issued by the United States Patent Office on October 16, 2012. The '572 Patent is a continuation of the '226 Patent, which in turn is a continuation of the '849 Patent. The assignee identified on the face of the '572 Patent is CSIRO. A copy of the '572 Patent is attached as Exhibit C.

10. United States Patent No. 8,575,377 ("the '377 Patent") is entitled "Synthesis of Long-Chain Polyunsaturated Fatty Acids by Recombinant Cell," and was issued by the United States Patent Office on November 5, 2013. The '377 Patent is a continuation of the '572 Patent, which in turn is a continuation of the '226 Patent, which in turn is a continuation of the '849 Patent. The assignee identified on the face of the '377 Patent is CSIRO. A copy of the '377 Patent is attached as Exhibit D.

11. United States Patent No. 8,853,432 ("the '432 Patent") is entitled "Synthesis of Long-Chain Polyunsaturated Fatty Acids by Recombinant Cell," and was issued by the United States Patent Office on October 7, 2014. The '432 Patent is a continuation of the '377 Patent, which in turn is a continuation of the '572 Patent, which in turn is a continuation of the '226 Patent, which in turn is a continuation of the '849 Patent. The assignee identified on the face of the '432 Patent is CSIRO. A copy of the '432 Patent is attached as Exhibit E.

12. United States Patent No. 9,458,410 ("the '410 Patent") is entitled "Synthesis of Long-Chain Polyunsaturated Fatty Acids by Recombinant Cell," and was issued by the United States Patent Office on October 4, 2016. The '410 Patent is a continuation of the '432 Patent, which in turn is a continuation of the '377 Patent, which in turn is a continuation of the '572

Patent, which in turn is a continuation of the '226 Patent, which in turn is a continuation of the '849 Patent. The assignee identified on the face of the '410 patent is CSIRO. A copy of the '410 Patent is attached as Exhibit F.

13. Collectively, the '849 Patent, the '226 Patent, the '572 Patent, the '377 Patent, the '432 Patent, and the '410 Patent are referred to herein as the "Patents-in-Suit."

14. The Patents-in-Suit are from the same family of patents and share virtually identical specifications and similar patent claims.

History of BASF Plant Science's and Cargill, Incorporated's Development of EPA+DHA Canola

15. BASF Plant Science is a pioneer in developing innovative plant biotechnology solutions for agriculture. Since 1998, BASF has pursued the development of a novel plant form which can synthesize long chain omega-3 polyunsaturated fatty acids ("LC-PUFAs"), docosahexaenoic acid ("DHA") and eicosapentaenoic acid ("EPA"). DHA and EPA are omega-3 fatty acids that support brain development and protect neurological function, and oily fish (*e.g.*, salmon, herring, and mackerel) is the most widely available source of DHA and EPA. BASF has now dedicated 20 years' of its resources towards a new dietary source of EPA/DHA that will make it easier for consumers to achieve optimal omega-3 fatty acid intake. Such substantial research was necessary to identify the genes responsible for EPA and DHA synthesis and to successfully transform and optimize a plant-based system for the production of EPA and DHA. After testing a variety of plant systems, BASF Plant Science selected canola ("EPA+DHA Canola Project"); after processing and extraction, the genetically engineered canola seed yields an EPA- and DHA- rich canola oil. To date, there is no commercially available EPA- and DHA- rich canola or canola oil.

16. In 2011, BASF Plant Science partnered with Cargill, Incorporated ("Cargill") for

the development and commercialization of a canola oil product containing EPA- and DHA-rich long chain omega-3 polyunsaturated fatty acids ("EPA+DHA Canola Product").

17. In April 2011, BASF Plant Science and Cargill entered into a development and commercialization agreement to develop a transgenic canola that should deliver oil containing EPA- and DHA-rich LC-PUFAs, with a target fatty acid profile as agreed to by BASF Plant Science and Cargill. Under the agreement, BASF Plant Science is responsible for developing the transgenic canola seed, as well as obtaining regulatory approval. Cargill is responsible for cultivation, processing, extracting, and commercialization of the canola oil.

18. BASF Plant Science and Cargill announced their agreement to co-develop the EPA+DHA Canola Product in a press release issued in November 2011. In their announcement, they explained their respective contributions to the effort:

Cargill and BASF Plant Science's multi-year development and commercialization agreement reflects the complementary competencies that both companies bring to the partnership in the EPA/DHA canola field. Specifically, Cargill's food applications capabilities and existing commercial relationships with major food manufacturers and food service operators globally, and BASF Plant Science's expertise in genetically enhancing EPA/DHA levels in canola seed oil and deregulating it for use in food products.

19. For sixteen years, BASF engaged in discovery and screening efforts to identify the best biotechnology trait that would define how its genetically engineered canola (the EPA+DHA Canola Product) can synthesize EPA and DHA long chain omega-3 polyunsaturated fatty acids. BASF Plant Science filed a priority patent application in 2014 for the protection of that biotechnology trait, its Elite Event LBFLFK, which is fundamentally fixed. BASF's regulatory activities and Cargill's commercial crop development for the EPA+DHA Canola Product are based on Elite Event LBFLFK. That priority patent application was subsequently published in May 2016 (WO2016/075326); it discloses the omega 3-fatty acid profile of the Elite

Event LBFLFK seeds, including the relative amounts of EPA and DHA. As part of the Elite Event patent application requirements, BASF Plant Science was required to deposit samples of its Elite Event seeds with the American Type Culture Collection ("ATCC").

20. After five years of BASF Plant Science's and Cargill's collaboration, in November 2016, a press release was issued announcing that testing and regulatory approval for the EPA+DHA Canola Product was under way, with EPA+DHA rich canola oil expected to reach the market around 2020. (See <https://www.cargill.com/2016/cargill-developing-new-omega-3-rich-canola>).

21. In November 2017, following a period of roughly three years of dedicated regulatory studies, and related safety assessments, BASF Plant Science submitted a petition with the U.S. Department of Agriculture (USDA) for a determination that its EPA+DHA omega-3 rich canola seed is not a regulated article ("USDA Dossier"), and thus is approved for commercialization. BASF Plant Science's USDA application was based on its Elite Event LBFLFK. Based on the USDA target approval timeline, BASF Plant Science expects to obtain regulatory approval for its Elite Event LBFLFK in the first quarter of 2019.

22. BASF Plant Science and Cargill are at an advanced phase for the development and commercialization of the EPA+DHA Canola Product. (See https://croplife-r9qnrxt3qygjra4.netdna-ssl.com/wp-content/uploads/2016/09/CropLifePlantBiotechPipeline2016_LoRes1.pdf). Receipt of USDA regulatory approval for BASF Plant Science's Elite Event LBFLFK will trigger a chain of events directed toward commercialization: production of certified genetically engineered seed for sale to growers, planting of certified seed for grain production, harvesting, processing, and extracting of EPA+DHA Canola oil for commercial sale. BASF Plant Science's Elite Event LBFLFK is the

sole basis for these concrete plans to commercialize EPA+DHA canola.

23. In addition to 20 years' of time, BASF has invested a substantial amount of resources into its EPA+DHA Canola Project. A survey completed in 2011 found the cost of discovery, development and authorization of a new plant biotechnology trait introduced between 2008 and 2012 was \$136 million. On average, about 26 percent of those costs (\$35.1 million) were incurred as part of the regulatory testing and registration process. The same study found that the average time from initiation of a discovery project to commercial launch is about 13 years. The longest phase of product development is regulatory science and registration activities, at about 5.5 years for traits introduced in 2011. (*See* <https://www.forbes.com/sites/gmoanswers/2016/08/25/biotech-innovation/#3ad35d4a5ca9>).

BASF's investment in its EPA+DHA Canola Project has been on par with or in excess of these reported figures.

History of Negotiations and Patent Disputes Between the Parties

24. There is a history of global patent disputes between the parties concerning LC-PUFA and EPA- and DHA-rich LC-PUFA technology. Over the past few years, CSIRO opposed multiple BASF-owned patent applications or patents in jurisdictions outside the United States. In Europe, CSIRO opposed three patents owned by BASF. In Australia, one patent application owned by BASF is disputed by CSIRO. BASF is also opposing one CSIRO patent in Europe. More recently, Nuseed Americas filed a petition for *inter partes* review of BASF's U.S. Patent No. 7,777,098.

25. In approximately 2013, CSIRO approached representatives of BASF in Germany to discuss global patent cross-licensing of patents relating to plant-based omega-3 polyunsaturated fatty acids. Subsequently, in the summer of 2016, CSIRO directed that BASF's

negotiations concerning the U.S. market in particular should be conducted via Nuseed Americas, and CSIRO provided introductions to personnel at Nuseed Americas. In September 2016, Plaintiff and Nuseed Americas entered into a Confidentiality Agreement.

26. Between October 19, 2016 and April 13, 2017, BASF Plant Science and Nuseed Americas had two in-person meetings and five telephone conferences, and engaged in additional written correspondence. The express purpose of those meetings and correspondence was to determine whether a commercial agreement, including a patent license covering the United States and the EPA+DHA Canola Product, could be negotiated, or whether litigation would be necessary.

