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15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF WASHINGTON  
17 AT SPOKANE

18 NORTHWEST AGRICULTURAL )  
19 PRODUCTS, INC., a Washington )  
20 corporation, ) NO.  
21 )  
22 Plaintiff, ) COMPLAINT FOR  
23 ) DECLARATORY  
24 v. ) JUDGMENT OF PATENT  
25 ) INVALIDITY AND NON-  
26 EMERALD BIOAGRICULTURE ) INFRINGEMENT  
27 CORP., a Delaware corporation, )  
28 ) JURY TRIAL DEMANDED  
29 Defendant. )

30 Pursuant to 28 U.S.C. §§ 2201, *et seq.*, Plaintiff Northwest Agricultural  
Products, Inc. (“NAP”), seeks a declaration that it has not infringed any valid

1 claim of United States Patent No. 5,439,873 (“the ’873 Patent”), United States  
2 Patent No. 5,840,656 (“the ’646 Patent”), or United States Patent No.  
3 6,534,446 (“the ’446 Patent”), and that the claims of the ’873, ’656, and ’446  
4 Patents are invalid for failing to meet the requirements of the Patent Act, 35  
5 U.S.C. §§ 1, *et seq.*

### 6 JURISDICTION AND VENUE

7 1. This Court has jurisdiction of this action pursuant to 28 U.S.C.  
8 § 1338(a).

9 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

### 10 PARTIES

11 3. Plaintiff, Northwest Agricultural Products, Inc. (“NAP”), is a  
12 Washington corporation having its principal place of business in Pasco,  
13 Washington.

14 4. On information and belief, Defendant Emerald BioAgriculture  
15 Corp. (“Emerald”) is a corporation organized and existing under the laws of  
16 the State of Delaware, with its principal place of business in Okemos,  
17 Michigan.

### 18 FACTUAL ALLEGATIONS

19 5. On June 25, 2008, Emerald sent a letter to NAP asserting that  
20 certain products of NAP infringe the ’873, ’656, and ’446 Patents.

1           6.     One or more claims of the '873, '656, and '446 Patents are  
2     invalid, and NAP does not infringe any valid claim of the '873, '656, and  
3     '446 Patents.

4           7.     There is an actual controversy as to whether any claim of the  
5     '873, '656, and '446 Patents is valid, and as to whether NAP infringes any  
6     valid claim of that patent.

7                                   **FIRST CLAIM FOR RELIEF:**

8                   **DECLARATION OF NON-INFRINGEMENT OF '484 PATENT**

9           8.     NAP incorporates the allegations of Paragraphs 1 through 7  
10    above as if set forth fully herein.

11          9.     NAP is entitled to a declaration that it does not infringe any  
12    claim of the '873, '656, or '446 Patent, either literally or under the doctrine of  
13    equivalents.

14                                   **SECOND CLAIM FOR RELIEF:**

15                   **DECLARATION OF PATENT INVALIDITY**

16          10.    NAP incorporates the allegations of Paragraphs 1 through 9  
17    above as if set forth fully herein.

18          11.    NAP is entitled to a declaration that each claim of the '873, '656,  
19    and '446 Patents is invalid for failure to comply with one or more of the  
20

1 provisions of the Patent Act, 35 U.S.C. §§ 1 *et seq.*, including Sections 102,  
2 103, and 112.

3 **PRAYER FOR RELIEF**

4 WHEREFORE plaintiff, Northwest Agricultural Products, Inc., prays  
5 for judgment against defendant Emerald BioAgriculture Corp., as follows:

6 1. Declaring that NAP has not infringed any valid claim of  
7 the '873, '656, and '446 Patents;

8 2. Declaring that the claims of the '873, '656, and '446  
9 Patents are invalid;

10 3. Declaring that plaintiff is free to make, use, sell, import  
11 and offer for sale products that defendant claims infringe the '873, '656, and  
12 '446 Patents, and that plaintiff's customers are free to use, sell, and offer for  
13 sale such products;

14 4. Awarding plaintiff its costs of suit; and

15 5. Granting such and further relief as may be just and  
16 equitable under the circumstances.

17 **JURY TRIAL**

18 Plaintiff Northwest Agricultural Products, Inc., hereby demands a trial by  
19 jury for all issues so triable.

1 DATED this 23rd day of July, 2008.

2  
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