

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

MONSANTO COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 DEAN FORD, DEBBIE FORD,)
 MELVIN FORD, FORD LUMBER &)
 BUILDING SUPPLY, INC., JASON)
 WEHNER d/b/a TAYLOR-WEHNER)
 FARM, and JAMES REED,)
)
 Defendants.)

CASE NO. 4:04-CV-0064DFH-WGH

SERVE:

**James Reed
10986 South County Road 450 W
Madison, Indiana 47250**

FIRST AMENDED COMPLAINT AND JURY DEMAND

DEMAND FOR JURY TRIAL

COMES NOW, the plaintiff, Monsanto Company, (hereinafter "Monsanto") by and through its undersigned counsel, and for its First Amended Complaint at law against Dean Ford, Debbie Ford, Melvin Ford, Ford Lumber & Building Supply, Inc., Jason Wehner d/b/a Taylor-Wehner Farm, and James Reed, 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 Indiana and in this judicial district.

THE DEFENDANTS

2. Defendant Dean Ford is an individual who has attained the age of majority and is a resident and domiciliary of Jefferson County, Indiana. Defendant Dean Ford is engaged in a farming business that includes the planting of soybeans. Defendant Dean Ford is the President of Ford Lumber & Building Supply, Inc., and controls Ford Lumber & Building Supply, Inc.'s day-to-day business operations.

3. Defendant Debbie Ford is an individual who has attained the age of majority and is a resident and domiciliary of Jefferson County, Indiana. Defendant Debbie Ford is engaged in a farming business that includes the planting of soybeans.

4. Defendant Melvin Ford is an individual who has attained the age of majority and is a resident and domiciliary of Jefferson County, Indiana. Defendant Melvin Ford is engaged in a farming business that includes the planting of soybeans.

5. Defendant Ford Lumber & Building Supply, Inc. is a domestic corporation organized and existing under the laws of the State of Indiana with its principal place of business in Jefferson County, Indiana. Defendant Ford Lumber & Building Supply, Inc. owns farmland located in Jefferson County, Indiana, upon which soybeans were planted in 2003.

6. Defendant Jason Wehner d/b/a Taylor-Wehner Farm is an individual who has attained the age of majority and is a resident and domiciliary of Jefferson County, Indiana. Defendant Jason Wehner is engaged in a farming business that includes the planting of soybeans.

6.a. Defendant James Reed is an individual who has attained the age of majority and is a resident and domiciliary of Jefferson County, Indiana. Defendant James Reed is engaged in a farming business that includes the planting of soybeans.

JURISDICTION AND VENUE

7. 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.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391, as a substantial part of the events giving rise to this action occurred in this judicial district, and the defendants are residents of this judicial district, and pursuant to 28 U.S.C. §1400 as the defendants reside in this judicial district and committed acts of infringement in this judicial district.

GENERAL ALLEGATIONS

9. 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 plant biotechnology that involves the transfer of a man-made gene into certain crop seed that causes the crop to be resistant to glyphosate, the active ingredient in glyphosate-based herbicides such as Monsanto's Roundup® branded herbicides. The genetically improved crop seed is marketed by Monsanto as, inter alia, Roundup Ready® soybean seed. Roundup® and Roundup Ready® are registered trademarks of Monsanto.

10. Roundup® and other glyphosate based herbicides will cause severe injury or crop destruction to soybean varieties that are not Roundup Ready®.

11. 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.") A true and correct copy of the '605 patent is attached hereto as Exhibit A.

The '605 patent was issued and assigned to Monsanto prior to the events giving rise to this action.

12. Monsanto licenses the use of Roundup Ready® seed technology to farmers at the retail marketing level. All soybean producers must obtain a license before they can use Roundup Ready® soybeans.

13. The required statutory notice that Roundup Ready® technology is patented is placed on the labeling of all bags containing Roundup Ready® seed. In particular, each bag of Roundup Ready® soybean seed is marked with notice of U.S. Patent No. 5,352,605.

