

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)	
MONSANTO TECHNOLOGY LLC,)	
)	
Plaintiffs,)	
)	Cause No.:
v.)	
)	
BOGGS FARM CENTER, INC.,)	
and ANDREW MAX BOGGS, JR.,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs Monsanto Company and Monsanto Technology LLC (sometimes collectively referred to hereinafter as “Monsanto”), by and through their undersigned counsel, and for their Complaint against Defendant Boggs Farm Center, Inc. (“Boggs Farm Center”) and Defendant Andrew Max Boggs, Jr. (“Max Boggs”), state as follows:

THE PLAINTIFFS

1. Monsanto Company is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri. Monsanto Company is authorized to do and is doing business in Missouri and in this judicial district. Monsanto Company is in the business of developing, manufacturing, licensing and selling agricultural biotechnology, agricultural chemicals and other agricultural products.

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

THE DEFENDANTS

3. Defendant Boggs Farm Center is an agricultural business incorporated in the State of North Carolina.

4. Defendant Max Boggs is an officer of Boggs Farm Center and is a resident and domiciliary of Cleveland County, North Carolina. Upon information and belief, Defendant Max Boggs is employed by Defendant Boggs Farm Center.

JURISDICTION AND VENUE

5. This Court has jurisdiction 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 regarding patents. Additionally, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' non-federal question claims, such that they form part of the same case or controversy.

6. This Court has personal jurisdiction over Defendants and venue is proper in this judicial district insomuch as the parties agreed to personal jurisdiction in this judicial district and have designated this Honorable Court as the forum and venue for all disputes arising under the 2001 licensing agreement executed by Defendant Boggs Farm Center and Defendant Max Boggs. A true and accurate copy of the licensing agreement executed by and on behalf of Defendant Boggs Farm Center and Defendant Max Boggs is attached hereto as Exhibit 1.

GENERAL ALLEGATIONS

7. After the investment of substantial time, expense, and expertise, Monsanto developed a new plant biotechnology that involves the transfer into crop seed of a gene that causes such seed to be resistant to Roundup® branded herbicides. Roundup® is a non-selective herbicide manufactured by Monsanto, which causes severe injury or crop destruction to soybean

varieties that are not Roundup Ready®. This technology has been utilized in several agricultural crops, including soybeans. The genetically improved seeds are marketed by Monsanto as Roundup Ready® soybeans.

8. Monsanto's Roundup Ready® seed biotechnology is protected under patents issued by the United States Patent Office, including U.S. Patent Number 5,352,605 (the "'605 patent") and U.S. Patent Number US RE39,247 E (the "'247 patent"), true and accurate copies of which are attached hereto as Exhibits 2 and 3, respectively, and incorporated herein by reference. The '605 and '247 patents were issued and assigned to Monsanto prior to the events giving rise to this action.

9. Monsanto licenses the use of Roundup Ready® seed technology to farmers at the retail marketing level.

10. The required statutory notice that Roundup Ready® biotechnology is patented is placed on the labeling of all bags containing Roundup Ready® seed. In particular, each bag of Roundup Ready® seed is marked with notice of at least U.S. Patent No. 5,352,605.

11. A 2001 licensing agreement was executed by and on behalf of Defendant Boggs Farm Center and Defendant Max Boggs. (*See* Exhibit 1).

12. Under the terms of Monsanto's licensing system, through which Monsanto's patented Roundup Ready® crop seed technology is licensed, a purchaser is only authorized to use the seed for planting a commercial crop in a single growing season, and is prohibited from saving any of the crop produced from the purchased seed for planting or selling saved seed from the crop produced from the purchased seed, or otherwise supplying or transferring any seed produced from the purchased seed to anyone for planting. The only permissible use of the patent protected seed is to market the crop derived therefrom as a commodity.

13. Under the terms of Monsanto's licensing system, through which Monsanto's patented Roundup Ready® and other crop seed technology is licensed, a purchaser is expressly prohibited from reselling or otherwise supplying seed obtained pursuant to the limited-use license granted by Monsanto's license agreements such as Exhibit 1 to any other person or entity for planting.

14. Upon information and belief, Defendant Boggs Farm Center and Defendant Max Boggs have sold and/or transferred "saved" (i.e., second generation), bin-run Roundup Ready® soybeans, that is, soybean seed which was produced from Roundup Ready® soybean seed which was planted in the immediately preceding or an earlier year to one or more third parties.

