

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

MONSANTO COMPANY,

Plaintiff,

vs.

MICHAEL WHITE, WAYNE WHITE,
WHITE'S SEED CLEANING,
and WHITE FARMS FEED & SEED, INC.
Defendants

)
)
)
)
) Civil

CV-03-HGD-2804-NE.

COMPLAINT AND JURY DEMAND

COMES NOW plaintiff, Monsanto Company (hereinafter "Monsanto") by and through its undersigned counsel, and for its Complaint at law, makes the following allegations:

THE PLAINTIFF

1. Monsanto is a corporation 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 Alabama and in this judicial district.

THE DEFENDANT

2. The defendant, Michael White, is an individual who has attained the age of majority and is a resident and domiciliary of Jackson County, Alabama.

3. The defendant, Wayne White, is an individual who has attained the age of majority and is a resident and domiciliary of Jackson County, Alabama.

4. The defendant, White Farms Feed & Seed, Inc., a corporation organized and existing under the laws of the State of Alabama with its principal place of business in Jackson County, Alabama.

5. The defendant, White's Seed Cleaning, is a business entity organized and existing under the laws of the State of Alabama with its principal place of business in Jackson County, Alabama.

JURISDICTION AND VENUE

6. 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.

7. Venue is proper in this judicial 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 herein occurred within this judicial district.

GENERAL ALLEGATIONS

8. 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 into crop seed a gene that causes the plant to be resistant to glyphosate based herbicides such as Roundup UltraMAX® and WeatherMAX®¹.

¹ Roundup UltraMAX® and Roundup WeatherMAX® are registered trademarks of Monsanto Company.

9. This new biotechnology has been utilized by Monsanto in soybeans. The genetically improved soybeans are marketed by Monsanto as Roundup Ready®² soybeans.

10. Roundup UltraMAX® and Roundup WeatherMAX® 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.

11. Monsanto's Roundup Ready seed technology is protected under U.S. Patent Number 5,352,605 which is attached hereto as Exhibit A. This patent was issued and assigned to Monsanto prior to the events giving rise to this action.

12. 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 U.S. Patent No. 5,352,605.

13. Monsanto licenses the use of Roundup Ready® seed technology to soybean producers at the retail level through a limited use license agreement commonly referred to as a Technology Agreement.

14. Under the terms of the Monsanto Technology Agreement, a purchaser/licensee is prohibited from saving, selling, reselling, or otherwise transferring any seed produced from the purchased seed for use as planting seed. The only permissible use of the patent protected seed allowed by the Monsanto Technology Agreement is to market the crop derived therefrom as a grain commodity.

15. All 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.

² Roundup Ready® is a registered trademark of Monsanto Company.

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

17. Monsanto does not authorize the sale of saved (bin run and/or brown bag) Roundup Ready® soybeans.

18. The defendants farm a significant acreage in and around Jackson County, Alabama on which they produce soybeans.

19. The defendants also perform seed cleaning services for soybean farmers in and around Jackson County, Alabama. Specifically, defendants clean soybeans harvested by growers in order to prepare them for planting in a subsequent growing season.

20. The defendants also sell and/or offer to sell soybeans that they have cleaned on behalf of growers.

21. During the winter of 2002-2003 and into the spring of 2003, defendants cleaned soybeans that local growers harvested from their 2002 soybean crops, including saved Roundup Ready® soybeans.

22. The defendants also sold and/or offered to sell saved Roundup Ready® soybeans which they had cleaned on behalf of other growers.

23. The defendants have not signed a technology agreement with Monsanto, and have not been authorized by Monsanto to save or sell Roundup Ready® soybeans.

24. The defendants have saved and used, sold and offered to sell Roundup Ready® soybean seed without authorization from Monsanto, in violation of Monsanto's patent and intellectual property rights in that seed.

25. Defendants have planted saved Roundup Ready® soybean seed, in violation of Monsanto's patent and intellectual property rights in that seed.

26. Defendants have knowingly aided and abetted others to save, plant, sell and offer to sell saved Roundup Ready® soybeans in violation of Monsanto's patent and intellectual property rights in that seed.