14. Under the terms of Monsanto's limited use licensing agreements, a licensee is prohibited from saving, selling, reselling or otherwise transferring any harvested seed for the purpose of planting another crop or from selling the original purchased seed to third parties for use as a planting seed. The only permissible use of the patent protected seed allowed by the licensing agreement is to market the crop derived therefrom as a commodity.

15. Defendant, Jason Wehner, purchased Roundup Ready® soybeans during the 2003 crop year.

16. Defendant Wehner, without authorization or license, sold or otherwise transferred soybean seed containing Monsanto's patented Roundup Ready® biotechnology to Dean Ford during the term of U.S. Patent No. 5,352,605. Also, upon information and belief, Defendant, Jason Wehner d/b/a Taylor-Wehner Farm, planted saved Roundup Ready® soybean seed in fields farmed by him during the 2003 crop season in violation of Monsanto's patent rights.

17. Upon information and belief, Defendant Dean Ford induced Defendant Wehner to sell or otherwise transfer Roundup Ready® soybean seed to him for planting purposes during the 2003 crop year in violation of Monsanto patent rights.

18. Fields farmed by Defendants Dean Ford, Debbie Ford and Melvin Ford were planted with soybean seed containing Monsanto's patented Roundup Ready® biotechnology during the 2003 crop year in violation of Monsanto's patent rights.

18.a. Upon information and belief, fields farmed by Defendant James Reed located in the Jefferson Proving Ground were planted with soybean seed containing Monsanto's patented Roundup Ready® biotechnology during the 2003 crop year in violation of Monsanto's patent rights. The fields farmed by Defendant Reed in the Jefferson Proving Grounds were owned by Defendant Ford Lumber & Building Supply, Inc.

19. Farm equipment under the control of Defendant Dean Ford was used to plant soybean seed on land owned and/or farmed by Defendant Ford Lumber & Building Supply, Inc. during the 2003 crop year. Upon information and belief, the equipment was used to plant soybean seed containing Monsanto's patented Roundup Ready® biotechnology during the 2003 crop year in violation of Monsanto's patent rights.

19.a. Farm equipment under the control of Defendant Dean Ford was used to plant soybean seed on land located at the Jefferson Proving Ground owned by Defendant Ford Lumber & Building Supply, Inc. in 2003 and farmed by Defendant Reed. Upon information and belief, the equipment was used to plant soybean seed containing Monsanto's patented Roundup Ready® biotechnology during the 2003 crop year in violation of Monsanto's patent rights.

19.b. Upon information and belief, the land owned by Defendant Ford Lumber & Building Supply, Inc. located at the Jefferson Proving Ground was leased to James Reed during the 2003 crop year.

COUNT ONE – Infringement of U.S. 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 were explicitly set forth hereunder.

21. On October 4, 1994, United States Patent No. 5,352,605 was duly and legally issued for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and at all times relevant herein, Monsanto has been the owner and/or assignee of that patent. This invention is in the fields of genetic engineering and plant biology. See Exhibit A.

22. The statutory notice that Monsanto's Roundup Ready® technology is protected by U.S. Patent 5,352,605 was/is placed on the labeling of all bags containing Roundup Ready® soybean seed in compliance with 35 U.S.C. § 287.

23. The defendants' conduct as set forth above in the above numbered paragraphs, constitutes the unauthorized and illegal use of the patented invention within the United States during the term of the '605 patent, all in violation of 35 U.S.C. §271. Monsanto therefore has a right of civil action against all defendants pursuant to 35 U.S.C. §281.

24. The defendants have and may still be infringing Monsanto's Patent by making, using, offering for sale or selling soybean seed embodying Monsanto's patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

25. Upon information and belief, all of the named defendants' infringing activities were undertaken with full knowledge and, with notice that such activities were in violation of Monsanto's patent rights.