27. Just prior to the first such meeting, which took place on October 19, 2016, Nuseed Americas transmitted to BASF Plant Science a set of PowerPoint slides, titled "Nuseed Omega-3 Patent Portfolio (co-owned or in-licensed) 19 October 2016." The slides identified, *inter alia*, sixteen issued U.S. patents, including the 6 Patents-in-Suit (i.e., the '849, '226, '572, '377, '432, and '410 Patents), as well as several published U.S. patent applications. All of the patents and patent applications in the PowerPoint slides are directed to genetically engineered systems that can synthesize LC-PUFAs. Notably, CSIRO is the sole assignee or co-assignee for all sixteen patents; the co-assignees for certain of the patents are Grains Research and Development Corporation ("GRDC") and/or Nuseed Pty Ltd ("Nuseed Pty"). Nuseed Pty is the sister corporation of Nuseed Americas.

28. At the October 19, 2016 meeting, Nuseed Americas represented to BASF that Nuseed America's Elite Event was superior to BASF Plant Science's Elite Event, that BASF should cease pursuing its EPA+DHA Canola Product (based on BASF Plant Science's Elite Event), and that BASF should instead license Nuseed America's Elite Event. To date, the parties

only have one Elite Event each. Nuseed America's Elite Event B0050-027 is directed to DHA Canola; BASF Plant Science's Elite Event LBFLFK is directed EPA+DHA Canola. At the time of the October 19, 2016 meeting, the aforementioned priority patent application, dated May 2016, was the only public disclosure of the fatty acid profile of BASF Plant Science's Elite Event LBFLFK. At the October 19, 2016 meeting, Nuseed Americas stated that the patents identified in its PowerPoint slides would create significant freedom-to-operate challenges for BASF Plant Science and its partners and that BASF Plant Science would require a license to proceed. From October 19, 2016 onwards, all negotiations between the parties have been based on this position articulated by Nuseed Americas, as CSIRO's commercial business partner and proxy agent; the underlying context for the parties' negotiations has been the EPA+DHA Canola Product based on BASF Plant Science's Elite Event LBFLFK.

29. Also at the October 19, 2016 meeting, Brent Zacharias, the General Executive for Nuseed Group, represented that the Nuseed team at the meetings represented the interests of both Nuseed and CSIRO, and that multiple conversations with both parties would not be required.

30. In a meeting held on December 6, 2016, BASF Plant Science explained to Nuseed Americas that it would be advancing its omega-3 canola technology and that it saw a clear path forward to commercialization. BASF Plant Science specifically referenced the November 2016 press release concerning the EPA+DHA Canola Product as evidence of BASF Plant Science's progress and intent. Both BASF Plant Science and Nuseed Americas expressed a desire to avoid litigation by finding a mutually agreeable licensing arrangement.

31. In January 2017, consistent with Mr. Zacharias' representation to BASF Plant Science in the October 19, 2016 meeting, CSIRO and GRDC each sent a letter to BASF Plant Science, representing that they authorized Nuseed to negotiate on their behalf. In a letter dated

January 20, 2017, John Manners, Director of CSIRO Agriculture and Food, stated that "Nuseed Pty Ltd. and its affiliates (e.g., Nuseed Americas Inc., collectively, 'Nuseed') entered into exclusive global licensing agreements with the Commonwealth Scientific and Industrial Research Organization ('CSIRO') and the Grains Research and Development Corporation ('GRDC') pertaining to the production, processing and refinement of Omega 3 polyunsaturated fatty acids from canola plants ('CSIRO and GRDC technology')." The letter went on to state, "CSIRO and GRDC authorize Nuseed, as the exclusive, global licensee of the CSIRO and GRDC technology, to negotiate on their behalf with BASF to find a commercial solution to resolve certain ongoing patent disputes, global freedom to operate and potential licenses." On January 16, 2017, Dr. Steve Jeffries, the Managing Director of GRDC, sent an identically-worded letter to BASF Plant Science.

32. In a subsequent telephone conference held on January 26, 2017, BASF Plant Science explained that BASF Plant Science and Cargill are in a close relationship, have significant on-going dialogue, and are in lock step with respect to their collaboration. BASF Plant Science also informed Nuseed Americas that although it had been careful not to share any information disclosed under the Confidentiality Agreement with Cargill, it would be beneficial to bring Cargill into the loop of the parties' discussion. Nuseed Americas subsequently expressed its willingness to expand the Confidentiality Agreement to include BASF Plant Science's and Nuseed Americas' respective partners, and acknowledged that it was important to keep them updated on the parties' discussions. On February 7, 2017, the Confidentiality Agreement was amended to include Cargill, CSIRO, and GRDC.

33. As the discussions proceeded into the spring of 2017, it became clear to BASF Plant Science that issues relating to patent scope, claimed coverage, and potential licensing

would have to be resolved before any general commercial arrangements could be discussed.

Nuseed Americas continued to assert that the patents, including the Patents-in-Suit (which are all exclusively owned by CSIRO and which Nuseed Americas specifically identified as among the most relevant patents in that portfolio), presented significant freedom-to-operate challenges for BASF Plant Science. Rather than a simple mutual cross-license, Nuseed Americas demanded very high net payments from BASF Plant Science for a license of the patents. This net payment amount was unacceptable to BASF Plant Science.

34. The parties exchanged several proposals, but those proposals remained far apart. This led to the voicing of concerns at a February 3, 2017 meeting that there may not be enough common interest to move forward and avoid litigation costs. On several occasions, Nuseed Americas representatives told BASF Plant Science representatives that if the parties could not find a negotiated resolution, "by all means" Nuseed Americas would "block" BASF Plant Science from practicing its technology in the U.S. BASF Plant Science understood this to be a threat of patent litigation if a license agreement for its EPA+DHA Canola Product was not reached.

35. Further, on or about March 22, 2017, BASF became aware that an individual claiming to be the Global Regulatory Lead of Nuseed Americas acting through her firm MacIntosh & Associates, Inc. had requested samples of BASF Plant Science's Elite Event seeds from the ATCC seed repository. BASF Plant Science is unaware of any business or regulatory purpose that would require Nuseed Americas to request access to such seed material, other than for litigation purposes. BASF Plant Science believes that Nuseed Americas obtained BASF Plant Science's Elite Event seeds to conduct testing for a pre-filing infringement analysis in preparation for potential patent litigation against BASF Plant Science with respect to the

EPA+DHA Canola Product.

36. The last in-person meeting between BASF Plant Science and Nuseed Americas (before BASF Plant Science filed a patent suit against Nuseed Americas in the U.S. District Court for the District of Delaware for a declaratory judgment of invalidity) was held on April 13, 2017. At that meeting, the parties' positions concerning license valuation remained far apart (the parties fundamentally disagreed on which direction net payments should flow in any proposed cross-license deal). Based on these differences, Nuseed Americas' representative stated, "There is no path forward with the numbers you're saying." Meanwhile, BASF Plant Science suggested that if Nuseed Americas was unwilling to reduce its demand, perhaps the parties had reached an impasse and should be in court. Nuseed Americas' representative stated, "Maybe that's where we're at."

37. Based on the statements and tenor of that meeting, and Nuseed America's actions and statements during the months-long negotiations, BASF Plant Science understood there to be a definite and concrete dispute between BASF Plant Science and Defendant concerning the Patents-in-Suit and the EPA+DHA Canola Product; BASF Plant Science understood that there was a significant and immediate risk to its concrete plans for development and commercialization of the EPA+DHA Canola Product. Indeed, there appeared to be clear and imminent threat of litigation by Nuseed Americas.

38. On April 13, 2017, BASF Plant Science brought suit against Nuseed Americas in the U.S. District Court for the District of Delaware for a Declaratory Judgment of Invalidity of the '849, '226, '572, '377, '432, and '410 Patents and U.S. Patent Nos. 7,834,250 and 8,809,559 (collectively, the "Delaware Patents-in-Suit"). *See* D. Del. Case No. 17-CV-00421-MAK (the "Delaware -421 Action"). BASF Plant Science alleged, on information and belief, that Nuseed

Americas is the exclusive licensee of each of the Delaware Patents-in-Suit. Nuseed Americas denied that it was the exclusive licensee of each of the Delaware Patents-in-Suit and moved to dismiss the Delaware -421 Action. It argued, *inter alia*, that Nuseed Americas has no right, title or interest in the Delaware Patents-in-Suit, and that its related entity, Nuseed Pty, has only a field-of-use-limited exclusive license to the Delaware Patents-in-Suit. BASF Plant Science opposed Nuseed Americas' motion to dismiss based on the information available to it about Nuseed Americas' role in negotiating with BASF Plant Science concerning the Delaware Patents-in-Suit. On August 17, 2017, the U.S. District Court for the District of Delaware found that Nuseed Americas would have lacked standing to sue for infringement of the Delaware Patents-in-Suit and dismissed the Delaware -421 Action, "without prejudice to Plaintiff suing in a Court which could exercise personal jurisdiction over the parties who may allegedly sue Plaintiff for patent infringement and thus allow a potential declaratory judgment action." (Order dated August 17, 2017).