15. Upon information and belief, Defendant Boggs Farm Center and Defendant Max Boggs have sold, transferred or otherwise supplied newly purchased soybean, corn and/or cotton seed containing Monsanto's patented biotechnology to one or more third persons and/or entities for planting without authorization or a license from Monsanto to do so.

16. Upon information and belief, Defendants knowingly, intentionally and willfully sold and/or transferred "saved" or unauthorized Roundup Ready® seed without authorization from Monsanto.

COUNT I - PATENT INFRINGEMENT - PATENT NO. 5,352,605
DEFENDANT BOGGS FARM CENTER

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

18. On October 4, 1994, United States Patent No. 5,352,605 was duly and legally issued for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, Monsanto has been and still is the owner of that patent. *See* Exhibit 2. This invention is in the fields of genetic engineering and plant biology.

19. Without authorization or license, Defendant Boggs Farm Center has made, used, offered to sell, sold and/or transferred Monsanto's patented invention within the United States during the term of Patent No. 5,352,605, and in violation of 35 U.S.C. § 271.

20. Defendant Boggs Farm Center's infringing activities were undertaken with full knowledge and with notice that Defendant Boggs Farm Center was in violation of Monsanto's patent rights.

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

22. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to Defendant Boggs Farm Center. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 284 in light of Defendant Boggs Farm Center's knowing, willful, deliberate and conscious infringement of the patent rights at issue and that Monsanto recover its reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT II - PATENT INFRINGEMENT - PATENT NO. US RE39,247 E
DEFENDANT BOGGS FARM CENTER

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

24. On August 22, 2006, United States Patent No. US RE39,247 E was duly and legally reissued for an invention in Glyphosate-Tolerant 5-Enolpyruvylshikimate-3-Phosphate Synthases. This was the reissue of Patent No. 5,633,435, issued on May 27, 1997, and since that date, Monsanto has been and still is the owner of that patent. *See* Exhibit 3. This invention is in the fields of genetic engineering and plant biology.

25. Without authorization or license, Defendant Boggs Farm Center has made, used, offered to sell, sold and/or transferred Monsanto's patented invention within the United States during the term of Patent No US RE39,247 E, and in violation of 35 U.S.C. § 271.

26. Defendant Boggs Farm Center's infringing activities were undertaken with full knowledge and with notice that Defendant Boggs Farm Center was in violation of Monsanto's patent rights.

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

28. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to Defendant Boggs Farm Center. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 284 in light of Defendant Boggs Farm Center's knowing, willful, deliberate and conscious infringement of the patent rights at issue and that Monsanto recover its reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT III - PATENT INFRINGEMENT - PATENT NO. 5,352,605
DEFENDANT MAX BOGGS

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

30. On October 4, 1994, United States Patent No. 5,352,605 was duly and legally issued for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, Monsanto has been and still is the owner of that patent. *See Exhibit 2.* This invention is in the fields of genetic engineering and plant biology.

31. Without authorization or license, Defendant Max Boggs has made, used, offered to sell, sold and/or transferred Monsanto's patented invention within the United States during the term of Patent No. 5,352,605, and in violation of 35 U.S.C. § 271.

32. Defendant Max Boggs' infringing activities were undertaken with full knowledge and with notice that Defendant Max Boggs was in violation of Monsanto's patent rights.

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

34. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to Defendant Max Boggs. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 284 in light of Defendant Max Boggs' knowing, willful, deliberate and conscious infringement of the patent rights at issue and that Monsanto recover its reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT IV - INDUCEMENT TO INFRINGE PATENT NO. 5,352,605
DEFENDANT MAX BOGGS

35. 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.

36. Through his control of, and/or direct participation in, the actions and operations of Defendant Boggs Farm Center, Defendant Max Boggs intentionally and actively induced Defendant Boggs Farm Center to make, use, offer to sell, sell or otherwise transfer unlicensed crop seed, including, but not limited to Roundup Ready® soybean seed, containing articles which are claimed by Monsanto's '605 patent, which actions constitute an unauthorized and illegal use of Monsanto's patented traits.

37. Defendant Max Boggs knew or should have known that his actions, including, but not limited to controlling, directing and/or participating in Defendant Boggs Farm Center's making, using, offers to sell, sales and/or transfers of, *inter alia*, saved Roundup Ready® soybean seed would cause and induce Defendant Boggs Farm Center to make unauthorized and infringing uses of articles which are claimed by Monsanto's '605 patent.

38. Defendant Max Boggs' actions alleged above constitute inducement of infringement of Monsanto's '605 patent in violation of 35 U.S.C. § 271(b). Monsanto therefore has a right of civil action against Defendant Max Boggs pursuant to 35 U.S.C. § 281.

