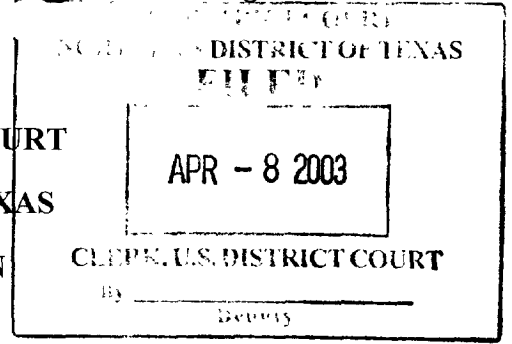


ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**



MONSANTO COMPANY,)
Plaintiff)
)
v.)
)
TERRY McALISTER d/b/a)
McALISTER FARMS and)
McALISTER PROPERTIES, INC.)

Civil Action No. 2-03 CV - 074 - R

COMPLAINT

COMES NOW, the plaintiff, Monsanto Company, (hereinafter "Monsanto") by and through its undersigned counsel, and for its Complaint at law against defendants, Terry McAlister d/b/a McAlister Farms and McAlister Properties, Inc. (hereinafter referred to as "McAlister" or "defendants") makes the following allegations.

THE PLAINTIFF

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. It is authorized to do and is doing business in Missouri and in this judicial district.

THE DEFENDANTS

2. Defendant, Terry McAlister, is an individual who has attained the age of majority and is a resident and domiciliary of Wichita County, Texas. Defendant does business as McAlister Farms.

3. Defendant, McAlister Properties, Inc., is a domestic corporation existing under the laws of the State of Texas with its principal place of business in Electra, Texas. It is authorized to do and is doing business in Texas and in this judicial district.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §1331, in that one or more of Monsanto's 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.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391, as a substantial part the events giving rise to this action occurred in this judicial district, and the defendant is a resident of this judicial district, and pursuant to 28 U.S.C. §1400 as the defendant resides in this judicial district and committed acts of infringement in this judicial district.

GENERAL ALLEGATIONS

6. 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 plant biotechnology that involves the transfer of a man-made gene into certain crops that causes the crop to be resistant to glyphosate, the active ingredient in glyphosate based herbicides such as Roundup Ultra®. The genetically improved crop is marketed by Monsanto as Roundup Ready®¹. This technology has been utilized by Monsanto in several agricultural crops, including cotton.

7. In addition to the development of the Roundup Ready® gene found in Roundup Ready® cotton, Monsanto expended great effort and expense in the development of technology for the transfer of other man-made genes into plants and crop seed. Another such biotechnology invented by Monsanto involves the transfer of a gene into plants which enables the plant to produce an insecticidal protein called *Bacillus thuringiensis* (B.t.). A plant which contains this transgene is able to produce the B.t. protein and thereby protect itself from certain insects. This unique biotechnology is utilized by Monsanto in cotton and is marketed as the Bollgard® gene.

8. The research and development that led to the creation of the Roundup Ready® and Bollgard® technologies also led Monsanto to create technology by which both genes could be utilized in a single plant. In short, Monsanto has created a biotechnology whereby a plant is resistant to glyphosate based herbicides such as Roundup®, and also produces an insecticidal protein that

¹ Roundup® and Roundup Ready® are registered trademarks of Monsanto.

allows the plant to repel certain insects. Cotton that contains both genes is marketed by Monsanto as "Bollgard with Roundup Ready® cotton" and is commonly referred to as stacked cotton.

9. Monsanto's Roundup Ready® technology is protected under patents issued by the United States Patent Office, specifically including U. S. Patent Number 5,352,605 (hereinafter the "'605 patent.") The '605 patent is attached as Exhibit A. The '605 patent was issued and assigned to Monsanto prior to the events giving rise to this action.

10. Monsanto's Bollgard® and Bollgard® with Roundup Ready® technologies are protected by several U.S. Patents, including United States Patent Numbers 5,352,605 and 5,196,525 (hereinafter the "'605 and '525 patents," respectively.) These patents were issued and assigned to Monsanto prior to the events giving rise to this action. A copy of the '525 patent is attached as Exhibit B.

11. Monsanto placed the required statutory notice that its Roundup Ready®, Bollgard®, and Bollgard® with Roundup Ready® technologies are patented on the labeling of all bags containing Roundup Ready® cottonseed, Bollgard® cottonseed, and Bollgard® with Roundup Ready® cottonseed. In particular, Monsanto provided notice that Roundup Ready® cottonseed was protected by U. S. Patent No. 5,352,605; and that Bollgard® and Bollgard® with Roundup Ready® cottonseed were protected by U.S. Patent Nos. 5,352,605 and 5,196,525, in compliance with 35 U.S.C. §287.

12. Monsanto licenses the use of Roundup Ready®, Bollgard® and Bollgard® with Roundup Ready® technologies to growers at the retail marketing level.

13. Under the terms of Monsanto's limited use licensing agreements, a licensee is only authorized to use the seed for planting a single crop and is prohibited from saving any of the harvested seed for the purpose of planting another crop or from selling or supplying harvested seed for planting purposes. The only permissible use of harvested crop allowed by the licensing agreement is to market the crop as a commodity.

