

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

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BAYER CROPSCIENCE LP	:	
	:	
Plaintiff,	:	
	:	C.A. No. 06-921
v.	:	
	:	
MAKHTESHIM AGAN	:	
OF NORTH AMERICA, INC.,	:	
	:	
Defendant.	:	
-----X	:	

COMPLAINT

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent laws of the United States, Title 35, United States Code. Jurisdiction and venue are based on 28 U.S.C. §§ 1331, 1338(a), 1391(b), 1391(c), 1400(b), 2201, 2202 and 35 U.S.C. § 271.

2. On information and belief, Defendant Makhteshim Agan of North America, Inc., (“MANA”) has infringed and is engaging in activities directed toward the further infringement of United States Patent Nos. 5,294,644 (“the ‘644 patent”); 5,071,463 (“the ‘463 patent”); 5,156,666 (“the ‘666 patent”); 5,160,528 (“the ‘528 patent”); 5,176,736 (“the ‘736 patent”); and 5,250,499 (“the ‘499 patent”) (collectively “the patents-in-suit”) by making, selling and offering for sale its REDI-PIK™ 1.5 EC cotton defoliant (“REDI-PIK”).

3. There has been and is now an actual controversy between MANA and Plaintiff as to whether MANA has infringed and will infringe the patents-in-suit.

THE PARTIES

4. Plaintiff Bayer CropScience LP (“BCS”) is a company organized and existing under the laws of Delaware, having its principal place of business at 2 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. BCS is the sole exclusive licensee of the patents-in-suit for cotton defoliant in the United States and has the full and complete right to enforce the said patents, including by civil action for patent infringement.

5. On information and belief, defendant Makhteshim Agan of North America, Inc. (“MANA”) is a United States entity, having its headquarters and principal place of business at 4515 Falls of Neuse, Suite 300, Raleigh, North Carolina 27609. On information and belief, MANA has developed, manufactures, sells and distributes REDI-PIK by itself and/or through affiliates or third parties.

6. On information and belief, MANA regularly does or solicits business in North Carolina, has continuous and systematic contacts with North Carolina, and through its various entities has engaged in activities related to the subject matter of this action and thus is subject to personal jurisdiction in this judicial district.

FIRST CLAIM FOR RELIEF: THE '644 PATENT

7. Plaintiff BCS realleges paragraphs 1-6, above, as if set forth specifically here.

8. The '644 patent (Exhibit A), entitled “Surface Active Lactams”, issued on March 15, 1994 to ISP Investments Inc. upon assignment from the inventors Robert B. Login, Ratan K. Chaudhuri, Rama K. Haldar, Mohamed M. Hashem, Michael W. Heliouff and

David J. Tracey. The '644 patent claims, *inter alia*, a novel emulsion concentrate comprising a substituted lactam surfactant and a water insoluble agricultural chemical in an agriculturally effective amount.

9. Plaintiff BCS has been and is still the sole exclusive licensee of the '644 patent. The '644 patent is and remains in force.

10. On information and belief, MANA has infringed the '644 patent under 35 U.S.C. § 271(a) and (b) by engaging in the commercial manufacture, use, sale and offer for sale of an emulsion concentrate claimed in the '644 patent prior to the expiration of the '644 patent.

11. On information and belief, MANA manufactures, offers to sell and sells REDI-PIK in the United States. On information and belief, these acts occur at MANA's active behest and with its intent, knowledge, and encouragement. On information and belief, MANA actively encourages, aids, and abets these acts with knowledge that it is in contravention of Plaintiff's rights under the '644 patent.

12. On information and belief, MANA's REDI-PIK is especially made or especially adapted for use as a generic substitute for Plaintiff's branded product GINSTAR®, a cotton defoliant which is made and sold under Plaintiff's exclusive license to the '644 patent. On information and belief, MANA is aware that MANA's REDI-PIK product is so made or so adapted. On information and belief, MANA is aware that MANA's REDI-PIK product is and will be used in contravention of Plaintiff's rights under the '644 patent.

13. On information and belief, the manufacture, use and sale of MANA's REDI-PIK product does and absent the relief sought herein will continue to infringe one or more claims of the '644 patent.

SECOND CLAIM FOR RELIEF: THE '463 PATENT

14. Plaintiff BCS realleges paragraphs 1-13, above, as if set forth specifically here.

15. The '463 patent (Exhibit B), entitled "Delivery System for Agricultural Chemicals", issued on December 10, 1991 to ISP Investments Inc. upon assignment from the inventors Kolazi S. Narayanan, Ratan K. Chaudhuri and Manilal Dahanayake. The '463 patent claims, *inter alia*, a novel stable emulsifiable concentrate comprising an agriculturally active herbicide.

16. Plaintiff BCS has been and is still the sole exclusive licensee of the '463 patent. The '463 patent is and remains in force.

