

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
OCT 21 2004  
JAMES W. McCORMACK, CLERK  
By: *Madra Sugate* DEP. CLERK

BASF AGROCHEMICAL PRODUCTS B.V. )  
and BASF CORPORATION )

Plaintiffs, )

CASE NO. 3-04-CV-311

vs. )

DON ARNOLD, BRUCE ARNOLD, )  
DARREL CRISLER, WILSON CRISLER, )  
BRYAN FARMER, FCA TRUCKING, INC., )  
DICK FARMER, STAN CRISLER, )  
AGRI MARKETING, INC., )  
D & T FARMS PARTNERSHIP, )  
ARNOLD & JACOBS FARMS, INC., )  
MAEGON JACOBS, J. A. J. FARMS, INC., )  
CRISLER & FARMER, INC., )  
K & S ARNOLD FARMS, INC., )  
BRITTANY SCHMIDT, DONNIE JACOBS, )  
SHERRY MCQUAY, A-JAC FARMS, INC., )  
HOPEWELL FARMS, INC., )  
JENNIFER JACOBS, CODY ARNOLD, )  
RONNIE JACOBS, ARNOLD FARMS, INC., )  
WILSON CRISLER FARMS, INC., and )  
JOHN DOES 16-25 )

Defendants. )

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**FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF**

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Plaintiffs BASF Agrochemical Products B.V., and BASF Corporation (collectively, "Plaintiffs") bring this action against the defendants.

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## JURISDICTION AND VENUE

1. This is an action for relief from patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. The subject matter of the patent-in-suit is related to plants, plant tissues and plant seeds, which are resistant to inhibition by herbicides, such as herbicides of the imidazolinone class, which normally inhibit the growth and development of those plants, plant tissues and plant seeds.

2. This Court has jurisdiction over the subject matter of this patent action pursuant to 28 U.S.C. § 1331, in that one or more of Plaintiffs' claims arise under the laws of the United States, as well as 28 U.S.C. § 1338, granting district courts original jurisdiction over any civil action relating to patents. Additionally, supplemental jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1367 over all of Plaintiffs' non-federal question claims, such that they form part of the same case or controversy.

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

## PARTIES

4. Plaintiff BASF Agrochemical Products, B.V., ("BASF Agro"), a corporation organized under the laws of the Netherlands, is the exclusive licensee of United States Patents No. 6,211,438, 6,211,439 and 6,222,100 (collectively, the "patents-in-suit"), with right to enforce such patents.

5. Plaintiff BASF Corporation ("BC") is a corporation organized under the laws of Delaware with its principal place of business at 100 Campus Drive, Florham Park, New Jersey. BC is a sublicensee of the Patents in suit and, as such, BC has a legal interest in this cause. Furthermore, BC entered into certain contractual relationships with several of the named defendants.

6. Defendant Don Arnold is a resident of Lawrence County, Walnut Ridge, Arkansas. On or about February 17, 2003, defendant Don Arnold executed a BASF CLEARFIELD\* Rice Stewardship Grower Agreement and attests to have read and agreed to all terms and conditions of the agreement.

7. Defendant Bruce Arnold is a resident of Lawrence County, Bono, Arkansas. On or about February 17, 2003, defendant Bruce Arnold executed a BASF CLEARFIELD\* Rice Stewardship Grower Agreement and attests to have read and agreed to all terms and conditions of the agreement.

8. Defendant Darrel Crisler is a resident of Lawrence County, Walnut Ridge, Arkansas. On or about February 17, 2003, defendant Darrel Crisler executed a BASF CLEARFIELD\* Rice Stewardship Grower Agreement and attests to have read and agreed to all terms and conditions of the agreement.