14. In addition to the single commercial crop restriction, a grower that wishes to plant cotton seed containing the Bollgard® gene is required to implement an "Insect Resistance Management" program pursuant to the express terms of the license.

15. Purchasers of Roundup Ready®, Bollgard® and Bollgard® with Roundup Ready® seed are also required to pay a technology fee for each commercial unit of seed purchased. The technology fee varies depending on the particular agricultural crop being purchased.

16. Defendants have farmed, and still have in production, a significant acreage in and around Wichita County, Texas, whereupon they produce cotton.

17. Monsanto inspected and sampled eleven fields totaling 1,067.1 acres of defendants' 2002 cotton crop in August, 2002.

18. Laboratory testing confirmed the presence of the CP4 EPSPS protein associated with the Roundup Ready® gene in all eleven fields sampled.

19. In addition, laboratory testing confirmed the presence of the B.t. Cry1Ac protein associated with the Bollgard gene in six fields representing 688.2 acres.

20. None of the defendants can document authorized purchases of Monsanto's patent protected technologies for the 2002 growing season. Defendants therefore infringed both the '605 and '525 patents in 2002.

21. Each defendant knowingly and intentionally saved, or otherwise obtained an unauthorized supply, and used, sold, or otherwise transferred Roundup Ready®, Bollgard®, and/or Bollgard® with Roundup Ready® technologies without authorization from Monsanto, in violation of Monsanto's patent and intellectual property rights in those technologies.

COUNT ONE – Infringement of U.S. Patent No. 5,352,605

22. 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.

23. On October 4, 1994, United States Letters 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 this Patent. This invention is in the fields of genetic engineering and plant biology.

24. The defendants' use and production of cottonseed containing the transgenic technology set forth in the above numbered paragraphs, constitutes the unauthorized and illegal 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 defendants pursuant to 35 U.S.C. §281.

25. Monsanto placed the required statutory notice that its transgenic technology was protected by U.S. Patent No. 5,352,605 on the labeling of all bags containing Roundup Ready®, Bollgard® and Bollgard® with Roundup Ready® cottonseed sold in the United States in compliance with 35 U.S.C. §287.

26. Defendants have and may still be infringing Monsanto's '605 patent by making, using, offering for sale or selling cottonseed embodying Monsanto's patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

27. The defendants' infringing activities were undertaken in full knowledge and with actual notice that defendants were in violation of plaintiff's patent rights, and were willful and wanton.

28. 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.

29. 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. Further, damages should be trebled in light of the defendants' knowing, willful, deliberate and conscious infringement of the patent rights at issue.

30. Monsanto is also entitled to the reimbursement of its attorney's fees pursuant to 35 U.S.C. §285, because this is an exceptional case.

COUNT TWO – Infringement of U.S. Patent No. 5,196,525

31. 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.

32. On March 23, 1993, United States Letters Patent No. 5,196,525 was duly and legally issued to plaintiff for an invention in a DNA Construct for Enhancing the Efficiency of Transcription, and since that date, plaintiff has been and still is the owner of the '525 patent. This invention relates to plant biotechnology, namely new DNA regions which provide for enhanced transcription of other DNA sequences.

33. Defendants' conduct as set forth in the above numbered paragraphs, constitutes the unauthorized and illegal use of patented inventions within the United States during the term of Patent No.5,196,525, all in violation of 35 U.S.C. §271, and Monsanto therefore has a right of civil action against the defendants pursuant to 35 U.S.C. §281.

34. Monsanto placed the required statutory notice on the labeling of bags of Bollgard® and Bollgard® with Roundup Ready® cottonseed that the technology was protected by U.S. Patent No. 5,196,525 in compliance with 35 U.S.C. §287.

35. 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.

36. The defendants' infringing activities were undertaken with full knowledge and with actual notice that defendants were in violation of plaintiff's patent rights, and were willful and wanton.

37. 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.

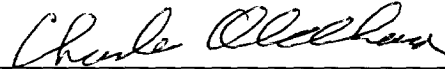
38. Further, damages should be trebled pursuant to 35 U.S.C. §284 in light of the defendants' knowing, willful, deliberate and conscious infringement of the patent rights at issue. Monsanto is also entitled to the reimbursement of its attorney's fees pursuant to 35 U.S.C. §285, because this is an exceptional case.

39. Monsanto requests a trial by jury.

WHEREFORE, Monsanto Company prays that process in due form of law issue to Defendants, requiring defendants to appear and answer, all and singular the allegations of the Complaint and that, after due proceedings are had, there be judgment entered in favor of Monsanto Company, and against the defendants, jointly and severally, providing the following remedies to Monsanto:

- a. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for defendants' patent infringement;
- b. Trebling of damage awarded for the infringement of patents, together with reasonable attorneys' fees;
- c. Entry of an order prohibiting defendants from planting, transferring or selling the infringing articles to a third party;
- d. Entry of a permanent injunction against defendants to prevent defendants from saving, cleaning, treating or otherwise preparing seed for replanting which contains any of Monsanto's proprietary technologies, in order to protect against future infringement of Monsanto's rights secured by its patents;
- e. Entry of judgment for costs, expenses and reasonable attorneys' fees incurred by Monsanto; and
- f. Such other relief as the Court may deem appropriate.

Respectfully submitted,



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