

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

AUG 18 2006

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

**MONSANTO COMPANY and  
MONSANTO TECHNOLOGY LLC**

**PLAINTIFFS**

**VS.**

**CASE NO.:** 3:06CV00146 GTE  
This case assigned to District Judge Eisele  
and to Magistrate Judge Ray

**GARY MCCRORY and  
ANDY MCCRORY**

**DEFENDANTS**

**COMPLAINT AND JURY DEMAND**

Monsanto Company and Monsanto Technology LLC (hereinafter referred to collectively as "Monsanto"), by their counsel, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., for their Complaint against Gary McCrory and Andy McCrory (hereinafter "McCrory" or "Defendants") alleges as follows:

**THE PLAINTIFFS**

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 Arkansas and this judicial district.

2. 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.

**THE DEFENDANTS**

3. Defendant Gary McCrory, is an individual who has attained the age of majority and is a resident and domiciliary of Mississippi County, Arkansas.

4. Defendant Andy McCrory is an individual who has attained the age of majority and is a resident and domiciliary of Mississippi County, Arkansas.

### **JURISDICTION AND VENUE**

5. 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.

6. 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**

7. Monsanto 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 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®<sup>1</sup>.

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

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<sup>1</sup> Touchdown® is a registered trademark of Syngenta.

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

10. Monsanto's Roundup Ready® seed technology is protected under United States Patent Number 5,352,605. The 5,352,605 patent was issued to Monsanto prior to the events giving rise to this action. A copy of U.S. Patent No. 5,352,605 is attached hereto as Exhibit A.

11. Monsanto Technology LLC is the owner of U.S. Patent No. 5,352,605 (hereinafter the '605 patent).

12. Monsanto Company is the exclusive licensee of the '605 patent from Monsanto Technology LLC.

13. Since the Roundup Ready® technology was commercially introduced, Monsanto has labeled all bags of Roundup Ready® soybeans sold in the United States with the required statutory notice that its Roundup Ready® technology was patented. In particular, each bag of Roundup Ready® soybean seed sold in the United States has been marked with notice of United States Patent Number 5,352,605.

14. 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.

15. Among other things, the express terms of the limited use license prohibits licensees from saving harvested Roundup Ready® soybeans for planting purposes, or from selling, transferring or supplying saved Roundup Ready® soybeans to others for planting.

The use of Roundup Ready® soybean seed is limited to the production of a single commercial crop.

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

17. Defendants, individually and/or on behalf of one another, farm land in Mississippi County, Arkansas, upon which they produce soybeans.

18. Defendants, individually and/or on behalf of one another, purchased Roundup Ready® soybeans in the 2003 growing season pursuant to a limited use license.

19. Defendants, individually and/or on behalf of one another, saved Roundup Ready® soybean seed harvested from their 2003 crop and used that seed for planting a soybean crop in 2004.

20. Defendants, individually and/or on behalf of one another, harvested their 2004 Roundup Ready® soybean crop and used the harvested Roundup Ready® soybean seed to plant a soybean crop in 2005.

21. Defendants, individually and/or on behalf of one another, planted saved Roundup Ready® soybean seed in 2005.

22. Defendants, individually and/or on behalf of one another, applied a glyphosate based herbicide over the top of their 2005 soybean crop and the soybeans were not injured by the glyphosate based herbicide.

23. The defendants have planted and used saved Roundup Ready® soybean seed in both 2004 and 2005 in contravention of Monsanto's patent rights.

24. The defendants, individually and/or on behalf of one another, knowingly, willfully, and intentionally planted and used saved Roundup Ready® soybeans without authorization from Monsanto in violation of Monsanto's patent rights.

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

25. 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.

26. 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.

27. 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.

28. 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 defendants pursuant to 35 U.S.C. §281.

29. Upon information and belief, 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.

30. 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.

31. 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 defendants' knowing, willful, conscious, and deliberate infringement of the patent rights at issue.

32. The infringing activity of the defendants 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.

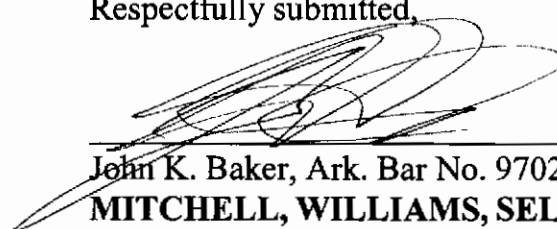
**WHEREFORE**, plaintiffs, Monsanto Company and Monsanto Technology LLC, pray that process and due form of law issue to defendants, Gary McCrory and Andy McCrory, requiring them to appear and answer, all and singular, the allegations of this complaint, and that after due proceedings are had, there be judgment in favor of plaintiffs and against the defendants, providing the following remedies to plaintiffs:

1. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the defendants' patent infringement;
2. Trebling of damages awarded for the infringement of patents together with reasonable attorney's fees and costs;
3. Entry of an order prohibiting the defendants from planting, transferring, or selling the infringing articles to a third party;
4. Entry of a permanent injunction against the defendants to prevent the defendants 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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