

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MONSANTO COMPANY,

Plaintiff,

COMPLAINT AND JURY DEMAND

vs.

CASE NO.:

PETER J. DRAGAN,

Defendant.

Plaintiff, Monsanto Company (hereinafter “Monsanto”), through its undersigned counsel, as and for its Complaint against Peter J. Dragan (hereinafter “Dragan” or “Defendant”), 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 New York and this judicial district.

THE DEFENDANT

2. Defendant Peter J. Dragan, is an individual who has attained the age of majority and is a resident and domiciliary of Orleans County, New York.

JURISDICTION AND VENUE

3. 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.

4. Venue is proper in this district pursuant to 28 U.S.C. §1400 as the defendant resides 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

5. 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 Ultra¹, Roundup UltraMAX², Roundup WeatherMAX³, and Touchdown⁴.

6. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready⁵ soybeans.

7. 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.

8. Monsanto's Roundup Ready[®] seed technology is protected under United States Patent Number 5,352,605, which is 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.

¹ Roundup Ultra[®] is a registered trademark of Monsanto Company.

² Roundup UltraMAX[®] is a registered trademark of Monsanto Company.

³ Roundup WeatherMAX[®] is a registered trademark of Monsanto Company.

⁴ Touchdown[®] is a registered trademark of Syngenta.

⁵ Roundup Ready[®] is a registered trademark of Monsanto Company.

9. 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.

10. 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.

11. 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 the seed is limited to the production of a single commercial crop.

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

13. Defendant farms land in and around Orleans County, New York, upon which he produces soybeans.

14. Defendant has admitted that he planted saved Roundup Ready® soybeans in 2005.

15. Upon information and belief, the defendant planted, used, offered to sell and sold or otherwise transferred saved Roundup Ready® soybean seed during and prior to 2005 in contravention of Monsanto's patent rights.

16. 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.

COUNT ONE – PATENT INFRINGEMENT – Patent No. 5,352,605

17. 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.

18. 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.

19. 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.

20. Defendant's conduct, as set forth above, constitutes the unauthorized use of, offer to sell and sale 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.

21. Upon information and belief, the defendant has 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.

22. 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.

Monsanto has no adequate remedy at law.

23. 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.

24. 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.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Monsanto demands trial by jury of all issues triable of right by jury.

WHEREFORE, Monsanto Company prays for judgment in favor of Monsanto Company and against the defendant, Peter J. Dragan, 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 restraining and enjoining the defendant, permanently and during the pendency of this action, from planting, transferring, or selling the infringing articles to a third party, and from otherwise making, using, selling, offering to sell or importing any infringing articles without express written permission from Monsanto;
4. Entry of preliminary and permanent injunctions 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.

Dated: October 18, 2005
Buffalo, New York

Respectfully submitted,

/s/ Miles P. Clements

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