

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRA HAUTE DIVISION
OCT 12 2007
LAURENCE, INDIANA
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRA HAUTE DIVISION

MONSANTO COMPANY and)
)
MONSANTO TECHNOLOGY, LLC,)
)
Plaintiffs,)
)
vs.)
)
VERNON HUGH BOWMAN,)
)
Defendant.)

CASE NO.

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COMPLAINT

Plaintiffs, Monsanto Company, and Monsanto Technology, LLC (sometimes referred to collectively as “Monsanto”), for their Complaint against Vernon Hugh Bowman (hereinafter “Bowman” or “Defendant”) makes the following allegations:

THE PLAINTIFFS

Monsanto Company

1. Monsanto Company 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 Indiana and this judicial district.

2. Monsanto Company is in the business of developing, manufacturing, licensing, and selling agricultural biotechnology, agricultural chemicals, and agricultural products. After the investment of substantial time, expense, and expertise, Monsanto Company developed a 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®, Roundup UltraMAX®,

Roundup WeatherMAX®, and Touchdown®.

3. This biotechnology has been utilized by Monsanto Company in soybeans. The genetically improved soybeans are marketed by Monsanto Company as Roundup Ready® soybeans.

4. Monsanto's Roundup Ready® biotechnology is protected under United States Patent Numbers 5,352,605 and RE 39,247 E, which are attached hereto as Exhibits "A" and "B". The 5,352,605 and RE 39,247 E patents (commonly referred to as the '605 and '247 patents, respectively) were issued prior to the events giving rise to this action.

5. Monsanto Company is and has been the exclusive licensee of the '605 and '247 patents from Monsanto Technology, LLC.

Monsanto Technology

6. Monsanto Technology, LLC is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri.

7. Monsanto Technology, LLC is and has been the owner of the '605 and '247 patents prior to the events giving rise to this action.

THE DEFENDANT

8. Defendant is an individual who resides in Knox County, Indiana at 21488 E State Road 58, Sandborn, IN.

JURISDICTION AND VENUE

9. 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.

10. Venue is proper in this district pursuant to 28 U.S.C. §1400 as Defendant resides in this judicial district, and as a substantial number of the events giving rise to Monsanto's claims of patent infringement occurred within this judicial district.

Defendant's Infringing Activities

11. Defendant farms land in the Indiana County of Knox, upon which he produces soybeans. In 2006, Defendant planted approximately 350 acres of soybeans.

12. Upon information and belief, the Defendant knowingly, willfully and intentionally planted and used saved Roundup Ready® soybeans without authorization from Monsanto in violation of Monsanto's patent rights.

13. Defendant purchased harvested soybean seed from a grain elevator for planting purposes.

14. Defendant planted the soybean seed he purchased from the grain elevator.

15. Defendant applied a weed controlling agent to the soybean fields planted with soybean seed purchased from the grain elevator.

16. The weed controlling agent applied by the defendant contained glyphosate.

17. Defendant harvested seed from plants that survived the weed controlling agent's application on the fields planted with soybean seed purchased from the grain elevator.

18. Defendant retained (saved) a portion of his harvested soybean seed to plant a subsequent (later) crop.

19. Defendant applied a weed controlling agent to the fields planted with soybean seed purchased from the grain elevator with the intention to select for Roundup Ready® soybeans.

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

20. Each and every 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, the '605 Patent was duly 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.

22. Defendant has infringed the '605 Patent by making, using, offering for sale, selling, or importing into the United States Roundup Ready® soybean seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

23. Defendant's actions have damaged Monsanto.

24. 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.

25. 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, on information and belief, 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.

26. The infringing activity of the 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 II
PATENT INFRINGEMENT-Patent No. RE 39,247 E

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

28. On August 22, 2006, United States Patent Number 5,633,435 was duly and legally reissued to Monsanto as U.S. Patent No. RE 39,247 E. U.S. Patent No. 5,633,435 was initially issued on May 27, 1997. The '247 patent is for an invention of Glyphosate-Tolerant 5-Enolpyruvylshikimate-3-Phosphate Synthases. This invention is in the fields of genetic engineering and plant biology.

29. Defendant has infringed Monsanto's patent rights by making, using, offering for sale, selling, importing into the United States, or otherwise transferring Roundup Ready® soybean seed embodying or using the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

30. Defendant's actions have damaged Monsanto.

31. 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.

32. 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, on information and belief, 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.

33. The infringing activity of the 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.

PRAYER FOR RELIEF

WHEREFORE, Monsanto prays that process and due form of law issue to Defendant requiring him to appear and answer the allegations of this complaint, and that after due proceedings are had, there be judgment in favor of Plaintiffs and against the Defendant, providing the following remedies to Plaintiffs:

A) Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the Defendant's patent infringement;

B) Trebling of damages awarded for the infringement of patents together with reasonable attorney's fees;

C) Entry of an order prohibiting the Defendant from planting infringing articles;

D) Entry of an order prohibiting the Defendant from selling or otherwise transferring infringing articles to a third party;

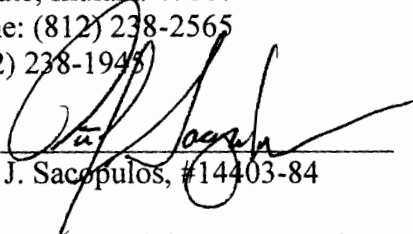
E) Entry of a permanent injunction against the Defendant to prevent the Defendant from using, saving, cleaning, or planting any of Monsanto's proprietary seed technologies, without express written permission from Monsanto;

F) Entry of judgment for costs, expenses, and reasonable attorney's fees incurred by Monsanto; and

G) Such other relief as the Court may deem appropriate.

Respectfully submitted,

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By: 
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