39. After the Delaware Complaint was filed, Nuseed Americas asked for further discussions. Representatives of Nuseed Americas and BASF held discussions over the phone, during which representatives of Nuseed Americas and of its parent, Nufarm Limited, expressed a desire to continue negotiations. As a result, Nuseed Americas and BASF held an in-person meeting on June 6 and 7, 2017. Although there were additional communications by phone and email, there was no progress in the parties' respective positions concerning the Patents-in-Suit.

40. On September 19, 2017, BASF Plant Science filed a Complaint against CSIRO, GRDC, and Nuseed Pty for a Declaratory Judgment of Invalidity of the Delaware Patents-in-Suit and U.S. Patent Nos. 8,816,111; 9,550,718; 8,946,460; and 9,556,102. D.I. 1. On December 26, 2017, the defendants moved to dismiss the Complaint on three grounds: (1) that the Court lacked

subject matter jurisdiction because there is no case or controversy; (2) that the Court lacked personal jurisdiction over CSIRO and GRDC because they are immune from suit under the FSIA; and (3) that if the Court dismisses CSIRO and GRDC, the case against Nuseed Pty should be dismissed for failure to join all necessary and indispensable parties. D.I. 15-16. On January 9, 2018, BASF Plant Science filed its Brief in Opposition to Defendants' Motion to Dismiss. D.I. 23-24. On January 16, 2018, the defendants filed their Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss. D.I. 25. On April 11, 2018, the Court held a hearing on defendants' Motion to Dismiss. Upon hearing the parties' argument, the Court granted defendants' Motion to Dismiss on the ground of failure to state a cause of action pursuant to declaratory judgment. The Court granted BASF Plant Science ten (10) days to file an amended complaint. The Court took under advisement the issue of sovereign immunity from jurisdiction and failure to include a necessary party.

41. The parties held in-person meetings on April 11 and 12, 2018. The parties' impasse remained. BASF Plant Science has not obtained from Defendant a covenant not to sue or an agreement not to assert the Patents-in-Suit in relation to the EPA+DHA Canola Product.

The Facts Demonstrate a Substantial, Real, and Immediate Controversy Between Plaintiff and Defendant Based on the Patents-in-Suit and the EPA+DHA Canola Product

42. In 2007, the Supreme Court clarified that the test for declaratory judgment jurisdiction is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune v. Genentech*, 549 U.S. 118, 127 (2007). The Federal Circuit has made clear that this test is met "where the patentee takes a position that puts the declaratory judgment plaintiff in the position of either pursuing arguably illegal behavior or abandoning that which he claims a right to do." *Arkema*

Inc. v. Honeywell Int'l, Inc., 706 F.3d 1351, 1357 (Fed. Cir. 2013). The Federal Circuit has also held that "[i]n patent cases, declaratory judgment jurisdiction exists 'where a patentee asserts rights under a patent based on certain identified ongoing or planned activity of another party, and where the party contends that it has the right to engage in the accused activity without a license.'" *Hewlett-Packard Co. v. Acceleron LLC*, 587 F.3d 1358, 1361 (Fed. Cir. 2009).

43. As the above facts demonstrate, there exists a substantial, real, and immediate controversy between BASF Plant Science and CSIRO concerning the Patents-in-Suit and the EPA+DHA Canola Product. CSIRO, through its proxy agent, Nuseed Americas, approached BASF Plant Science for a license to its patents. During negotiations, Nuseed Americas repeatedly asserted that the Patents-in-Suit, all owned exclusively by CSIRO, would create significant freedom-to-operate challenges for BASF Plant Science and that a license would be required to proceed with the EPA+DHA Canola Product. Moreover, Nuseed Americas told BASF Plant Science on several occasions that if the parties are unable to reach a negotiated resolution, "by all means," Nuseed Americas would "block" BASF Plant Science from practicing its technology in the U.S. Despite lengthy negotiations over the course of many months, the parties were unable to reach agreement. In the last face-to-face meeting before BASF Plant Science filed the Delaware Action, both sides recognized that litigation was the likely next step.

44. In addition, there is a history of patent litigation between the parties involving similar technology and patents. Nuseed Americas has also requested samples of BASF Plant Science's Elite Event seeds from the ATCC seed repository. BASF Plant Science is unaware of any business or regulatory purpose that would require Nuseed Americas to request access to such seeds, other than for litigation purposes. Further, Nuseed filed a Freedom of Information Act (FOIA) request seeking access to BASF Plant Science's USDA filing concerning its Elite Event

LBFLFK. Notably, CSIRO has not agreed to a covenant-not-to-sue or any other agreement not to assert the Patents-in-Suit in relation to the EPA+DHA Canola Product.

45. The dispute between BASF Plant Science and CSIRO is both immediate and real. As detailed above, BASF Plant Science's Elite Event LBFLFK is fixed and has formed the sole basis for concrete plans to commercialize the EPA+DHA Canola Product. Regulatory approval is underway, with approval for BASF Plant Science's Elite Event LBFLFK expected in the first quarter of 2019. Receipt of USDA regulatory approval for BASF Plant Science's Elite Event LBFLFK will trigger a chain of events directed toward commercialization: production of certified genetically engineered seed for sale to growers, planting of certified seed for grain production, harvesting, processing, and extracting of EPA+DHA Canola oil for commercial sale.

46. BASF Plant Science has invested substantial amounts of time and resources into the EPA+DHA Canola Project. Yet, through the actions of CSIRO and its proxy, Nuseed Americas, BASF Plant Science has been placed in a position of either pursuing potentially infringing activity or abandoning its commercialization efforts, a quintessential example of where declaratory judgment relief is necessary and warranted.

47. The '849 Patent contains 11 total claims, including one independent claim and ten dependent claims. Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, claims 1-6 and 9-11 of the '849 Patent. No claim term in any of these claims has been construed.

48. Independent claim 1 of the '849 Patent is generally directed to a broad process of producing oil containing EPA, DHA, and DPA comprising (1) obtaining a transgenic oil-seed rape seed (*e.g.*, canola) comprising EPA, DHA, and DPA and (2) extracting oil from that transgenic seed. Specifically claim 1 of the '849 Patent recites "[a] process for producing oil

containing eicosapentaenoic acid [EPA], docosahexaenoic acid [DHA] and docosapentaenoic acid [DPA], comprising the steps of obtaining a transgenic oil-seed rape seed, a transgenic cotton seed or a transgenic flax seed comprising eicosapentaenoic acid [EPA], docosahexaenoic acid [DHA] and docosapentaenoic acid [DPA], wherein at least 25% (w/w) of the eicosapentaenoic acid [EPA], docosahexaenoic acid [DHA] and docosapentaenoic acid [DPA] of the transgenic seed is incorporated into triacylglycerols in the transgenic seed, and wherein the total fatty acid in the oil of the transgenic seed comprises at least 2.5% ω 3 C20 fatty acids (w/w), and extracting oil from the transgenic seed so as to thereby produce the oil." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols and ω 3 C20 fatty acids within the claimed quantity, whereby oil is produced from extracting oil from those seeds.

49. Dependent claim 2 of the '849 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the step of extracting the oil comprises crushing the transgenic seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil containing EPA, DHA, and DPA may be extracted by crushing BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product.

50. Dependent claim 3 of the '849 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid in the oil of the transgenic seed

comprises at least 9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

51. Dependent claim 4 of the '849 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid in the oil of the transgenic seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

52. Dependent claim 5 of the '849 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the level of docosapentaenoic acid [DPA] relative to eicosapentaenoic acid [EPA] in the transgenic seed is at least 5% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

53. Dependent claim 6 of the '849 Patent depends from broad independent claim 1

and recites "[t]he process of claim 1, wherein the total fatty acid in the oil of the transgenic seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

54. Dependent claim 9 of the '849 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the transgenic seed is an oilseed rape seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola seeds are oilseed rape seeds used to make the EPA+DHA Canola Product.

55. Dependent claim 10 of the '849 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA], docosahexaenoic acid [DHA] and docosapentaenoic acid [DPA] of the transgenic seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

56. Dependent claim 11 of the '849 Patent depends from broad independent claim 1

and recites "[t]he process of claim 1, wherein the oil comprises at least 50% triacylglycerols."

Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

57. The '226 Patent contains 18 total claims, including one independent claim and 17 dependent claims. Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, all 18 claims of the '226 Patent. No claim term in any of these claims has been construed.

58. Independent claim 1 of the '226 Patent is generally directed to a broad process of producing oil containing EPA and DPA comprising (1) obtaining a transgenic *Brassica* plant seed (*e.g.*, canola) comprising EPA and DPA and (2) extracting oil from that transgenic seed. Specifically claim 1 of the '226 Patent recites "[a] process for producing oil containing eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA], comprising the steps of obtaining a transgenic *Brassica* or *Arabidopsis* plant seed comprising eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA], wherein the total fatty acid of the transgenic seed comprises at least 2.5% ω 3 C20 fatty acids (w/w) and wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 5% (w/w), and extracting oil from the transgenic *Brassica* or *Arabidopsis* plant seed so as to thereby produce the oil." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes,

either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise ω 3 C20 fatty acids within the claimed quantity and the claimed fatty acids within the claimed conversion ratio, whereby oil is produced from extracting oil from those seeds.