9. Defendant Dick Farmer is a resident of Randolph County, Arkansas.

10. Defendant Wilson Crisler is a resident of Lawrence County, Walnut Ridge, Arkansas.

11. Defendant F C A Trucking, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Bruce Arnold. On information and belief, F C A Trucking, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

12. Defendant Agri Marketing, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Wilson Crisler. On information and belief, Agri Marketing, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

13. Defendant Stan Crisler is, on information and belief, a resident of Lawrence County, Walnut Ridge, Arkansas.

14. Defendant Bryan Farmer is, on information and belief, a resident of Lawrence County, Walnut Ridge, Arkansas, executed a BASF CLEARFIELD\* Rice Stewardship Grower Agreement and attests to have read and agreed to all terms and conditions of the agreement.

15. Defendant D & T Farms Partnership is an unregistered partnership within the State of Arkansas, and on information and belief, this partnership comprises at least separate defendant Darrel Crisler and this partnership is also expressly referenced by Crisler as the location of the farms on which the rice purchased pursuant to the BASF CLEARFIELD\* Rice Stewardship Grower Agreement was to be planted as stated by Darrel Crisler on the BASF CLEARFIELD\* Rice Stewardship Grower Agreement.

16. In substitution of John Doe No. 1, Defendant Arnold & Jacobs Farms, Inc. is an Arkansas corporation with its principal place of business in Jonesboro, Arkansas. The registered agent for this entity is Cindy Wann. On information and belief, Arnold & Jacobs Farms, Inc. farms rice in or around Jonesboro, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

17. In substitution of John Doe No. 2, Defendant Maegon Jacobs, on information and belief, is a resident of Lawrence County, Walnut Ridge, Arkansas.

18. In substitution of John Doe No. 3, Defendant J. A. J. Farms, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Don Arnold. On information and belief, J. A. J. Farms, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

19. In substitution of John Doe No. 4, Defendant Crisler & Farmer, Inc. is an Arkansas corporation with a principal place of business in Pocahontas, Arkansas. The registered agent for this entity is Dick Farmer. On information and belief, Crisler & Farmer, Inc. farms rice in or around Pocahontas, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

20. In substitution of John Doe No. 5, Defendant K & S Arnold Farms, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Sherry McQuay. On information and belief, K & S Arnold Farms, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

21. In substitution of John Doe No. 6, Defendant Brittany Schmidt, on information and belief, is a resident of Lawrence County, Walnut Ridge, Arkansas.

22. In substitution of John Doe No. 7, Defendant Donnie Jacobs, on information and belief, is a resident of Lawrence County, Walnut Ridge, Arkansas.

23. In substitution of John Doe No. 8, Defendant Sherry McQuay, on information and belief, is a resident of Lawrence County, Walnut Ridge, Arkansas.

24. In substitution of John Doe No. 9, Defendant A-Jac Farms, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Donnie Jacobs. On information and belief, A-Jac Farms, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

25. In substitution of John Doe No. 10, Defendant Hopewell Farms, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Donnie Jacobs. On information and belief,

Hopewell Farms, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

26. In substitution of John Doe No. 11, Defendant Jennifer Jacobs, on information and belief, is a resident of Lawrence County, Walnut Ridge, Arkansas.

27. In substitution of John Doe No. 12, Defendant Cody Arnold, on information and belief, is a resident of Jonesboro, Arkansas.

28. In substitution of John Doe No. 13, Defendant Ronnie Jacobs, on information and belief, is a resident of Lawrence County, Walnut Ridge, Arkansas.

29. In substitution of John Doe No. 14, Defendant Arnold Farms, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Cody Arnold. On information and belief, Arnold Farms, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

30. In substitution of John Doe No. 15, Defendant Wilson Crisler Farms, Inc. is an Arkansas corporation with a principal place of business in Walnut Ridge, Arkansas. The registered agent for this entity is Wilson Crisler. On information and belief, Wilson Crisler Farms, Inc. farms rice in or around Walnut Ridge, Arkansas on which rice covered by or cultivated according to the patents-in-suit was planted during the 2003 growing season.

31. Defendants John Doe 16-25 are persons and entities who are/were providing or using services or goods that contributed, facilitated, or enabled the named defendants to infringe the patents-in-suit in the manner further described, below. While the identity of these parties is not presently known, Plaintiffs will timely amend pleadings to properly establish all real parties in interest to the litigation, if any.

