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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CARGILL, INCORPORATED, a
Delaware corporation,

Civil No. 03-01209-MO

Plaintiff,

SECOND AMENDED COMPLAINT
(Patent Infringement)

v.

CANBRA FOODS, LTD., a Canadian
corporation; **DOW AGROSCIENCES**
LLC, a Delaware corporation; **DOW**
AGROSCIENCES CANADA INC., a
Canadian corporation,

Demand for Jury Trial

PATENT CASE

Defendants.

Plaintiff Cargill, Incorporated, by and through the attorneys identified above,
hereby files this Second Amended Complaint requesting damages and injunctive relief
upon personal knowledge as to its own acts and circumstances, and upon information and
belief as to the acts and circumstances of others.

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PAGE 1 – SECOND AMENDED COMPLAINT

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PARTIES

1. Plaintiff Cargill, Incorporated (“Cargill” or “Plaintiff”), is a Delaware corporation, with a principal place of business located at 15407 McGinty Road West, Wayzata, Minnesota, 55391. Cargill is an international marketer, processor and distributor of agricultural, food, financial, and industrial products and services. Cargill is the sole assignee of various United States Patents relating to specialty canola oils, including U.S. Patent Nos. 5,969,169, 6,270,828, 6,680,396, and 6,201,145.

2. Canbra Foods, Ltd. is a Canadian corporation, with a principal place of business located at 2415 - 2 A Avenue North, Lethbridge, Alberta, T1J 3Y4, Canada. Canbra Foods, Ltd. is engaged in the production, use, sale, and/or distribution of specialty canola seed and/or oil products.

3. Dow AgroSciences LLC is a Delaware corporation, with a principal place of business located at 9330 Zionsville Road, Indianapolis, Indiana, 46268. Dow AgroSciences LLC is engaged in the production, use, sale, and/or distribution of specialty canola seed and/or oil products.

4. Dow AgroSciences Canada Inc. is a Canadian corporation, with a principal place of business located at 201, 1144-29 Avenue N.E., Calgary, Alberta, T2E 7P1, Canada. Dow AgroSciences Canada Inc. is engaged in the production, use, sale, and/or distribution of specialty canola seed and/or oil products. Dow AgroSciences Canada Inc. is a wholly-owned subsidiary of Dow AgroSciences LLC. Canbra Foods, Ltd., Dow AgroSciences LLC, and Dow AgroSciences Canada Inc., will be referred to herein, individually and collectively, as “Defendants.”

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has jurisdiction over Defendants because, among other things, Defendants have infringed, contributed to the infringement of, and/or actively induced others to infringe Cargill's patent rights in this district as alleged in this Second Amended Complaint.

7. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendants have committed acts of direct infringement in this district, or acts that have contributed to or induced direct infringement in this district, and are subject to personal jurisdiction in this district.

FACTS

8. Cargill has made significant investment in research and development relating to specialty canola oils. Cargill's efforts and investment have resulted in the development of specialty canola oils that provide for a wider range of applications, superior performance, and unprecedented health attributes such as low saturated fat content, zero trans fatty acids, and superior stability and flavor profiles. Cargill's advancements are the subject of patents issued to Cargill by the United States Patent and Trademark Office, such as, for example, U.S. Patent Nos. 5,969,169, 6,270,828, 6,680,396, and 6,201,145.

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9. Cargill is the sole owner of all right, title, and interest in and to the invention of United States Patent No. 5,969,169 (hereinafter “the ‘169 patent”), entitled “Non-Hydrogenated Canola Oil for Food Applications.” The ‘169 patent was duly and legally issued by the United States Patent and Trademark Office on October 19, 1999. A copy of the ‘169 patent is attached as Exhibit 1.

10. Cargill is the sole owner of all right, title, and interest in and to the invention of United States Patent No. 6,270,828 (hereinafter “the ‘828 patent”), entitled “Canola Variety Producing a Seed with Reduced Glucosinolates and Linolenic Acid Yielding an Oil with Low Sulfur, Improved Sensory Characteristics and Increased Oxidative Stability.” The ‘828 patent was duly and legally issued by the United States Patent and Trademark Office on August 7, 2001. A copy of the ‘828 patent is attached as Exhibit 2.

11. Cargill is the sole owner of all right, title, and interest in and to the invention of United States Patent No. 6,680,396 (hereinafter “the ‘396 patent”), entitled “Canola Oil with Reduced Linolenic Acid.” The ‘396 patent was duly and legally issued by the United States Patent and Trademark Office on January 20, 2004. A copy of the ‘396 patent is attached as Exhibit 3.

12. Cargill is the sole owner of all right, title, and interest in and to the invention of United States Patent No. 6,201,145 (hereinafter “the ‘145 patent”), entitled “Non-Hydrogenated Canola Oil for Food Applications.” The ‘145 patent was duly and legally issued by the United States Patent and Trademark Office on March 13, 2001. A copy of the ‘145 patent is attached as Exhibit 4.

13. Defendants make, use, sell, or offer for sale within the United States, or import into the United States, or contribute to or induce others to make, use, sell, or offer for sale within the United States, or import into the United States, specialty canola seeds and/or oil products, or methods for making specialty canola seeds and/or oil products, that infringe Cargill's '169, '828, '396, and '145 patents (hereinafter referred to as "accused products").