59. Dependent claim 2 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the step of extracting the oil comprises crushing the plant seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil containing EPA and DPA may be extracted by crushing BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product.

60. Dependent claim 3 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the plant seed comprises at least 9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

61. Dependent claim 4 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the plant seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant

will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

62. Dependent claim 5 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the plant seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

63. Dependent claim 6 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 25% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the plant seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

64. Dependent claim 7 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the plant seed is incorporated into triacylglycerols in

the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

65. Dependent claim 8 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the oil comprises at least 50% triacylglycerols." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

66. Dependent claim 9 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the plant seed comprises at least 7.9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

67. Dependent claim 10 of the '226 Patent depends from broad independent claim 9 and recites "[t]he process of claim 9, wherein the total fatty acid of the plant seed comprises at least 10.2% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier

and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

68. Dependent claim 11 of the '226 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein the total fatty acid of the plant seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

69. Dependent claim 12 of the '226 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the plant seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

70. Dependent claim 13 of the '226 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the docosapentaenoic acid [DPA] is present at a

level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 7% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

71. Dependent claim 14 of the '226 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the total fatty acid of the plant seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

72. Dependent claim 15 of the '226 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the plant seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

73. Dependent claim 16 of the '226 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 10% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

74. Dependent claim 17 of the '226 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein the total fatty acid of the plant seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

75. Dependent claim 18 of the '226 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the plant seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product

may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

76. The '572 Patent contains 20 total claims, including one independent claim and 19 dependent claims. Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, claims 1-18 of the '572 Patent. No claim term in any of these claims has been construed.

77. Independent claim 1 of the '572 Patent is generally directed to a broad process of producing oil containing EPA, DPA, and DHA comprising (1) obtaining a transgenic seed of an oilseed plant (*e.g.*, canola) comprising EPA, DPA, and DHA and (2) extracting oil from that transgenic seed. Specifically claim 1 of the '572 Patent recites "[a] process for producing oil containing eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosahexaenoic acid [DHA], comprising the steps of obtaining a transgenic seed of an oilseed plant which comprises eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosahexaenoic acid [DHA] in an esterified form as part of triglycerides, wherein the total fatty acid of the transgenic seed comprises at least 2.5% ω 3 C20 fatty acids (w/w) and wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 5% (w/w), and extracting oil from the transgenic seed so as to thereby produce the oil." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise ω 3 C20 fatty acids within the claimed quantity and the claimed fatty acids within the claimed conversion ratio, whereby oil is produced from extracting oil from

those seeds.

78. Dependent claim 2 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the step of extracting the oil comprises crushing the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil containing EPA, DPA, and DHA may be extracted by crushing BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product.

79. Dependent claim 3 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

80. Dependent claim 4 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

81. Dependent claim 5 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

82. Dependent claim 6 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 25% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

83. Dependent claim 7 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further

comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

84. Dependent claim 8 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the oil comprises at least 50% triacylglycerols." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

85. Dependent claim 9 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 7.9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

86. Dependent claim 10 of the '572 Patent depends from broad independent claim 9 and recites "[t]he process of claim 9, wherein the total fatty acid of the seed comprises at least 10.2% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

87. Dependent claim 11 of the '572 Patent depends from broad independent claim 10

and recites "[t]he process of claim 10, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

88. Dependent claim 12 of the '572 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

89. Dependent claim 13 of the '572 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 7% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

90. Dependent claim 14 of the '572 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

91. Dependent claim 15 of the '572 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

92. Dependent claim 16 of the '572 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 10% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA

Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

93. Dependent claim 17 of the '572 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

94. Dependent claim 18 of the '572 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

95. The '377 Patent contains 20 total claims, including one independent claim and 19 dependent claims. Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, all 20 claims of the '377 Patent. No claim term in any of these claims has been construed.

96. Independent claim 1 of the '377 Patent is generally directed to a broad process of producing oil containing EPA and DPA comprising (1) obtaining a transgenic seed of an oilseed

plant (*e.g.*, canola) comprising EPA, DPA, and a microalgal fatty acid desaturase and (2) extracting oil from that transgenic seed. Specifically claim 1 of the '377 Patent recites "[a] process for producing oil containing eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA], comprising the steps of obtaining a transgenic seed of an oilseed plant which comprises eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] in an esterified form as part of triglycerides, and a microalgal fatty acid desaturase, wherein the total fatty acid of the transgenic seed comprises at least 2.5% ω 3 C20 fatty acids (w/w) and wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 5% (w/w), and extracting oil from the transgenic seed so as to thereby produce the oil." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise the claimed desaturase, ω 3 C20 fatty acids within the claimed quantity, and the claimed fatty acids within the claimed conversion ratio, whereby oil is produced from extracting oil from those seeds.

97. Dependent claim 2 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the step of extracting the oil comprises crushing the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil containing EPA and DPA may be extracted by crushing BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product.

98. Dependent claim 3 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

99. Dependent claim 4 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

100. Dependent claim 5 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

101. Dependent claim 6 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 25% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

102. Dependent claim 7 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

103. Dependent claim 8 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the oil comprises at least 50% triacylglycerols." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

104. Dependent claim 9 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 7.9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

105. Dependent claim 10 of the '377 Patent depends from broad independent claim 9 and recites "[t]he process of claim 9, wherein the total fatty acid of the seed comprises at least 10.2% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

106. Dependent claim 11 of the '377 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

107. Dependent claim 12 of the '377 Patent depends from broad independent claim 10

and recites "[t]he process of claim 10, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

108. Dependent claim 13 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 7% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

109. Dependent claim 14 of the '377 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

110. Dependent claim 15 of the '377 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

111. Dependent claim 16 of the '377 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 10% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

112. Dependent claim 17 of the '377 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein the total fatty acid of the plant seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further

comprise the claimed fatty acids within the claimed quantities.

113. Dependent claim 18 of the '377 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

114. Dependent claim 19 of the '377 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the transgenic seed is a transgenic canola seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic seeds are canola seeds used to make the EPA+DHA Canola Product.

115. Dependent claim 20 of the '377 Patent depends from broad independent claim 4 and recites "[t]he process of claim 4, wherein the transgenic seed is a transgenic canola seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic seeds are canola seeds used to make the EPA+DHA Canola Product.

116. The '432 Patent contains 47 total claims, including two independent claims (claims 1 and 26) and 45 dependent claims. Plaintiff anticipates that Defendant will allege that

Plaintiff infringes, either directly or indirectly, claims 1-20, 22-42, and 44-47 of the '432 Patent. No claim term in any of these claims has been construed.

117. Independent claim 1 of the '432 Patent is generally directed to a broad process of producing oil containing EPA, DPA, and DHA comprising (1) obtaining a transgenic seed of an oilseed plant (*e.g.*, canola) comprising EPA, DPA, and DHA, (2) extracting oil from that transgenic seed, and (3) purifying or treating the extracted oil. Specifically claim 1 of the '432 Patent recites "[a] process for producing oil containing eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosahexaenoic acid [DHA], comprising the steps of (i) obtaining a transgenic seed of an oilseed plant which comprises eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosahexaenoic acid [DHA] in an esterified form as part of triglycerides, wherein the total fatty acid of the transgenic seed comprises at least 2.5% ω 3 C20 fatty acids (w/w) and wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 5% (w/w), (ii) extracting oil from the transgenic seed, and (iii) purifying the extracted oil or treating the extracted oil by hydrolysis, fractionation or distillation." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise ω 3 C20 fatty acids within the claimed quantity and the claimed fatty acids within the claimed conversion ratio, whereby oil is produced from extracting oil from those seeds and purifying the extracted oil.

118. Dependent claim 2 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the step of extracting the oil comprises crushing

the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil containing EPA, DPA, and DHA may be extracted by crushing BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product.

119. Dependent claim 3 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

120. Dependent claim 4 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

121. Dependent claim 5 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on

publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

122. Dependent claim 6 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 25% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

123. Dependent claim 7 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

124. Dependent claim 8 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the extracted oil comprises at least 50%

triacylglycerols." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

125. Dependent claim 9 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 7.9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

126. Dependent claim 10 of the '432 Patent depends from broad independent claim 9 and recites "[t]he process of claim 9, wherein the total fatty acid of the seed comprises at least 10.2% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

127. Dependent claim 11 of the '432 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the

assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

128. Dependent claim 12 of the '432 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

129. Dependent claim 13 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 7% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

130. Dependent claim 14 of the '432 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)."

Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

131. Dependent claim 15 of the '432 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

132. Dependent claim 16 of the '432 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 10% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

133. Dependent claim 17 of the '432 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein the total fatty acid of the seed comprises at least

1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)."

Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

134. Dependent claim 18 of the '432 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

135. Dependent claim 19 of the '432 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the extracted oil is purified after extraction." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil extracted from BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may be purified after extraction.

136. Dependent claim 20 of the '432 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein the extracted oil is purified after extraction."

Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil extracted from BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may be purified after extraction.

137. Dependent claim 22 of the '432 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

138. Dependent claim 23 of the '432 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

139. Dependent claim 24 of the '432 Patent depends from broad independent claim 16 and recites "[t]he process of claim 16, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

140. Dependent claim 25 of the '432 Patent depends from broad independent claim 23 and recites "[t]he process of claim 23, wherein the *Brassica* plant is a canola plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a canola plant.