26. 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.

27. 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 pursuant to 35 U.S.C. §284 in light of the defendants' knowing, willful, deliberate and conscious infringement of the patent rights at issue.

28. 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 - INDUCEMENT TO INFRINGE

29. 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.

30. Upon information and belief, Defendant, Dean Ford, is the physical embodiment of Ford Lumber & Building Supply, Inc, i.e., defendant, Dean Ford, physically manages and conducts all of the farming operations and land management of Ford Lumber & Building Supply, Inc. by tilling the soil in the fields, selecting the seed to be planted, planting the seed, applying herbicides and fertilizers to the crop, harvesting the crop and delivering the harvested crop to market for sale.

31. Defendant, Dean Ford, knowingly obtained Roundup Ready® soybeans from Jason Wehner or others for planting purposes during the 2003 crop season without obtaining a license in violation of Monsanto's patent rights.

32. Upon information and belief, Defendant Dean Ford knowingly saved Roundup Ready® soybeans from the 2002 crop and planted the seed in his own fields and/or transferred the seed to the Debbie Ford, Melvin Ford and Ford Lumber & Building Supply, Inc. and others for planting purposes in 2003.

33. Defendant, Dean Ford, knowingly directed his employees to load saved Roundup Ready® soybeans into a planter and plant those saved seeds on fields owned by Dean Ford, Debbie Ford, Melvin Ford, and Ford Lumber & Building Supply, Inc. during the 2003 growing season.

34. Defendant, Dean Ford, actively, knowingly, and willfully aided and abetted the direct infringement of U.S. Patent No. 5,352,605 by Debbie Ford, Melvin Ford and Ford Lumber & Building Supply, Inc. by saving and subsequently planting saved Roundup Ready® soybeans on behalf of and on land owned by Debbie Ford, Melvin Ford, and Ford Lumber & Building Supply, Inc. in the 2003 growing season.

34.a. Upon information and belief, Defendant, Dean Ford, actively, knowingly and willfully aided and abetted the direct infringement of U.S. Patent No. 5,352,605 by James Reed by saving and subsequently planting saved Roundup Ready® soybeans on behalf of and on land farmed by James Reed in the 2003 growing season.

35. Pursuant to 35 U.S.C. §271(b), Defendant, Dean Ford, has induced Defendants Debbie Ford, Melvin Ford, and Ford Lumber & Building Supply, Inc., to infringe Monsanto's patent.

35.a. Upon information and belief, Defendant, Dean Ford, has induced Defendant James Reed to infringe Monsanto's patent.

36. Pursuant to 35 U.S.C. §283, Monsanto is entitled to injunctive relief in accordance with the principles of equity to prevent defendant, Dean Ford, from infringing Monsanto's patent rights.

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

38. Monsanto should recover its reasonable attorneys' fees pursuant to 35 U.S.C. §285 as this is an exceptional case.

39. Dean Ford, Debbie Ford, Melvin Ford, Ford Lumber & Building Supply, Inc., Jason Wehner, and James Reed are jointly and severally liable to Monsanto for their infringement of U.S. Patent No. 5,352,605.

40. Monsanto demands trial by jury.

WHEREFORE, Monsanto Company prays that process in due form of law issue to Dean Ford, Debbie Ford, Melvin Ford, Dean Ford Lumber & Building Supply, Inc., Jason Wehner d/b/a Taylor Wehner Farm and James Reed requiring all 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, 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;

- f. An enhancement, up to trebling, of any damages pursuant to 35 U.S.C. § 284; and
- g. Such other relief as the Court may deem appropriate.

Respectfully submitted,

s/ Susan L. Williams

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2004, a copy of the foregoing First Amended Complaint was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I hereby certify that on the 15th day of October, 2004, a copy of the First Amended Complaint and Jury Demand and Summons was mailed by certified mail, return receipt requested, and properly addressed to the following:

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s/Susan L. Williams
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