17. On information and belief, MANA has infringed the '463 patent under 35 U.S.C. § 271(a) and (b) by engaging in the commercial manufacture, use, sale and offer for sale of an emulsifiable concentrate claimed in the '463 patent prior to the expiration of the '463 patent.

18. On information and belief, MANA manufactures, offers to sell and sells REDI-PIK in the United States. On information and belief, these acts occur at MANA's active behest and with its intent, knowledge, and encouragement. On information and belief, MANA actively encourages, aids, and abets these acts with knowledge that it is in contravention of Plaintiff's rights under the '463 patent.

19. On information and belief, MANA's REDI-PIK is especially made or especially adapted for use as a generic substitute for Plaintiff's branded product GINSTAR®, a cotton defoliant which is made and sold under Plaintiff's exclusive license to the '463 patent. On information and belief, MANA is aware that MANA's REDI-PIK product is so made or so

adapted. On information and belief, MANA is aware that MANA's REDI-PIK product is and will be used in contravention of Plaintiff's rights under the '463 patent.

20. On information and belief, the manufacture, use and sale of MANA's REDI-PIK product does and absent the relief sought herein will continue to infringe one or more claims of the '463 patent.

THIRD CLAIM FOR RELIEF: THE '666 PATENT

21. Plaintiff BCS realleges paragraphs 1-20, above, as if set forth specifically here.

22. The '666 patent (Exhibit C), entitled "Delivery System for Agricultural Chemicals", issued on October 20, 1992 to ISP Investments Inc. upon assignment from the inventors Kolazi S. Narayanan, Ratan K. Chaudhuri and Manilal Dahanayake. The '666 patent claims, *inter alia*, a novel stable emulsifiable concentrate consisting essentially of a herbicide.

23. Plaintiff BCS has been and is still the sole exclusive licensee of the '666 patent. The '666 patent is and remains in force.

24. On information and belief, MANA has infringed the '666 patent under 35 U.S.C. § 271(a) and (b) by engaging in the commercial manufacture, use, sale and offer for sale of an emulsifiable concentrate claimed in the '666 patent prior to the expiration of the '666 patent.

25. On information and belief, MANA manufactures, offers to sell and sells REDI-PIK in the United States. On information and belief, these acts occur at MANA's active behest and with its intent, knowledge, and encouragement. On information and belief,

MANA actively encourages, aids, and abets these acts with knowledge that it is in contravention of Plaintiff's rights under the '666 patent.

26. On information and belief, MANA's REDI-PIK is especially made or especially adapted for use as a generic substitute for Plaintiff's branded product GINSTAR®, a cotton defoliant which is made and sold under Plaintiff's exclusive license to the '666 patent. On information and belief, MANA is aware that MANA's REDI-PIK product is so made or so adapted. On information and belief, MANA is aware that MANA's REDI-PIK product is and will be used in contravention of Plaintiff's rights under the '666 patent.

27. On information and belief, the manufacture, use and sale of MANA's REDI-PIK product does and absent the relief sought herein will continue to infringe one or more claims of the '666 patent.

FOURTH CLAIM FOR RELIEF: THE '528 PATENT

28. Plaintiff BCS realleges paragraphs 1-27, above, as if set forth specifically here.

29. The '528 patent (Exhibit D), entitled "Delivery System for Agricultural Chemicals", issued on November 3, 1992 to ISP Investments Inc. upon assignment from the inventors Ratan K. Chaudhuri, Kolazi S. Narayanan, and Manilal Dahanayake. The '528 patent claims, *inter alia*, a novel stable emulsifiable concentrate comprising a herbicide.

30. Plaintiff BCS has been and is still the sole exclusive licensee of the '528 patent. The '528 patent is and remains in force.

31. On information and belief, MANA has infringed the '528 patent under 35 U.S.C. § 271(a) and (b) by engaging in the commercial manufacture, use, sale and offer

for sale of an emulsifiable concentrate claimed in the '528 patent prior to the expiration of the '528 patent.

32. On information and belief, MANA manufactures, offers to sell and sells REDI-PIK in the United States. On information and belief, these acts occur at MANA's active behest and with its intent, knowledge, and encouragement. On information and belief, MANA actively encourages, aids, and abets these acts with knowledge that it is in contravention of Plaintiff's rights under the '528 patent.

33. On information and belief, MANA's REDI-PIK is especially made or especially adapted for use as a generic substitute for Plaintiff's branded product GINSTAR®, a cotton defoliant which is made and sold under Plaintiff's exclusive license to the '528 patent. On information and belief, MANA is aware that MANA's REDI-PIK product is so made or so adapted. On information and belief, MANA is aware that MANA's REDI-PIK product is and will be used in contravention of Plaintiff's rights under the '528 patent.

