

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

| | | |
|---|---|-----------------------------------|
| MONSANTO COMPANY, |) | |
| |) | |
| VS. |) | Case No. 03-6032-CV-SJ-ODS |
| |) | |
| |) | |
| MIKE SMITH, |) | |
| 18513 East 240th Avenue |) | |
| Eagleville, Missouri 64442, |) | |
| |) | |
| Defendant. |) | |

C O M P L A I N T

COMES NOW the Plaintiff, Monsanto Company, (hereinafter "Monsanto" or "Plaintiff"), by and through its undersigned counsel of record, and for its Complaint against the Defendant, Mike Smith, (hereinafter "Smith" or "Defendant"), states and alleges as follows:

1. Monsanto 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 is authorized to do and is doing business in the State of Missouri and this judicial district.

2. Defendant is an individual who has obtained the age of majority and is a resident and domiciliary of Harrison County, Missouri.

3. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§1331 and 1338, granting District Courts original jurisdiction over any civil action regarding patents.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400 in that the Defendant resides in this judicial district and a substantial part of the events giving rise to this claim for patent infringement occurred in this judicial district.

GENERAL ALLEGATIONS

5. Monsanto is in the business of developing, manufacturing, licensing and selling agricultural biotechnology, agricultural chemicals and other agricultural products. After the investment of substantial time, expense and expertise, Monsanto developed a new plant biotechnology that involves the insertion into plants a gene that causes the plant to be resistant to glyphosate based herbicides such as Roundup Ultra¹.

6. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready² soybeans.

7. Roundup Ultra[®] is a non-selective herbicide which will cause severe injury or death to soybeans that do not contain the Roundup Ready[®] technology.

8. Monsanto's Roundup Ready[®] technology is protected by several U.S. Patents, including Patent Number 5,352,605, which is attached hereto as Exhibit "A". This patent was issued and assigned to Monsanto prior to the events giving rise to this action.

9. Monsanto placed the required statutory notice that its Roundup Ready[®] technology was patented on the labeling of all bags containing Roundup Ready[®] soybean seed. In particular, each bag of Roundup Ready[®] soybean seed is marked with notice of U.S. Patent Number 5,352,605.

¹ Roundup Ultra[®] is a registered trademark of Monsanto Company.

10. Monsanto licenses the use of Roundup Ready® seed technology to soybean producers at the retail marketing level through a limited use license agreement, commonly referred to as a Technology Agreement.

11. Under the terms of the Monsanto Technology Agreement, a purchaser/licensee is prohibited from saving, selling, reselling or otherwise transferring any seed produced from the purchased seed for use as a planting seed.

12. Monsanto does not authorize the planting of saved (commonly referred to as bin run and/or brown bag) Roundup Ready® soybeans.

13. Defendant farms a significant acreage in and around Harrison County, Missouri.

14. Defendant planted several fields of soybeans during the 2002 growing season with saved soybean seed.

15. Monsanto requested information from Defendant regarding the source of his soybean seed and whether he planted Roundup Ready soybeans, however, Defendant refused to provide any information regarding his soybean farming operations, and did not provide Monsanto with the source of his soybeans.

16. Upon information and belief, Defendant planted saved Roundup Ready® soybean seed in contravention of Monsanto's patent rights in the 2002 growing season.

17. Upon information and belief, Defendant knowingly, intentionally and willfully planted saved Roundup Ready® soybean seed without authorization and in violation of Monsanto's patent rights in those soybeans.

COUNT I
PATENT INFRINGEMENT - PATENT NO. 5,352,605

² Roundup Ready® is a registered trademark of Monsanto Company.

18. Each and every allegation set forth in Paragraphs 1 through 17 are incorporated herein by reference as though fully set forth herein.

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

20. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by U.S. Patent No. 5,352,605 on the labeling of all bags containing Roundup Ready® soybean seed in compliance with 35 U.S.C. §287.

21. Defendant's conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent No. 5,352,605, all in violation of 35 U.S.C. §271, and Monsanto, therefore, has a right of civil action against the Defendant pursuant to 35 U.S.C. §281.

22. The Defendant has and may still be infringing that patent by making, selling, offering for sale, using or otherwise transferring Roundup Ready® soybeans embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

23. 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.

24. 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 the infringer. Monsanto requests

that these damages be trebled pursuant to 35 U.S.C. §284 in light of the Defendant's knowing, willful, deliberate and conscious infringement of the patent right at issue.

25. The infringing activities of the Defendant brings this case within the ambit of the exceptional case contemplated by 35 U.S.C. §285, thus, Monsanto requests the award of reasonable attorney's fees.

WHEREFORE, under Count I of this Complaint, Plaintiff, Monsanto Company, prays that process and due form of law issue to Defendant herein, requiring Defendant to appear and answer, all the singular, the allegations of this Complaint, and that after due proceedings are had, there be Judgment in favor of Plaintiff, Monsanto Company, and against the Defendant, providing the following remedies to Plaintiff:

1. Entry of Judgment for damages, together with interest and costs, to compensate Plaintiff for the Defendant's patent infringement;
2. Trebling of damages awarded Plaintiff for the infringement of its patent, together with reasonable attorney's fees;
3. Entry of an Order prohibiting the Defendant from planting, transferring or selling the infringing articles to a third party;
4. Entry of a permanent injunction to prevent Defendant from using, cleaning or planting any of Plaintiff's proprietary seed biotechnology without the express written authorization from Plaintiff; and
5. Such other relief as the Court may deem appropriate.

Respectfully submitted,

MEISE & McMORRIS

By _____
CLYDE G. MEISE - #14522

1125 Grand Boulevard - Suite 900
Kansas City, Missouri 64106
816-221-6420 - FAX 816-283-3823

FRILOT, PARTRIDGE, KOHNKE &
CLEMENTS, L.C.

Miles P. Clements (La. Bar #4184)
Wayne K. McNeil (La. Bar #20956)
Joel E. Cape (La. Bar #26001)
3600 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163
504-599-8000 - FAX 504-599-8100

ATTORNEYS FOR PLAINTIFF