141. Independent claim 26 of the '432 Patent is generally directed to a broad process of producing a composition containing EPA, DPA, and DHA comprising (1) obtaining a transgenic seed of an oilseed plant (*e.g.*, canola) comprising EPA, DPA, and DHA, (2) extracting oil from that transgenic seed, and (3) processing the oil to produce the composition. Specifically claim 1 of the '432 Patent recites "[a] process for producing a composition comprising eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosaheptaenoic acid [DHA], comprising the steps of (i) obtaining a transgenic seed of an oilseed plant which comprises eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosaheptaenoic acid [DHA] in an esterified form as part of triglycerides, wherein the total fatty acid of the transgenic seed comprises at least 2.5% ω 3 C20 fatty acids (w/w) and wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 5% (w/w), (ii) extracting oil from the transgenic seed, and (iii) processing the oil, thereby producing the composition." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise ω 3 C20 fatty acids within the claimed quantity and the claimed

fatty acids within the claimed conversion ratio, whereby a composition is produced from extracting oil from those seeds and processing the oil.

142. Dependent claim 27 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

143. Dependent claim 28 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein the total fatty acid of the seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

144. Dependent claim 29 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant

will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

145. Dependent claim 30 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein the extracted oil comprises at least 50% triacylglycerols." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

146. Dependent claim 31 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein the total fatty acid of the seed comprises at least 7.9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

147. Dependent claim 32 of the '432 Patent depends from broad independent claim 31 and recites "[t]he process of claim 31, wherein the total fatty acid of the seed comprises at least 10.2% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA

Canola Product may further comprise the claimed fatty acids within the claimed quantity.

148. Dependent claim 33 of the '432 Patent depends from broad independent claim 32 and recites "[t]he process of claim 32, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

149. Dependent claim 34 of the '432 Patent depends from broad independent claim 32 and recites "[t]he process of claim 32, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

150. Dependent claim 35 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 7% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this

claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

151. Dependent claim 36 of the '432 Patent depends from broad independent claim 35 and recites "[t]he process of claim 35, wherein the total fatty acid of the plant seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

152. Dependent claim 37 of the '432 Patent depends from broad independent claim 35 and recites "[t]he process of claim 35, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

153. Dependent claim 38 of the '432 Patent depends from broad independent claim 35 and recites "[t]he process of claim 35, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 10% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff

anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

154. Dependent claim 39 of the '432 Patent depends from broad independent claim 38 and recites "[t]he process of claim 38, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

155. Dependent claim 40 of the '432 Patent depends from broad independent claim 38 and recites "[t]he process of claim 38, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

156. Dependent claim 41 of the '432 Patent depends from broad independent claim 35 and recites "[t]he process of claim 35, wherein the extracted oil is purified after extraction." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will

allege that Plaintiff infringes, either directly or indirectly, this claim because the oil extracted from BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may be purified after extraction.

157. Dependent claim 42 of the '432 Patent depends from broad independent claim 38 and recites "[t]he process of claim 38, wherein the extracted oil is purified after extraction." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because the oil extracted from BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may be purified after extraction.

158. Dependent claim 44 of the '432 Patent depends from broad independent claim 26 and recites "[t]he process of claim 26, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

159. Dependent claim 45 of the '432 Patent depends from broad independent claim 35 and recites "[t]he process of claim 35, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

160. Dependent claim 46 of the '432 Patent depends from broad independent claim 38

and recites "[t]he process of claim 38, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

161. Dependent claim 47 of the '432 Patent depends from broad independent claim 45 and recites "[t]he process of claim 45, wherein the *Brassica* plant is a canola plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a canola plant.

162. The '410 Patent contains 20 total claims, including one independent claim and 19 dependent claims. Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, all 20 claims of the '410 Patent. No claim term in any of these claims has been construed.

163. Independent claim 1 of the '410 Patent is generally directed to a broad process of producing oil containing EPA, DPA, and DHA comprising (1) growing a transgenic oilseed plant (*e.g.*, canola) comprising EPA, DPA, and DHA in its seed, (2) harvesting the seed from that transgenic seed. Specifically claim 1 of the '432 Patent recites "[a] process for producing eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosaheptaenoic acid [DHA], comprising the steps of (i) growing a transgenic oilseed plant which comprises eicosapentaenoic acid [EPA], docosapentaenoic acid [DPA] and docosaheptaenoic acid [DHA] in an esterified form as part of triglycerides in its seed, wherein the total fatty acid of the seed comprises at least

2.5% ω 3 C20 fatty acids (w/w) and wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 5% (w/w), and (ii) harvesting the seed from the transgenic plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may comprise ω 3 C20 fatty acids within the claimed quantity and the claimed fatty acids within the claimed conversion ratio, whereby those seeds are harvested.

164. Dependent claim 2 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

165. Dependent claim 3 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 2.1% eicosapentaenoic acid [EPA] and less than 0.1% eicosatrienoic acid (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's

transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

166. Dependent claim 4 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

167. Dependent claim 5 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein oil in the seed comprises at least 50% triacylglycerols." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

168. Dependent claim 6 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the total fatty acid of the seed comprises at least 7.9% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA

Canola Product may further comprise the claimed fatty acids within the claimed quantity.

169. Dependent claim 7 of the '410 Patent depends from broad independent claim 6 and recites "[t]he process of claim 6, wherein the total fatty acid of the seed comprises at least 10.2% C20 fatty acids (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantity.

170. Dependent claim 8 of the '410 Patent depends from broad independent claim 7 and recites "[t]he process of claim 7, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

171. Dependent claim 9 of the '410 Patent depends from broad independent claim 7 and recites "[t]he process of claim 7, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further

comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

172. Dependent claim 10 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 7% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

173. Dependent claim 11 of the '410 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

174. Dependent claim 12 of the '410 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein at least 50% (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF

Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

175. Dependent claim 13 of the '410 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein the docosapentaenoic acid [DPA] is present at a level based on a conversion ratio of eicosapentaenoic acid [EPA] to docosapentaenoic acid [DPA] of at least 10% (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed conversion ratio.

176. Dependent claim 14 of the '410 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the total fatty acid of the seed comprises at least 1.5% eicosapentaenoic acid [EPA] and at least 0.13% docosapentaenoic acid [DPA] (w/w)." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed quantities.

177. Dependent claim 15 of the '410 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein at least 506[sic] (w/w) of the eicosapentaenoic acid [EPA] and docosapentaenoic acid [DPA] of the seed is incorporated into triacylglycerols in the seed." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that

Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because one of BASF Plant Science's transgenic canola seeds used to make the EPA+DHA Canola Product may further comprise the claimed fatty acids within the claimed amount incorporated into triacylglycerols.

178. Dependent claim 16 of the '410 Patent depends from broad independent claim 1 and recites "[t]he process of claim 1, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

179. Dependent claim 17 of the '410 Patent depends from broad independent claim 10 and recites "[t]he process of claim 10, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

180. Dependent claim 18 of the '410 Patent depends from broad independent claim 13 and recites "[t]he process of claim 13, wherein the oilseed plant is a *Brassica* plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a *Brassica* plant.

181. Dependent claim 19 of the '410 Patent depends from broad independent claim 17

and recites "[t]he process of claim 17, wherein the *Brassica* plant is a canola plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a canola plant.

182. Dependent claim 20 of the '410 Patent depends from broad independent claim 18 and recites "[t]he process of claim 18, wherein the *Brassica* plant is a canola plant." Based on publicly available documents (*e.g.*, USDA Dossier and WO2016/075326) and the assumption that the claim terms are broadly construed, Plaintiff anticipates that Defendant will allege that Plaintiff infringes, either directly or indirectly, this claim because BASF Plant Science's transgenic canola used to make the EPA+DHA Canola Product is a canola plant.

COUNT I: INVALIDITY OF THE '849 PATENT

183. BASF Plant Science refers to and incorporates by reference each of its allegations in paragraphs 1-182.

184. An actual and justiciable case or controversy exists between BASF Plant Science and Defendant regarding the validity of the '849 Patent.

185. Claims 1-6 and 9-11 of the '849 Patent are invalid under 35 U.S.C. § 112 at least because they lack adequate written description, lack enablement, and/or are indefinite.

186. Independent Claim 1 of the '849 Patent recites a process for producing oil by obtaining a transgenic rape seed, transgenic cotton seed, or transgenic flax seed including EPA, DPA, and DHA, wherein, *inter alia*, the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w).

187. Claim 1 of the '849 Patent is invalid for lack of written description because the

specification does not teach the preparation of any transgenic rape plant, cotton plant, or flax plant, let alone any plant from the Brassica genus (an oil seed plant). The specification provides no examples of a plant from the Brassica genus capable of producing seeds having the claimed fatty acid content.