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

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

COUNT V - PATENT INFRINGEMENT - PATENT NO. US RE39,247 E
DEFENDANT MAX BOGGS

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

42. On August 22, 2006, United States Patent No. US RE39,247 E was duly and legally reissued for an invention in Glyphosate-Tolerant 5-Enolpyruvylshikimate-3-Phosphate

Synthases. This was the reissue of Patent No. 5,633,435, issued on May 27, 1997, and since that date, Monsanto has been and still is the owner of that patent. *See* Exhibit 3. This invention is in the fields of genetic engineering and plant biology.

43. Without authorization or license, Defendant Max Boggs has made, used, offered to sell, sold and/or transferred Monsanto's patented invention within the United States during the term of Patent No. US RE39,247 E, and in violation of 35 U.S.C. § 271.

44. Defendant Max Boggs' infringing activities were undertaken with full knowledge and with notice that Defendant Max Boggs was in violation of Monsanto's patent rights.

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

46. Pursuant to 35 U.S.C. § 284, Monsanto is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to Defendant Max Boggs. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 284 in light of Defendant Max Boggs' knowing, willful, deliberate and conscious infringement of the patent rights at issue and that Monsanto recover its reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT VI - INDUCEMENT TO INFRINGE PATENT NO. US RE39,247 E
DEFENDANT MAX BOGGS

47. 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.

48. Through his control of, and/or direct participation in, the actions and operations of Defendant Boggs Farm Center, Defendant Max Boggs intentionally and actively induced Defendant Boggs Farm Center to make, use, offer to sell, sell or otherwise transfer unlicensed

crop seed, including, but not limited to Roundup Ready® soybean seed, containing articles which are claimed by Monsanto's '247 patent, which actions constitute an unauthorized and illegal use of Monsanto's patented traits.

49. Defendant Max Boggs knew or should have known that his actions, including, but not limited to controlling, directing and/or participating in Defendant Boggs Farm Center's making, using, offers to sell, sales and/or transfers of, *inter alia*, saved Roundup Ready® soybean seed would cause and induce Defendant Boggs Farm Center to make unauthorized and infringing uses of articles which are claimed by Monsanto's '605 patent.

50. Defendant Max Boggs' actions alleged above constitute inducement of infringement of Monsanto's '247 patent in violation of 35 U.S.C. § 271(b). Monsanto therefore has a right of civil action against Defendant Max Boggs pursuant to 35 U.S.C. § 281.

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

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

COUNT VII - CONVERSION
DEFENDANT BOGGS FARM CENTER

53. 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.

54. By making, using, offering to sell and selling, *inter alia*, saved Roundup Ready® soybean seed without authority, Defendant Boggs Farm Center intentionally and wrongfully exercised dominion, ownership and control over Roundup Ready® technology which was the property of Monsanto under the terms of the '605 and '247 Patents and which is only legitimately available to third parties through an express and limited license from Monsanto.

55. Defendant Boggs Farm Center's conversion of Monsanto's property was malicious and willful.

56. As a result, Monsanto is entitled to damages equal to the value of the Roundup Ready® soybean seed at the time of the conversion; an amount to be proven at trial.

57. As Defendant Boggs Farm Center's conversion of Monsanto's property rights was malicious and willful, Monsanto is entitled to punitive damages.

COUNT VIII - CONVERSION
DEFENDANT MAX BOGGS

58. 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.

59. By making, using, offering to sell and selling, *inter alia*, Roundup Ready® soybean seed without authority, Defendant Max Boggs intentionally and wrongfully exercised dominion, ownership and control over Roundup Ready® technology which was the property of Monsanto under the terms of the '605 and '247 Patents and which is only legitimately available to third parties through an express and limited license from Monsanto.

60. Defendant Max Boggs' conversion of Monsanto's property was malicious and willful.

61. As a result, Monsanto is entitled to damages equal to the value of the, *inter alia*, Roundup Ready® soybean seed at the time of the conversion; an amount to be proven at trial.

62. As Defendant Max Boggs' conversion of Monsanto's property rights was malicious and willful, Monsanto is entitled to punitive damages.

COUNT IX - UNJUST ENRICHMENT
DEFENDANT BOGGS FARM CENTER

63. 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.

64. Defendant Boggs Farm Center's conduct, as described in the above-numbered paragraphs, has resulted in a benefit being conferred upon Defendant Boggs Farm Center and Defendant Boggs Farm Center's appreciation of the benefit, in that, Defendant Boggs Farm Center illegally made, used, sold and offered to sell, or otherwise transferred, *inter alia*, unlicensed Roundup Ready® soybean seed and/or cleaned "saved" unlicensed Roundup Ready® soybean seed, in contravention of Monsanto's patent rights.

