

FILED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

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STEPHEN J. CLARK  
CLERK  
FOR THE UNITED STATES DISTRICT  
COURT

MONSANTO COMPANY )  
Plaintiff )  
 )  
VERSUS )  
 )  
PAUL W. REIDENBACH and )  
PAUL W. REIDENBACH ENTERPRISES, INC. )  
Defendants )

CASE NO.:

1:04CV0342 WCL

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Monsanto Company (hereinafter "Monsanto") and for its Complaint at law against Paul W. Reidenbach and Paul W. Reidenbach Enterprises, Inc. (hereinafter "Reidenbach" 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 Indiana and this judicial district.

THE DEFENDANTS

2. Defendant Paul W. Reidenbach is an individual who has attained the age of majority and is a resident and domiciliary of Adams County, Indiana.

3. Defendant Paul W. Reidenbach Enterprises, Inc. is an Indiana Business Corporation located in Adams County, Indiana.

### **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<sup>®1</sup>, Roundup UltraMAX<sup>®2</sup>, Roundup WeatherMAX<sup>®3</sup>, and Touchdown<sup>®4</sup>.

7. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready<sup>®5</sup> soybeans.

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<sup>1</sup> Roundup Ultra<sup>®</sup> is a registered trademark of Monsanto Company.

<sup>2</sup> Roundup UltraMAX<sup>®</sup> is a registered trademark of Monsanto Company.

<sup>3</sup> Roundup WeatherMAX<sup>®</sup> is a registered trademark of Monsanto Company.

<sup>4</sup> Touchdown<sup>®</sup> is a registered trademark of Syngenta.

<sup>5</sup> Roundup Ready<sup>®</sup> is a registered trademark of Monsanto Company.

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.

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 commonly referred to as a Technology Agreement or a limited use invoice license, depending upon the particular brand of soybean.

12. Pursuant to the express terms of the limited use licenses, the licensees are prohibited from transferring the seed to third parties and are also prohibited from saving harvested Roundup Ready® soybean seed for replanting purposes.

13. 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.

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

15. Defendants farm significant acreage in Adams County, Indiana, where they produce soybeans.

16. Defendants planted saved Roundup Ready® soybean seed during 2004. Defendants also planted saved Roundup Ready® soybeans in 2001, 2002, and 2003 in contravention of Monsanto's patent rights.

17. Defendants knowingly and intentionally planted saved Roundup Ready® soybeans without authorization from Monsanto in violation of Monsanto's patent rights.

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

18. 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.

19. On October 4, 1994, United States Patent Number 5,352,605 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. This invention is in the fields of genetic engineering and plant biology.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

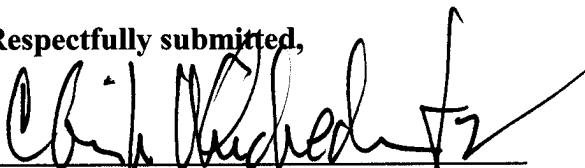
25. The infringing activity of defendant brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. §285, thus Monsanto requests the award of reasonable attorneys fees and costs.

WHEREFORE, Monsanto Company prays that process and due form of law issue to defendants, Paul W. Reidenbach and Paul W. Reidenbach Enterprises, 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,



C. ERIK CHICKEDANTZ

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**and**

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**Through its registered agent:**

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