188. The specification of the '849 Patent further does not disclose any oil produced from any transgenic oil seed plants that includes EPA, DPA, and DHA, let alone the claimed amount of at least 2.5% C20 ω 3 fatty acids (w/w). The specification of the '849 Patent does not contain representative examples of oil seed plants having the claimed fatty acid content. Claim 1 of the '849 Patent recites a process for producing the oil but the specification does not provide any examples of preparing a transgenic oil seed plant capable of producing an oil containing the recited fatty acids.

189. Thus, the specification does not provide written description support for producing oil from all transgenic rape, cotton, and flax plants having the claimed fatty acid content. The specification lacks sufficient examples and does not describe which genes would need inserting into the transgenic rape, cotton, and flax plants to obtain the oil having the claimed fatty acid content.

190. Additionally, and/or in the alternative, Claim 1 of the '849 Patent is invalid for lack of enablement. Claim 1 of the '849 Patent recites a process for producing oil by obtaining a transgenic rape seed, transgenic cotton seed, or transgenic flax seed wherein, *inter alia*, the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claim 1 thus recites an open-ended range limitation containing a lower threshold without an upper limit. Such a broad range is not enabled because the specification only provides one example – testing oil from a transgenic Arabidopsis plant cell – and this only produced three oils

comprising at least 2.5% (w/w) C20 ω 3 long-chain polyunsaturated fatty acids at the lower end of the claimed range (i.e., 3.8%, 3.8%, and 4.1 %). Thus, Claim 1 of the '849 Patent is not enabled over the entire claimed range.

191. The specification of the '849 Patent also does not enable one skilled in the art to produce a transgenic seed having the claimed oil content as the specification provides no examples of oils produced from a transgenic rape seed, cotton seed, or flax seed, let alone any oil seed in the Brassica plant genus including at least 2.5% C20 ω 3 fatty acids (w/w).

192. Claim 1 of the '849 Patent is also invalid as it is not enabled for the full breadth of the claim as the specification does not enable a person skilled in the art to make the claimed inventions. Claim 1 does not recite which genes are present in the transgenic plant cell that cause the plant cell to produce seeds having the recited long chain fatty acids. Claim 1 conceivably covers any transgenic rape, cotton, or flax seed that has the recited fatty acid content, but the specification does not provide sufficient guidance to enable one to make the transgenic rape, cotton, or flax plants capable of producing the oil covered by the scope of the claims. The specification does not enable a person skilled in the art to make any and all transgenic constructs that might be necessary to achieve a transgenic oil seed having the recited fatty acid content.

193. Further, Claim 1 of the '849 Patent is indefinite because it would be unclear to one of ordinary skill in the art what the patentees meant by the term "C20 ω 3 long chain fatty acids" and whether it includes only 20 carbon atoms in the carbon chain or whether it refers to omega-3 fatty acids including any amount of carbon atoms between 20-29 in the carbon chain.

194. Claims 2-6 and 9-11, which depend from Claim 1 of the '849 Patent, are invalid under 35 U.S.C. § 112 for the same reasons as Claim 1.

195. Additionally, and/or in the alternative, at least Claim 1 of the '849 Patent is invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and/or 103 in view of at least Opsahl-Ferstad, et al., "Biotechnological approaches to modify rapeseed oil composition for applications in aquaculture," Plant Science, Vol. 165, pages 349-357 (2003) ("Opsahl-Ferstad") and/or PCT Application Publication No. WO 02/090493 A2 (Mukerji, et al.) ("Mukerji"), alone and/or in combination, in view of the general knowledge of persons of ordinary skill in the art.

196. Additionally, and/or in the alternative, at least Claim 2 is obvious in view of at least Opsahl-Ferstad alone, Mukerji alone, and/or Opsahl-Ferstad combined with Mukerji, in view of the general knowledge of persons of ordinary skill in the art.

197. Based on the foregoing, Claims 1-6 and 9-11 of the '849 Patent are invalid.

COUNT II: INVALIDITY OF THE '226 PATENT

198. BASF Plant Science refers to and incorporates by reference each of its allegations in paragraphs 1-197.

199. An actual and justiciable case or controversy exists between BASF Plant Science and Defendant regarding the validity of the '226 Patent.

200. All claims of the '226 Patent are invalid under 35 U.S.C. § 112 at least because they lack adequate written description, are indefinite, and/or lack enablement.

201. Independent Claim 1 of the '226 Patent recites a process for producing oil by, *inter alia*, obtaining a transgenic Brassica or Arabidopsis seed including EPA and DPA, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

202. Claim 1 of the '226 Patent is invalid for lack of written description because the

specification does not teach the preparation of any plant from the Brassica genus (an oil seed plant). The specification provides no examples of a plant from the Brassica genus having the claimed fatty acid content, let alone a Brassica plant having DPA converted from EPA at a ratio of at least 5%.

203. The specification of the '226 Patent does not disclose any oil produced from any Brassica oil seed plant that includes EPA and DPA, let alone the claimed amount of at least 2.5% C20 ω 3 fatty acids (w/w). The specification contains no representative examples of oil seed plants having the claimed fatty acid content. Claim 1 of the '226 Patent recites a process for producing the oil but the specification lacks adequate written description because it does not provide any examples of preparing a transgenic Brassica oil seed plant capable of producing an oil containing the recited fatty acids.

204. Thus, the specification does not provide written description support for producing oil from all transgenic Brassica plants having the claimed fatty acid content. The specification lacks sufficient examples and does not describe which genes would need to be inserted into the transgenic Brassica plants to obtain a transgenic seed capable of having the claimed fatty acid content.

205. Additionally, and/or in the alternative, Claim 1 of the '226 Patent is invalid for lack of enablement. Claim 1 of the '226 Patent recites a process for producing oil by obtaining a transgenic Brassica or Arabidopsis seed, *inter alia*, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

206. Claim 1 of the '226 Patent recites two open-ended range limitations containing a lower threshold but no upper limit. Such a broad range is not enabled because the specification

only provides one example – testing oil from a transgenic Arabidopsis plant cell – which only produced three oils comprising at least 2.5% (w/w) C20 ω 3 long-chain polyunsaturated fatty acids at the lower end of the claimed range (i.e., 3.8%, 3.8%, and 4.1 %). Further, the specification does not provide any examples of an oil seed plant that produces DPA as a result of a conversion ratio of EPA to DPA of at least 5%. Thus, Claim 1 of the '226 Patent is invalid as it is not enabled over the entire claimed range.

207. The specification of the '226 Patent also does not enable one skilled in the art to produce a transgenic Brassica seed having the claimed oil content as the specification provides no examples of oils produced from a Brassica plant including at least 2.5% C20 ω 3 fatty acids (w/w).

208. Claim 1 of the '226 Patent is also invalid as it is not enabled for the full breadth of the claim as the specification does not enable a person skilled in the art to make the claimed invention. Claim 1 does not recite which genes are present in the transgenic plant cell that cause the plant cell to produce seeds having the recited long chain fatty acids. Claim 1 conceivably covers all processes for producing oil from all transgenic Brassica seeds that have the recited fatty acid content, but the specification does not provide sufficient guidance to enable one to make the transgenic Brassica seed plants capable of comprising the fatty acids required by the claims. The specification does not enable a person skilled in the art to make any and all transgenic constructs that might be necessary to achieve a transgenic Brassica seed having the recited fatty acid content.

209. Further, Claim 1 of the '226 Patent is indefinite because it would be unclear to one of ordinary skill in the art what the patentees meant by the term "C20 ω 3 fatty acids" and whether it includes only 20 carbon atoms in the carbon chain or whether it refers to omega-3

fatty acids including any amount of carbon atoms between 20-29 in the carbon chain.

210. Each claim depending from Claim 1 of the '226 Patent, including without limitation Claims 2-18, is invalid under 35 U.S.C. § 112 for the same reasons as Claim 1.

211. Additionally, and/or in the alternative, at least Claim 1 of the '226 Patent is invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and/or 103 in view of at least Opsahl-Ferstad and/or Mukerji, alone and/or in combination, in view of the general knowledge of persons of ordinary skill in the art.

212. Based on the foregoing, each claim of the '226 Patent is invalid.

COUNT III: INVALIDITY OF THE '572 PATENT

213. BASF Plant Science refers to and incorporates by reference each of its allegations in paragraphs 1-212.

214. An actual and justiciable case or controversy exists between BASF Plant Science and Defendant regarding the validity of the '572 Patent.

215. Claims 1-18 of the '572 Patent are invalid under 35 U.S.C. § 112 at least because they lack adequate written description, are indefinite, and/or lack enablement.

216. Independent Claim 1 of the '572 Patent recites a process for producing oil by, *inter alia*, obtaining a transgenic seed of an oil seed plant including EPA, DPA, and DHA, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω3 fatty acids (w/w). Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

217. Claim 1 of the '572 Patent is invalid for lack of written description because the specification does not teach the preparation of any plant from the Brassica genus (an oil seed plant), let alone provide working examples of a plant in the Brassica genus capable of producing

seeds having the claimed fatty acid content.

218. The specification of the '572 Patent does not disclose any oil produced from any oil seed plants that includes EPA, DPA, and DHA, let alone the claimed amount of at least 2.5% C20 ω 3 fatty acids (w/w). The specification contains no representative examples of oilseed plants having the claimed fatty acid content. Claim 1 of the '572 Patent recites a process for producing the oil but the specification does not provide any examples of preparing a transgenic oil seed plant capable of containing the recited fatty acids.