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 5,969,169
(35 U.S.C. §271)

14. Cargill incorporates and realleges paragraphs 1-13 as if fully set forth herein.

15. Defendants are directly infringing the '169 patent by making, using, offering to sell, or selling in the United States, or importing into the United States, the accused products, and/or are contributing to the infringement of, or inducing others to infringe, the '169 patent.

16. As a result of such infringement by Defendants, Cargill has suffered grievous damage.

17. The acts of infringement by Defendants have been made with full knowledge of Cargill's rights in the '169 patent. Such acts constitute willful and deliberate infringement, entitling Cargill to enhanced damages and reasonable attorney fees.

18. Cargill will continue to suffer grievous damage unless Defendants' unlawful infringing activities are enjoined by this Court.

SECOND CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 6,270,828
(35 U.S.C. § 271)

19. Cargill incorporates and realleges paragraphs 1-18 as if fully set forth herein.

20. Defendants are directly infringing the '828 patent by making, using, offering to sell, or selling in the United States, or importing into the United States, the accused products, and/or are contributing to the infringement of, or inducing others to infringe, the '828 patent.

21. As a result of such infringement by Defendants, Cargill has suffered grievous damage.

22. The acts of infringement by Defendants have been made with full knowledge of Cargill's rights in the '828 patent. Such acts constitute willful and deliberate infringement, entitling Cargill to enhanced damages and reasonable attorney fees.

23. Cargill will continue to suffer grievous damage unless Defendants' unlawful infringing activity is enjoined by this Court.

THIRD CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 6,680,396
(35 U.S.C. § 271)

24. Cargill incorporates and realleges paragraphs 1-23 as if fully set forth herein.

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25. Defendants are directly infringing the '396 patent by making, using, offering to sell, or selling in the United States, or importing into the United States, the accused products, and/or are contributing to the infringement of, or inducing others to infringe, the '396 patent.

26. As a result of such infringement by Defendants, Cargill has suffered grievous damage.

27. The acts of infringement by Defendants have been made with full knowledge of Cargill's rights in the '396 patent. Such acts constitute willful and deliberate infringement, entitling Cargill to enhanced damages and reasonable attorney fees.

28. Cargill will continue to suffer grievous damage unless Defendants' unlawful infringing activity is enjoined by this Court.

FOURTH CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 6,201,145 (35 U.S.C. § 271)

29. Cargill incorporates and realleges paragraphs 1-28 as if fully set forth herein.

30. Defendants are directly infringing the '145 patent by making, using, offering to sell, or selling in the United States, or importing into the United States, the accused products, and/or are contributing to the infringement of, or inducing others to infringe, the '145 patent.

31. As a result of such infringement by Defendants, Cargill has suffered grievous damage.

32. The acts of infringement by Defendants have been made with full knowledge of Cargill's rights in the '145 patent. Such acts constitute willful and deliberate infringement, entitling Cargill to enhanced damages and reasonable attorney fees.

33. Cargill will continue to suffer grievous damage unless Defendants' unlawful infringing activity is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cargill, Incorporated, prays that this Court enter judgment:

- (1) that Defendants have infringed United States Patent Nos. 5,969,169, 6,270,828, 6,680,396, and 6,201,145;
- (2) that Defendants' infringement is willful;
- (3) that this is an exceptional case;
- (4) enjoining and restraining Defendants and their agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents, and all others acting in concert or participating with Defendants from directly or indirectly infringing United States Patent Nos. 5,969,169, 6,270,828, 6,680,396, and 6,201,145;
- (5) awarding to Plaintiff actual damages, not less than a reasonable royalty, for the Defendants' infringement including pre- and post-judgment interest as allows by law;
- (6) awarding to Plaintiff treble the amount of losses and damages because of the willful, knowing and wanton nature of Defendants' conduct;

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(7) awarding all costs of this action, including Plaintiff's reasonable attorneys' fees and interest; and

(8) granting Plaintiff such other and further relief as the Court may deem just and equitable.

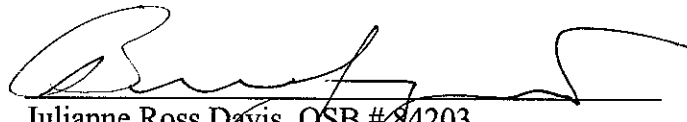
JURY DEMAND

Plaintiff demands a trial by jury of all issues triable as of right by a jury in this action.

Dated: September 21, 2004

Respectfully submitted,

CHERNOFF, VILHAUER, McCLUNG &
STENZEL, LLP



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CERTIFICATE OF SERVICE

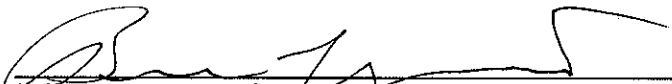
I hereby certify that a true and correct copy of the **SECOND AMENDED COMPLAINT** has been served upon the following attorney for defendants on September 21, 2004 by electronic means through the Court's Case Management/Electronic Case File system:

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Attorney for Defendants

DATED: September 21, 2004.

CHERNOFF, VILHAUER, McCLUNG
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