## FACTS

32. Plaintiffs are in the business of marketing, licensing, and providing for the production and sale of certain herbicide resistant crops. Plaintiffs also produce, market, license and sell herbicides useful in the cultivation of the same. Plaintiffs use a variety of organizations in this endeavor, including wholly owned subsidiaries, joint ventures, sales representatives, and independent dealers.

33. On April 3, 2001, U.S. Patents No. 6,211,438 ("the '438 Patent") and 6,211,439 ("the '439 Patent"), and on April 24, 2001, U.S. Patent No. 6,222,100 ("the '100 Patent"), all entitled "Herbicide Resistance in Plants," were duly and legally issued to the inventors named therein, who have assigned their rights to the entity known as Molecular Genetics, Inc., the exclusive licensor of these patents to BASF Agro. True and correct copies of the '438, '439 and '100 Patents are attached as Exhibit A and are incorporated herein by reference. The trade name BASF Agro uses for the technology related to the patents-in-suit is CLEARFIELD\*.

34. By and through agreement, Molecular Genetics, Inc. exclusively licensed technology as protected by the patents-in-suit to BASF Agro, who thereafter lawfully sub-licensed the technology to BC, such that all parties are proper litigants to this action.

35. By virtue of the issuance of the patents-in-suit, the herbicide resistant crops can be grown, marketed, licensed, and sold only by or with Plaintiffs' permission, in accordance with the Patent Laws and with the terms of the license agreements related to the Patents-in-Suit.

36. Defendants are actively growing, marketing, offering for sale, promoting, or selling a product embodying Plaintiffs' technology, in violation of Plaintiffs' patent and contract rights.

37. Defendants, through their agents, employees, and assigns, were placed on notice of Plaintiffs' patent rights insofar as the Defendants were given specific instruction by BC or its authorized dealers as to the patented nature of the CLEARFIELD\* rice, as a condition to receiving the rice for planting.

38. Defendants acted, and continue to act, with full knowledge and with notice that such activities are/were in violation of Plaintiffs' patent rights.

39. Plaintiffs have not granted permission to the Defendants to grow, use, market, or sell these infringing products in the manner in which they are currently doing.

40. Defendants who executed grower agreements expressly agreed not to save and replant the harvest from the 2003 rice crop, which is a material term prominently stated in the BASF CLEARFIELD\* Rice Stewardship Grower Agreement.

#### **COUNT I—INFRINGEMENT OF THE PATENTS-IN-SUIT**

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

42. Defendants infringed and continue to infringe; have induced and continue to induce others to infringe; or they have committed and continue to commit acts of contributory infringement of one or more of the claims of the patents-in-suit, under the theory of literal infringement or infringement by doctrine of equivalents, or both.

43. As a consequence of the Defendants' infringing activities in contravention of the Patent Laws, Plaintiffs have suffered monetary damages in an amount not yet determined. Further, Plaintiffs suffer irreparable harm and have no adequate remedy at law against ongoing and future infringements. These injuries will continue unless and until the Defendants' infringing activities are preliminarily and forever enjoined by this Court.



44. The irreparable harm is such that, without restriction upon the proper use of the technology, the long-term viability of the CLEARFIELD\* technology is at substantial risk. One of the target weeds of the BASF herbicide is red rice, a type of wild rice which shares a propensity to develop resistance to the herbicides to which cultivated rice is intentionally made tolerant by using the CLEARFIELD\* technology. If growers such as Defendants Bruce and Don Arnold, Darrel Crisler, and Bryan Farmer are permitted to save CLEARFIELD\* rice seed for planting in contravention of the grower agreements they signed, then it is scientifically inevitable that some red rice seed will also be saved. It is then just as inevitable that some of this red rice seed will have developed tolerance to the CLEARFIELD\* herbicides through natural mutation. When this tolerant red rice is planted it will thus propagate, creating progeny that are likewise tolerant to the CLEARFIELD\* herbicide. In this way, resistance of the weed to the herbicide will be accelerated and the effectiveness of the CLEARFIELD\* system to keep cultivated rice fields as free of red rice as possible will be rapidly undermined, thus reducing the value of the herbicide to the rice industry and other farmers who wish to benefit from this technology.