219. Thus, the specification does not provide written description support for producing oil from all transgenic oil seed plants having the claimed fatty acid content. The specification lacks sufficient examples, and does not describe which genes are needed for insertion into the oil seed plants to obtain the oil having the claimed fatty acid content.

220. Additionally, and/or in the alternative, Claim 1 of the '572 Patent is also invalid for lack of enablement. Claim 1 of the '572 Patent recites a process for producing oil by obtaining a transgenic seed of an oil seed plant, *inter alia*, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

221. Claim 1 of the '572 Patent recites two open-ended range limitations containing a lower threshold without an upper limit. Such broad ranges are not enabled because the specification only provides one example – testing oil from a transgenic Arabidopsis plant cell – which only produced three oils comprising at least 2.5% (w/w) C20 ω 3 long-chain polyunsaturated fatty acids at the lower end of the claimed range (i.e., 3.8%, 3.8%, and 4.1 %). Further, the specification does not provide any examples of an oil seed plant that produces DPA as a result of a conversion ratio of EPA to DPA of at least 5%. Thus, Claim 1 of the '572 Patent

is invalid as it is not enabled over the entire claimed range.

222. The specification of the '572 Patent does not enable one skilled in the art to produce all transgenic seeds of an oil seed plant having the claimed fatty acid content because the specification provides no examples of oils produced from an oil seed in the Brassica plant genus including at least 2.5% C20 ω 3 fatty acids (w/w).

223. Claim 1 of the '572 Patent is also invalid as it is not enabled for the full breadth of the claim as the specification does not enable a person skilled in the art to make the claimed invention. Claim 1 does not recite which genes are present in the transgenic plant cell to cause the plant cell to produce the recited long chain fatty acids. Claim 1 conceivably covers any transgenic seed of any oil seed plant that has the recited fatty acid content, but the specification does not provide sufficient guidance to enable one to make the transgenic oil seed plants capable of producing an oil covered by the scope of the claims. The specification does not enable a person skilled in the art to make any and all claimed transgenic constructs that might be necessary to achieve a transgenic oil seed having the recited fatty acid content.

224. Further, Claim 1 of the '572 Patent is indefinite because it would be unclear to one of ordinary skill in the art what the patentees meant by the term "C20 ω 3 fatty acids" and whether it includes only 20 carbon atoms in the carbon chain or whether it refers to omega-3 fatty acids including any amount of carbon atoms between 20-29 in the carbon chain.

225. Claims 2-18, which depend from Claim 1 of the '572 Patent, are invalid under 35 U.S.C. § 112 for the same reasons as Claim 1.

226. Additionally, and/or in the alternative, at least Claim 1 of the '572 Patent is invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and/or 103 in view of at least Opsahl-Ferstad and/or Mukerji, alone and/or in combination, in view of the general knowledge

of persons of ordinary skill in the art.

227. Based on the foregoing, Claims 1-18 of the '572 Patent are invalid.

COUNT IV: INVALIDITY OF THE '377 PATENT

228. BASF Plant Science refers to and incorporates by reference each of its allegations in paragraphs 1-227.

229. An actual and justiciable case or controversy exists between BASF Plant Science and Defendant regarding the validity of the '377 Patent.

230. All claims of the '377 Patent are invalid under 35 U.S.C. § 112 at least because they lack adequate written description, are indefinite, and/or lack enablement.

231. Independent Claim 1 of the '377 Patent recites a process for producing oil by, *inter alia*, obtaining a transgenic seed of an oil seed plant including EPA and DPA in an esterified form as part of a triglyceride, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claim 1 also recites that the transgenic plant comprises a microalgal fatty acid desaturase. Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

232. Claim 1 of the '377 Patent is invalid for lack of written description because the specification does not teach the preparation of any plant from the Brassica genus (an oil seed plant), let alone provide working examples of a plant in the Brassica genus capable of producing seeds having the claimed fatty acid content.

233. The specification of the '377 Patent does not disclose any oil produced from any oil seed plants that includes EPA and DPA, let alone the claimed amount of at least 2.5% C20 ω 3 fatty acids (w/w). The specification of the '377 Patent contains no representative examples of oilseed plants having the claimed fatty acid content. Claim 1 of the '377 Patent recites a process

for producing the oil but does not provide any examples of preparing a transgenic oil seed capable of producing an oil containing the recited fatty acids covered by the scope of the claim.

234. Thus, the specification does not provide written description support for producing oil from all transgenic oil seed plants having the claimed fatty acid content. The specification lacks sufficient examples, and does not describe which genes are needed for insertion into the oil seed plants to obtain the oil having the claimed fatty acid content.

235. Claim 1 of the '377 Patent is also indefinite and/or lacks adequate written description in claiming that the transgenic plant comprises a microalgal fatty acid desaturase. The specification does not provide adequate written description support for the term "microalgal fatty acid desaturase." It is not clear which microalgal fatty acid desaturases would be covered by the claims and there is no guidance as to which microalgal fatty acid desaturases would work in all transgenic oil seed plants to achieve the recited fatty acid content and the recited conversion efficiency.

236. Additionally, and/or in the alternative, Claim 1 of the '377 Patent is invalid for lack of enablement. Claim 1 of the '377 Patent recites a process for producing oil by obtaining a transgenic seed of an oil seed plant, *inter alia*, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

237. Claim 1 of the '377 Patent recites two open-ended range limitations containing a lower threshold without an upper limit. Such a broad range is not enabled because the specification only provides one example – testing oil from a transgenic Arabidopsis plant cell – which only produced three oils comprising at least 2.5% (w/w) C20 ω 3 long-chain polyunsaturated fatty acids at the lower end of the claimed range (i.e., 3.8%, 3.8%, and 4.1 %).

Further, the specification does not provide any examples of an oil seed plant that produces DPA as a result of a conversion ratio of EPA to DPA of at least 5%. Thus, Claim 1 of the '377 Patent is invalid as it is not enabled over the entire claimed range.

238. The specification of the '377 Patent does not enable one skilled in the art to produce all transgenic seeds of an oil seed plant having the claimed fatty acid content because the specification provides no examples of oils produced from an oil seed in the Brassica plant genus including at least 2.5% C20 ω 3 fatty acids (w/w).

239. Claim 1 of the '377 Patent is also invalid as it is not enabled for the full breadth of the claim as the specification does not enable a person skilled in the art to make the claimed invention. Claim 1 does not recite which genes are present in the transgenic plant cell to cause the plant cell to produce the recited long chain fatty acids. Claim 1 conceivably covers any transgenic seed of any oil seed plant that has the recited fatty acid content, but the specification does not provide sufficient guidance to enable one to make the transgenic oil seed plants capable of producing the oil covered by the scope of the claims. Further, the specification is not enabled for the use of any and all microalgal fatty acid desaturases in all Brassica plants to obtain the transgenic plant cell capable of producing an oil having the fatty acid content recited in the claims. The specification does not enable a person skilled in the art to make any and all transgenic constructs that might be necessary to achieve a transgenic oil seed having the recited fatty acid content.

240. Further, Claim 1 of the '377 Patent is indefinite because it would be unclear to one of ordinary skill in the art what the patentees meant by the term "C20 ω 3 fatty acids" and whether it includes only 20 carbon atoms in the carbon chain or whether it refers to omega-3 fatty acids including any amount of carbon atoms between 20-29 in the carbon chain.

241. Each claim depending from Claim 1 of the '377 Patent, including without limitation Claims 2-20, is invalid under 35 U.S.C. § 112 for the same reasons as Claim 1.

242. Additionally, and/or in the alternative, at least Claim 1 of the '377 Patent is invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and/or 103 in view of at least Opsahl-Ferstad and/or Mukerji, alone and/or in combination, in view of the general knowledge of persons of ordinary skill in the art.

243. Based on the foregoing, each claim of the '377 Patent is invalid.

COUNT V: INVALIDITY OF THE '432 PATENT

244. BASF Plant Science refers to and incorporates by reference each of its allegations in paragraphs 1-243.

245. An actual and justiciable case or controversy exists between BASF Plant Science and Defendant regarding the validity of the '432 Patent.

246. Claims 1-20, 22-42, and 44-47 of the '432 Patent are invalid under 35 U.S.C. § 112 at least because they lack adequate written description, are indefinite, and/or lack enablement.

247. Independent Claims 1 and 26 of the '432 Patent claim a process for producing oil or a composition, respectively, by, *inter alia*, obtaining a transgenic seed of an oil seed plant including EPA, DPA, and DHA in an esterified form as part of a triglyceride, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claims 1 and 26 of the '432 Patent also require that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

248. Claims 1 and 26 of the '432 Patent are invalid for lack of written description because the specification does not teach the preparation of any plant from the Brassica genus (an

oil seed plant), let alone provide working examples of a plant in the Brassica genus capable of producing seeds having the claimed fatty acid content.

