

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

FEB 11 2000

NANCY DOHERTY, CLERK

By Deputy

5-00CV0044-C
CIVIL ACTION NO.

MONSANTO COMPANY,
Plaintiff

V.

DON SNOWDEN and
DONALD SNOWDEN
Defendants

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PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, Plaintiff, Monsanto Company (hereinafter "Monsanto"), by and through its undersigned counsel, and for its Complaint at law against Don Snowden and Donald Snowden, defendants, makes the following allegations:

A. Parties

1. Plaintiff, 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 Missouri and in this judicial district.
2. Defendant, Don Snowden, is an individual who has attained the age of majority and is a resident and domiciliary of the State of Texas. He may be served with process at Route 1, Box 395, Wolfforth, Texas 79382.
3. Defendant, Donald Snowden, is an individual who has attained the age of majority and is a resident and domiciliary of the State of Texas. He may be served with process at 1007 County Road 1300, Wolfforth, Texas 79382.

B. 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. Additionally, this court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over all of Monsanto's non-federal question claims, such that they form part of the same case or controversy.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400 in that the defendants reside in the same state and a substantial part of the events giving rise to the claims contained herein occurred in this district.

C. General Allegations

6. 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 a new plant biotechnology that involves the insertion into plants of a gene that causes the plant to be resistant to Roundup® branded herbicides.

7. This new biotechnology has been utilized by Monsanto in several agricultural crops, including cottonseed. The genetically improved cottonseed are marked by Monsanto as Roundup Ready® cotton.

8. Monsanto's Roundup Ready® technology is protected under patents issued by the United States Patent Office, specifically including U. S. Patent Numbers 5,633,435, 5,352,605, and 4,490,835, which are attached hereto as Exhibits "B", "C", and "D". These patents were issued and assigned to Monsanto prior to the events giving rise to this action.

9. Monsanto licenses the use of Roundup Ready® seed technology to cotton producers such as the defendant at the retail marketing level.

10. Purchasers of Roundup Ready® cottonseed are also required to pay a license fee (otherwise referred to as a "technology fee") for each commercial unit of seed purchased.

11. Monsanto placed the required statutory notice that its Roundup Ready® technology was patented on the labeling of all bags containing Roundup Ready® cottonseed.

12. During the end of November, 1999 and the beginning of December, 1999, the defendants stripped their cotton fields, and transported the harvested cotton in modules to a local gin.

13. After the defendants' cotton was ginned, Monsanto purchased a portion of the seed which was separated from the cotton lint during the ginning process and submitted it for laboratory analysis.

14. Laboratory analysis revealed the presence of Monsanto's Roundup Ready® technology in the defendants' 1999 cotton crop.

15. The defendants produced a crop of Roundup Ready® cotton in 1999 from cottonseed that was saved from previous growing seasons.

16. The defendants knowingly, intentionally and willfully saved and/or obtained an unauthorized supply of Roundup Ready® cottonseed and planted the cottonseed without authorization from Monsanto and used the cottonseed in violation of Monsanto's patent rights in that cottonseed.

D. Count One - Patent Infringement - Patent No. 5,633,435

17. 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.

18. On May 27, 1997, United States Patent No. 5,633,435 was duly and legally issued to plaintiff for an invention of Glphosate-Tolerant-5-Enolpyruvylshikimate-3-Phosphate Synthases and since that date, plaintiff has been and still is the owners of that patent. This invention relates to plant molecular biology.

19. The defendants have been and still are infringing that patent by making, using or otherwise transferring Roundup Ready® cottonseed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

20. The defendants' infringing activities were undertaken in full knowledge and with actual notice that defendants were in violation of plaintiff's patent rights and was willful and wanton.

21. Pursuant to 35 U.S.C. § 283, Monsanto is entitled to injunctive relief in accordance with the principals of equity to prevent the infringement of rights secured by its patents.

22. The infringing activities of defendants bring this case within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, thus Monsanto requests the award of reasonable attorney's fees.

E. Count Two - Patent Infringement - Patent No. 5,352,605

23. Each and every material allegations set forth in the above numbered paragraphs is hereby incorporated by reference just as if it were explicitly set forth hereunder.

24. On October 4, 1994, United States Patent No. 5,352,605 was duly and legally issued to plaintiff for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, plaintiff has been and still is the owner of that patent. This invention is in the fields of genetic engineering and plant biology.

25. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by U.S. Patent No. 5,352,605 on the labeling of bags containing Roundup Ready® cottonseed.

26. The conduct of defendant, as set forth above, constitutes the unauthorized use of use of patented inventions within the United States during the term of Patent No. 5,352,605, all in violation of 35 U.S.C. § 271, and Monsanto therefore has a right of civil action against the defendant pursuant to 35 U.S.C. § 281.

27. The defendants have and may still be infringing that patent by making, using, or otherwise transferring Roundup Ready® cottonseed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

28. The defendants' infringing activities were undertaken in full knowledge and with actual notice that defendants were in violation of plaintiff's patent rights and was willful and wanton.

29. 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.

30. 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. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 285 in light of defendant's knowing, wilful, deliberate and conscious infringement of the patent rights at issue.

31. The infringing activities of defendant bring this case within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, thus Monsanto requests the award of reasonable attorney's fees.

F. Count Three - Patent No. 4,490,835

32. Each and every material allegations set forth in the above numbered paragraphs is hereby incorporated by reference just as if it were explicitly set forth hereunder.

33. On July 10, 1990, United States Patent No. 4,490,835 was duly and legally issued to plaintiff for an invention in a cloning or expression vector comprising a gene which encodes 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS) polypeptide, and since that date, plaintiff has been and still is the owner of that patent. This invention is in the fields of genetic engineering, biochemistry and plant biology.

34. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by U.S. Patent No. 4,490,835 on the labeling of bags containing Roundup Ready® cottonseed.

35. The conduct of defendants, as set forth above, constitutes the unauthorized use of use of patented inventions within the United States during the term of Patent No. 4,490,835, all in violation of 35 U.S.C. § 271, and Monsanto therefore has a right of civil action against the defendants pursuant to 35 U.S.C. § 281.

36. The defendants have and may still be infringing that patent by making, using, or otherwise transferring Roundup Ready® cottonseed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

37. The defendants' infringing activities were undertaken in full knowledge and with actual notice that defendants were in violation of plaintiff's patent rights and was willful and wanton.

38. 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.

39. 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. Monsanto requests that these damages be trebled pursuant to 35 U.S.C. § 285 in light of defendant's knowing, wilful, deliberate and conscious infringement of the patent rights at issue.

40. The infringing activities of defendant bring this case within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, thus Monsanto requests the award of reasonable attorney's fees.

WHEREFORE, Monsanto Company prays that process and due form of law issue to Don Snowden and Donald Snowden, defendants, requiring them to appear and answer, all and singular, the allegations of this 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 judgment for costs, expenses and reasonable attorney's fees incurred by Monsanto; and
- e. Such other relief as the Court may deem appropriate.

Respectfully submitted,

McWHORTER, COBB & JOHNSON

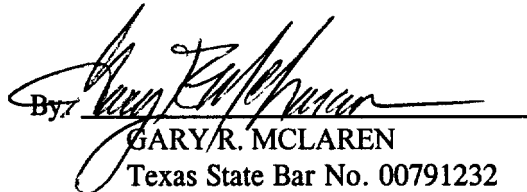
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