#### **COUNT II--CONVERSION**

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

46. Defendants are exercising dominion and control over patented technology.

47. Defendants have converted the patented technology to their own use without permission.

48. As a result of Defendants' actions, Plaintiffs are entitled to recover compensatory damages.

49. As Defendants' conversion of the intellectual property was done willfully and maliciously, with reckless disregard for Plaintiffs' rights, Plaintiffs are entitled to an award of punitive damages.

### **COUNT III—BREACH OF CONTRACT**

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

51. Defendants Bruce Arnold, Don Arnold, Bryan Farmer, and Darrel Crisler individually entered into a contractual agreement entitled "BASF CLEARFIELD\* Rice Stewardship Grower Agreement" for the 2003 season, each Agreement being provided as Exhibit B and incorporated herein by reference.

52. The language of the executed agreement expressly limits use of the seed, in part as follows:

- (a) To use the seed containing CLEARFIELD\* technologies solely for planting a single commercial crop.
- (b) To not supply any of this seed to any other person or entity for planting, and to not save any crop produced from this seed for replanting, or supply seed produced from this seed to anyone for replanting.

53. The signed agreements contain a liquidated damages provision in the amount of \$750 for each acre planted in unauthorized CLEARFIELD\* seed. Additionally, the signed agreements provide for full repayment of Plaintiffs' legal fees and costs.

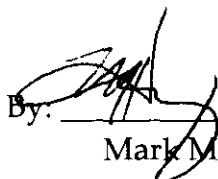
### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request this Court to grant the following relief:

- A. That the Defendants be declared to have infringed, induced others to infringe, or committed acts of contributory infringement with respect to the claims of the patents-in-suit;
- B. That the Defendants', their officers, agents, servants, employees, parents, subsidiaries, affiliates, successors, and all others in active concert or participation with them or acting on their behalf be permanently enjoined from further infringement of the patents-in-suit;
- C. That the Defendants be ordered to account for and pay to Plaintiffs all damages caused to Plaintiffs in an amount adequate to compensate Plaintiffs for the infringement of the patents-in-suit, but in no event less than a reasonable royalty;
- D. That Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused to them by reason of Defendants' infringement of the patents-in-suit;
- E. That this be declared an "exceptional case" pursuant to 35 U.S.C. § 285 and that Defendants be ordered to pay Plaintiffs' attorneys' fees and costs;
- F. That this Court treble the damages awarded for the infringement, together with reasonable attorneys' fees;
- G. That this Court award damages sufficient to compensate Plaintiffs for Defendants' conversion of Plaintiffs' intellectual property rights, together with interest and costs;
- H. That this Court award punitive damages for Defendants' willful and malicious acts of conversion;
- I. That this Court award contract damages, including liquidated damages of \$750 for each acre illegally planted and for legal fees and other costs, including all other costs associated with enforcing the CLEARFIELD\* Rice Stewardship Agreements;

- J. That this Court permanently enjoin the Defendants from acting contrary to their obligations under the CLEARFIELD\* Rice Stewardship Agreements into which they entered, including but not limited to implementation of corrective measures to comply with the stewardship obligations stated therein; and
- K. That this Court award such other relief to which Plaintiffs may be entitled and as the Court may deem appropriate.

BASF Agrochemical Products B.V.  
BASF Corporation

By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I certify that on October 20, 2004, I sent the foregoing via first class mail to the following counsel of record with sufficient postage to ensure delivery thereof, at the following address below:

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\_\_\_\_\_  
Mark Murphey Henry

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

EXHIBITS ARE ATTACHED TO  
ORIGINAL PLEADING IN  
COURT'S CASE FILE