65. As a result, Defendant Boggs Farm Center has been unjustly enriched and obtained profits that in equity and good conscience belong to Monsanto.

66. Defendant Boggs Farm Center's acceptance and retention of this benefit under the circumstances renders Defendant Boggs Farm Center's retention of these benefits inequitable.

67. As a result, Monsanto is entitled to damages in an amount equal to at least the applicable sale price.

COUNT X - UNJUST ENRICHMENT
DEFENDANT MAX BOGGS

68. 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.

69. Defendant Max Boggs' conduct, as described in the above-numbered paragraphs, has resulted in a benefit being conferred upon Defendant Max Boggs and Defendant Max Boggs' appreciation of the benefit, in that, Defendant Max Boggs illegally made, used, sold and offered to sell, or otherwise transferred, *inter alia*, unlicensed Roundup Ready® soybean seed in contravention of Monsanto's patent rights.

70. As a result, Defendant Max Boggs has been unjustly enriched and obtained profits that in equity and good conscience belong to Monsanto.

71. Defendant Max Boggs' acceptance and retention of this benefit under the circumstances renders Defendant Max Boggs' retention of these benefits inequitable.

72. As a result, Monsanto is entitled to damages in an amount equal to at least the applicable sale price.

COUNT XI - BREACH OF CONTRACT
DEFENDANT BOGGS FARM CENTER

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

74. The conduct of Defendant Boggs Farm Center, as set forth above, is a breach of the 2001 licensing agreement (*see* Exhibit 1) which, among other provisions, prohibits: 1) the saving, planting and/or transfer or sale of saved Roundup Ready® soybean seed or use of any portion of seed grown from newly purchased Roundup Ready® soybean seed for anything other than marketing the crop derived therefrom into a terminal market as a commodity; and 2) the

resale or other supply of seed obtained pursuant to the limited-use license granted by Monsanto's license agreements such as Exhibit 1 to any other person or entity for planting.

75. As a direct and proximate result of this breach, Monsanto has been damaged and is entitled to damages for breach of the licensing agreement, as well as reasonable attorneys' fees and all other costs under the licensing agreement.

COUNT XIV - BREACH OF CONTRACT
DEFENDANT MAX BOGGS

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

77. The conduct of Defendant Max Boggs, as set forth above, as set forth above, is a breach of the 2001 licensing agreement (*see* Exhibit 1) which, among other provisions, prohibits: 1) the saving, planting and/or transfer or sale of saved Roundup Ready® soybean seed or use of any portion of seed grown from newly purchased Roundup Ready® soybean seed for anything other than marketing the crop derived therefrom into a terminal market as a commodity; and 2) the resale or other supply of seed obtained pursuant to the limited-use license granted by Monsanto's license agreements such as Exhibit 1 to any other person or entity for planting.

78. As a direct and proximate result of this breach, Monsanto has been damaged and is entitled to damages for breach of the licensing agreement, as well as reasonable attorneys' fees and all other costs under the licensing agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Monsanto Company and Monsanto Technology LLC request judgment in their favor and against Defendant Boggs Farm Center and Defendant Max Boggs providing the following remedies:

- a. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for Defendants' patent infringement and inducement to infringe;
- b. Trebling of damages awarded for Defendants' patent infringement and inducement to infringe Monsanto's patent rights, together with reasonable attorneys' fees and costs;
- c. Entry of judgment finding Defendants' patent infringement to be willful;
- d. Entry of a permanent injunction against Defendants to prevent Defendants from making, using, cleaning, planting, selling, or offering to sell or otherwise transferring, *inter alia*, any Roundup Ready® crop seed in order to protect against future infringement of Monsanto's rights secured by its patents;
- e. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for Defendants' conversion of Monsanto's property rights;
- f. Entry of a punitive damages award against Defendants for their willful and malicious conversion of Monsanto's property;
- g. Entry of judgment for damages, together with interest and costs to compensate Monsanto for Defendants' unjust enrichment and the profits obtained that in equity and good conscience belong to Monsanto;
- h. Entry of judgment for damages, together with interest, Monsanto's attorneys' fees and costs to compensate Monsanto for Defendants' breach of the 2001 licensing agreement at issue; and
- i. For such other and further as the Court shall deem appropriate.

Respectfully submitted,

HUSCH BLACKWELL SANDERS LLP

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