249. The specification of the '432 Patent does not disclose any oil produced from any oil seed plants that includes EPA, DPA, and DHA, let alone the claimed amount of at least 2.5% C20 ω 3 fatty acids (w/w). The specification contains no representative examples of oil seed plants having the claimed fatty acid content. Claims 1 and 26 of the '432 Patent claim a process for producing the oil but the specification does not provide any examples of preparing a transgenic oil seed plant capable of containing the recited fatty acids.

250. Thus, the specification does not provide written description support for producing oil from all transgenic oil seed plants having the claimed fatty acid content. The specification lacks sufficient examples, and does not describe which genes would need inserting into the transgenic oil seed plants to obtain the oil having the claimed fatty acid content.

251. Additionally, and/or in the alternative, Claims 1 and 26 of the '432 Patent are also invalid for lack of enablement. Claims 1 and 26 of the '432 Patent claim a process for producing oil and a composition, respectively, by obtaining a transgenic seed of an oil seed plant, *inter alia*, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w). Claims 1 and 26 also require that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

252. Claims 1 and 26 of the '432 Patent recite two open-ended range limitations containing a lower threshold without an upper limit. Such broad range is not enabled by the specification because the specification only provides one example – testing oil from a transgenic Arabidopsis plant cell – and this only produced three oils comprising at least 2.5% (w/w) C20 ω 3 fatty acids at the lower end of the claimed range (i.e., 3.8%, 3.8%, and 4.1 %). Further, the

specification does not provide any examples of an oil seed plant that produces DPA as a result of a conversion ratio of EPA to DPA of at least 5%. Thus, Claims 1 and 26 are invalid as they are not enabled over the entire claimed range.

253. The specification of the '432 Patent does not enable one skilled in the art to produce all transgenic seeds of an oil seed plant having the claimed oil content as the specification provides no examples of oils produced from an oil seed in the Brassica plant genus including at least 2.5% C20 ω 3 fatty acids (w/w).

254. Claims 1 and 26 are also invalid as they are not enabled for their full breadth as the specification does not enable a person skilled in the art to make the claimed inventions. The claims do not recite which genes are present in the transgenic plant cell that cause the plant cell to produce seeds having the recited long chain fatty acids. The claims conceivably cover any transgenic seed of any oil seed plant that has the recited fatty acid content, but the specification does not provide sufficient guidance to enable one to make the transgenic oil seed plants capable of producing the oil covered by the scope of the claims. The specification does not enable a person skilled in the art to make any and all transgenic constructs that might be necessary to achieve a transgenic oil seed having the recited fatty acid content.

255. Further, Claims 1 and 26 of the '432 Patent are indefinite because it would be unclear to one of ordinary skill in the art what the patentees meant by the term "C20 ω 3 fatty acids" and whether it includes only 20 carbon atoms in the carbon chain or whether it refers to omega-3 fatty acids including any amount of carbon atoms between 20-29 in the carbon chain.

256. Claims 2-20 and 22-25, which depend from Claim 1 of the '432 Patent, are invalid under 35 U.S.C. § 112 for the same reasons as Claim 1.

257. Claims 27-42 and 44-47, which depend from Claim 26 of the '559 Patent, are

invalid under 35 U.S.C. § 112 for the same reasons as Claim 26.

258. Additionally, and/or in the alternative, at least Claims 1 and 26 of the '432 Patent are invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and/or 103 in view of at least Opsahl-Ferstad and/or Mukerji, alone and/or in combination, in view of the general knowledge of persons of ordinary skill in the art.

259. Based on the foregoing, Claims 1-20, 22-42, and 44-47 of the '432 Patent is invalid.

COUNT VI: INVALIDITY OF THE '410 PATENT

260. BASF Plant Science refers to and incorporates by reference each of its allegations in paragraphs 1-259.

261. An actual and justiciable case or controversy exists between BASF Plant Science and Defendant regarding the validity of the '410 Patent.

262. All claims of the '410 Patent are invalid under 35 U.S.C. § 112 at least because they lack adequate written description, are indefinite, and/or lack enablement.

263. Independent Claim 1 of the '410 Patent recites a process for producing EPA, DPA, and DHA by, *inter alia*, growing a transgenic oil seed plant that comprises EPA, DPA, and DHA in esterified form as part of triglycerides in its seed, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w) acids. Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

264. Claim 1 of the '410 Patent is invalid for lack of written description because the specification does not teach the preparation of any plant from the Brassica genus (an oil seed plant). The specification provides no examples of a plant from the Brassica genus capable of

having the claimed fatty acid content, let alone an oil seed plant having DPA converted from EPA at a ratio of at least 5%.

265. The specification of the '410 Patent does not disclose any oil produced from any oil seed plant that includes EPA, DPA, and DHA, let alone the claimed amount of at least 2.5% C20 ω 3 fatty acids (w/w). The specification of the '410 Patent contains no representative examples of oil seed plants having the claimed fatty acid content. Claim 1 of the '410 Patent recites a process for producing the fatty acids but the specification does not provide any examples of preparing a transgenic oil seed plant capable of producing the recited fatty acids.

266. Thus, the specification does not provide written description support for producing the recited fatty acids from all transgenic oil seed plants. The specification lacks a sufficient number of examples, as well as lacks a description of which genes would need to be inserted into the transgenic oil seed plants capable of producing the claimed fatty acids.

267. Additionally, and/or in the alternative, Claim 1 of the '410 Patent is also invalid for lack of enablement. Claim 1 of the '410 Patent recites a process for producing EPA, DPA, and DHA by growing a transgenic oil seed plant that comprises EPA, DPA, and DHA in esterified form as part of triglycerides in its seed, *inter alia*, wherein the total fatty acid content of the transgenic seed comprises at least 2.5% C20 ω 3 fatty acids (w/w) acids. Claim 1 also requires that the level of DPA present is based on a conversion ratio of EPA to DPA of at least 5%.

268. Claim 1 of the '410 Patent recites two open-ended range limitations containing a lower threshold, without an upper limit. Such broad range is not enabled by the specification because the specification only provides one example – testing oil from a transgenic Arabidopsis plant cell – and this only produced three oils comprising at least 2.5% (w/w) C20 ω 3 fatty acids

at the lower end of the claimed range (i.e., 3.8%, 3.8%, and 4.1 %). Further, the specification does not provide any examples of an oil seed plant that produces DPA as a result of a conversion ratio of EPA to DPA of at least 5%. Thus, Claim 1 of the '410 Patent is invalid as it is not enabled over the entire claimed range.

269. The specification of the '410 Patent does not enable one skilled in the art to practice the claimed process for producing EPA, DPA, and DHA because the specification fails to provide an example of a transgenic oil seed plant having the claimed fatty acid content as the specification provides no examples of oils produced from a transgenic Brassica seed including at least 2.5% C20 ω 3 fatty acids (w/w).

270. Claim 1 is also invalid as it is not enabled for the full breadth of the claim as the specification does not enable a person skilled in the art to make the claimed inventions. Claim 1 does not recite which genes are present in the transgenic plant cell that cause the plant cell to produce seeds having the recited long chain fatty acids. Claim 1 conceivably covers all processes for producing EPA, DPA, and DHA from all transgenic oil seed plants, but the specification does not provide sufficient guidance to enable one to make the transgenic oil seed plants necessary to produce the fatty acids. The specification does not enable a person skilled in the art to make any and all claimed transgenic constructs that might be necessary to achieve a transgenic oil seed having the recited fatty acid content.

271. Further, Claim 1 of the '410 Patent is indefinite because it would be unclear to one of ordinary skill in the art what the patentees meant by the term "C20 ω 3 fatty acids" and whether it includes only 20 carbon atoms in the carbon chain or whether it refers to omega-3 fatty acids including any amount of carbon atoms between 20-29 in the carbon chain.

272. Each claim depending from Claim 1 of the '410 Patent, including without

limitation Claims 2-20, is invalid under 35 U.S.C. § 112 for the same reasons as Claim 1.

273. Additionally, and/or in the alternative, at least Claim 1 of the '432 Patent is invalid as anticipated and/or obvious under 35 U.S.C. §§ 102 and/or 103 in view of at least Opsahl-Ferstad and/or Mukerji, alone and/or in combination, in view of the general knowledge of persons of ordinary skill in the art.

274. Based on the foregoing, each claim of the '410 Patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to:

- A. Enter declaratory judgment that claims 1-6 and 9-11 of the '849 Patent are invalid.
- B. Enter declaratory judgment that claims 1-18 of the '226 Patent are invalid.
- C. Enter declaratory judgment that claims 1-18 of the '572 Patent are invalid.
- D. Enter declaratory judgment that claims 1-20 of the '377 Patent are invalid.
- E. Enter declaratory judgment that claims 1-20, 22-42, and 44-47 of the '432 Patent are invalid.
- F. Enter declaratory judgment that claims 1-20 of the '410 Patent are invalid.
- G. Declare this case exceptional and grant Plaintiff its reasonable attorneys' fees under 35 U.S.C. § 285.
- H. Grant such other and further relief as this Court deems just and proper.

JURY DEMAND

Under Rule 38 of the Federal Rules of Civil Procedure, BASF Plant Science requests a trial by jury of any issues so triable.

April 20, 2018

Respectfully submitted,

BASF PLANT SCIENCE, L.P.

By counsel

/s/ Thomas N. Connally

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of April 2018, electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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