

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

MONSANTO COMPANY)
Plaintiff)
)
VERSUS) CASE NO.: CV-03-B-3250-NE
)
)
NACY MEEKS and)
MEEKS FARMS, INC.)
Defendants)

FIRST AMENDED AND RESTATED COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Monsanto Company (hereinafter "Monsanto") and files its First Amended and Restated Complaint at law against Nancy Meeks and Meeks Farms, Inc. (hereinafter "Meeks") pursuant to Fed R. Civ. P. 15(a).

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 Alabama and this judicial district.

THE DEFENDANTS

2. Defendant Nancy Meeks is an individual who has attained the age of majority and is a resident and domiciliary of Jackson County, Alabama, residing at 535 County Road 134, Pisgah, Alabama, 35765.

3. Defendant Meeks Farms, Inc. is an Alabama Business Corporation located in Jackson County, Alabama, 535 County Road 134, Pisgah, Alabama, 35765.

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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 district pursuant to 28 U.S.C. §1400 as the defendants reside in this judicial district and a substantial number of the events giving rise to Monsanto's claims of patent infringement occurred within this judicial district.

GENERAL ALLEGATIONS

6. Monsanto is in the business of developing, manufacturing, licensing, and selling agricultural biotechnology, chemicals, and various other agricultural products. After the investment of substantial time, expense, and expertise, Monsanto developed plant biotechnology that involves the transfer of a gene into crop seed that causes the plant to be resistant to glyphosate based herbicides such as Roundup Ultra^{®1}, Roundup UltraMAX^{®2}, Roundup WeatherMAX^{®3}, and Touchdown^{®4}.

7. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready^{®5} soybeans.

8. The Roundup[®] family of herbicides are non-selective herbicides manufactured by Monsanto, which will cause severe injury or death to soybean varieties that do not contain the Roundup Ready[®] technology.

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

² Roundup UltraMAX[®] is a registered trademark of Monsanto Company.

³ Roundup WeatherMAX[®] is a registered trademark of Monsanto Company.

⁴ Touchdown[®] is a registered trademark of Syngenta.

⁵ Roundup Ready[®] is a registered trademark of Monsanto Company.

9. Monsanto's Roundup Ready® seed technology is protected under United States Patent Number 5,352,605, which are attached hereto as Exhibit "A". The 5,352,605 patent was issued and assigned to Monsanto prior to the events giving rise to this action.

10. 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 United States Patent Number 5,352,605.

11. 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.

12. The defendants are either bound by the terms of a license in connection with his use of Roundup Ready® soybeans or he used such soybeans without authority in violation of Monsanto's patents. Such a license is either express or implied. If express, it arises by virtue of a license signed on behalf of defendant by others authorized to do so or by virtue of the sales documentation and labeling reflecting the terms of the sale. If implied, then the circumstances reflecting the terms of the implied license include the acceptability to benefits under Monsanto's Technology Package program, statements on the label of the product, statements on the product invoice, knowledge of the terms of Roundup Ready® soybean sales, and any other pertinent circumstances revealed in the course of discovery.

13. 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 planting seed. The only permissible use of the patent protected seed

allowed by the Monsanto Technology Agreement is to market the crop derived therefrom as a grain commodity.

14. An agent for Meeks Farms, Inc. has executed a Technology Agreement with Monsanto on behalf of Meeks Farms, Inc.

15. Authorized purchasers of Roundup Ready® soybeans are required to pay a license fee, otherwise referred to as a technology fee, for each commercial unit of seed purchased.

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

17. The defendants farm significant acreage in the Alabama County of Jackson, where they produces soybeans.

18. Meeks sold saved Roundup Ready® soybean seed to Monsanto investigators working on behalf of Monsanto and has refused to speak to Monsanto Representatives regarding this matter.

19. Defendants knowingly, willingly, and intentionally planted saved Roundup Ready® soybeans without authorization from Monsanto and used such soybeans in violation of Monsanto's patent rights in those soybeans.

COUNT ONE-PATENT INFRINGEMENT-Patent No. 5,352,605

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

21. On October 4, 1994, United States Patent Number 5,352,605 was dully and legally issued to Monsanto for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, Monsanto has been the owner of this patent. This invention is in the fields of genetic engineering and plant biology.

22. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by United States Patent Number 5,352,605 on the labeling of all bags containing Roundup Ready® soybean seed in compliance with 35 U.S.C. §287.

23. Defendants' conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent Number 5,352,605, all in violation of 35 U.S.C. § 271. Accordingly, Monsanto has a right of civil action against the defendant pursuant to 35 U.S.C. §281.

24. The defendants have and may be continuing to infringe Monsanto's patent by making, using, offering for sale, selling, or otherwise transferring Roundup Ready® soybean seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

25. 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.

26. 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 interest and costs to be taxed to the infringer. Further, damages should be trebled pursuant to 35 U.S.C. §284 in light of the defendant's knowing, willful, conscious, and deliberate infringement of the patent rights at issue.

27. The infringing activity of defendant brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. §285, thus Monsanto requests the award of reasonable attorneys fees and costs.

COUNT TWO-BREACH OF CONTRACT

28. 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.

29. The conduct of the defendants, as set forth above, is a breach of the terms set forth in the 1998 Monsanto Technology Agreement executed by Angela E. Meeks on behalf of Meeks Farms, Inc. A copy of the 1998 Monsanto Technology Agreement executed by Angela E. Meeks is attached hereto as Exhibit B.

30. As a direct and proximate result of this breach, Monsanto is contractually entitled to liquidated damages and attorneys' fees as set forth in the terms of the Monsanto Technology Agreement executed on behalf of the defendant, Meeks Farms, Inc.

WHEREFORE, Monsanto Company prays that process and due form of law issue to defendants, Nancy Meeks and Meeks Farms, Inc., requiring them to appear and answer, all and singular, the allegations of this complaint, and that after due proceedings are had, there be judgment in favor of Monsanto Company and against defendants, providing the following remedies to Monsanto:

1. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the defendant's patent infringement;
2. Trebling of damages awarded for the infringement of patents 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 against the defendant to prevent the defendant from using, saving, cleaning, or planting any of Monsanto's proprietary seed technologies, without express written permission from Monsanto;
5. Entry of judgment for costs, expenses, and reasonable attorney's fees incurred by Monsanto; and

6. Such other relief as the Court may deem appropriate.

Respectfully submitted,



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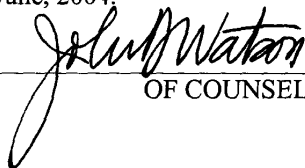
ATTORNEYS FOR MONSANTO COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the above and foregoing First Amended Complaint on:

R. Don Word
R. Don Word, P.C.
Attorney at Law
223 S. Market Street
Scottsboro, Alabama 35768

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to his regular mailing address, on this 15th day of June, 2004.



OF COUNSEL

**EXHIBITS TOO LARGE FOR
SCANNING-SEE ORIGINAL
FILE**