34. On information and belief, the manufacture, use and sale of MANA's REDI-PIK product does and absent the relief sought herein will continue to infringe one or more claims of the '528 patent.

FIFTH CLAIM FOR RELIEF: THE '736 PATENT

35. Plaintiff BCS realleges paragraphs 1-34, above, as if set forth specifically here.

36. The '736 patent (Exhibit E), entitled "Delivery System for Agricultural Chemicals", issued on January 5, 1993 to ISP Investments Inc. upon assignment from the inventors Kolazi S. Narayanan, Ratan K. Chaudhuri and Manilal Dahanayake. The '736 patent claims, *inter alia*, a novel stable emulsifiable concentrate comprising an

agriculturally active herbicide, a composition comprising the concentrate and a method for treating plants using the composition.

37. Plaintiff BCS has been and is still the sole exclusive licensee of the '736 patent. The '736 patent is and remains in force.

38. On information and belief, MANA has infringed the '736 patent under 35 U.S.C. § 271(a) and (b) by engaging in the commercial manufacture, use, sale and offer for sale of an emulsifiable concentrate claimed in the '736 patent prior to the expiration of the '736 patent.

39. On information and belief, MANA manufactures, offers to sell and sells REDI-PIK in the United States. On information and belief, these acts occur at MANA's active behest and with its intent, knowledge, and encouragement. On information and belief, MANA actively encourages, aids, and abets these acts with knowledge that it is in contravention of Plaintiff's rights under the '736 patent.

40. On information and belief, MANA's REDI-PIK is especially made or especially adapted for use as a generic substitute for Plaintiff's branded product GINSTAR®, a cotton defoliant which is made and sold under Plaintiff's exclusive license to the '736 patent. On information and belief, MANA is aware that MANA's REDI-PIK product is so made or so adapted. On information and belief, MANA is aware that MANA's REDI-PIK product is and will be used in contravention of Plaintiff's rights under the '736 patent.

41. On information and belief, the manufacture, use and sale of MANA's REDI-PIK product does and absent the relief sought herein will continue to infringe one or more claims of the '736 patent.

SIXTH CLAIM FOR RELIEF: THE '499 PATENT

42. Plaintiff BCS realleges paragraphs 1-41, above, as if set forth specifically here.

43. The '499 patent (Exhibit F), entitled "Delivery System for Agricultural Chemicals", issued on October 5, 1993 to ISP Investments Inc. upon assignment from the inventors Kolazi S. Narayanan, Ratan K. Chaudhuri and Manilal Dahanayake. The '499 patent claims, *inter alia*, a novel stable emulsifiable concentrate comprising an agricultural active chemical, a composition comprising the concentrate, methods for treating plants using the composition, methods for treating pests using the composition and methods for controlling the population of pests using the composition.

44. Plaintiff BCS has been and is still the sole exclusive licensee of the '499 patent. The '499 patent is and remains in force.

45. On information and belief, MANA has infringed the '499 patent under 35 U.S.C. § 271(a) and (b) by engaging in the commercial manufacture, use, sale and offer for sale of an emulsifiable concentrate claimed in the '499 patent prior to the expiration of the '499 patent.

46. On information and belief, MANA manufactures, offers to sell and sells REDI-PIK in the United States. On information and belief, these acts occur at MANA's active behest and with its intent, knowledge, and encouragement. On information and belief, MANA actively encourages, aids, and abets these acts with knowledge that it is in contravention of Plaintiff's rights under the '499 patent.

47. On information and belief, MANA's REDI-PIK is especially made or especially adapted for use as a generic substitute for Plaintiff's branded product GINSTAR®,

a cotton defoliant which is made and sold under Plaintiff's exclusive license to the '499 patent. On information and belief, MANA is aware that MANA's REDI-PIK product is so made or so adapted. On information and belief, MANA is aware that MANA's REDI-PIK product is and will be used in contravention of Plaintiff's rights under the '499 patent.

48. On information and belief, the manufacture, use and sale of MANA's REDI-PIK product does and absent the relief sought herein will continue to infringe one or more claims of the '499 patent.

WHEREFORE, Plaintiff BCS respectfully requests the following relief:

(a) A judgment declaring that each and every one of the patents-in-suit is infringed by defendant MANA's continued manufacture, use, offer to sell and sale of REDI-PIK in the United States prior to the expiration of each such patent;

(b) A permanent injunction against any infringement by MANA of each and every one of the patents-in-suit;

(c) A judgment that MANA's conduct is willful;

(d) A judgment that MANA's conduct is exceptional;

(e) Attorneys' fees in this action under 35 U.S.C. § 285;

(f) Damages adequate to compensate for the infringement and enhanced damages under 35 U.S.C. § 284;

(g) Costs and expenses in this action; and

(h) Such other relief as this Court may deem proper.

This the 20th day of October, 2006.

/s/ Pressly M. Millen

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