27. Defendants knowingly, willingly and intentionally planted, sold, and/or offered to sell saved Roundup Ready® soybeans, and have induced others to save, plant, sell and/or offer to sell saved Roundup Ready® soybeans, without authorization from Monsanto and used such soybeans in violation of Monsanto's patent rights in those soybeans.

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

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

29. On October 4, 1994, United States Letters Patent Number 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, Monsanto has been, and still is, the owner of this Patent. This invention is in the fields of genetic engineering and plant biology.

30. Defendants have been and still are infringing U.S. Patent No. 5,352,605 in violation of 35 U.S.C. § 271, by making, using, offering for sale, selling or otherwise transferring Roundup Ready® soybean seed and violating the patent invention without authorization from Monsanto, and therefore, Monsanto has the right of civil action against the defendants pursuant to 35 U.S.C. § 281.

31. The defendants' infringing activities were undertaken in full knowledge and with actual notice that the defendants were in violation of Monsanto's patent rights.

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

33. 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 costs and interest to be taxed to the infringer. Further, those damages should be trebled pursuant to 35 U.S.C. § 284 in light of the defendants' knowing, willful, conscious and deliberate infringement of its patent at issue. Monsanto should recover its reasonable attorney's fees pursuant to 35 U.S.C. § 285 because this has been an exceptional case.

COUNT TWO - INDUCEMENT TO INFRINGE

34. 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.

35. Defendants knowingly saved cleaned Roundup Ready® soybeans for themselves and for other farmers enabling them to plant the saved Roundup Ready® soybeans.

36. Defendants actively, knowingly, and willfully aided and abetted the direct infringement of U.S. Patent No. 5,352,605 by other farmers by cleaning and conditioning saved Roundup Ready® soybeans on their behalf so that such soybeans could be planted in the 2003 growing season, and by selling and/or offering to sell saved Roundup Ready® soybeans.

37. Pursuant to U.S.C. § 271(b), defendant has induced the infringement by others of Monsanto's 605 patent.

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

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 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 aiding and abetting the infringement of the patent rights at issue.

40. Monsanto should recover its reasonable attorney's fees pursuant to 35 U.S.C. § 285 because this is an exceptional case.

41. Michael White, Wayne White, White's Seed Cleaning and White Farms Feed & Seed, Inc. are jointly and severally liable for their infringement and for aiding and abetting the infringement by others of Monsanto's U.S. Patent No. 5,352,605.

COUNT THREE - PIERCING THE CORPORATE VEIL

42. 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.

43. Upon information and belief, White Farms Feed & Seed, Inc. is a mere alter ego of Michael White and/or Wayne White.

44. Upon information and belief, Michael White and/or Wayne White exercise complete domination and control over White Farms Feed & Seed, Inc. to the point that White Farms Feed & Seed, Inc. has no mind, will, or existence separate and apart from Michael White and/or Wayne White.

45. Upon information and belief, Michael White and/or Wayne White have failed to provide sufficient capitalization for White Farms Feed & Seed, Inc. As a result of this

undercapitalization, White Farms Feed & Seed, Inc.'s assets are inadequate to respond to Monsanto's demands arising from its claims of patent infringement.

46. Michael White, Wayne White and White Farms Feed & Seed, Inc. are jointly and severally liable to Monsanto for their infringement of U.S. Patent No. 5,352,605.

JURY DEMAND

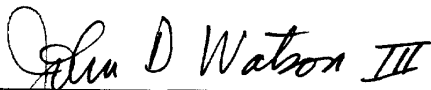
47. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Monsanto demands a jury trial on all issues so triable.

WHEREFORE, Monsanto Company prays that process and due form of law issue to Michael White, Wayne White, White Seed Cleaning, and White Farms Feed & Seed, Inc. requiring defendants to appear and answer all and singular the allegations of the Complaint and that after due proceedings are had, that there be judgment entered in favor of Monsanto Company and against the defendants, jointly and severally, providing the following remedies to Monsanto:

- a. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the defendants' patent infringement;
- b. Trebling of damages awarded for the infringement of patents together with reasonable attorney's fees;
- c. Entry of an order prohibiting the defendants from planting, transferring or selling the infringing articles to a third party;
- d. Entry of a permanent injunction against the defendants to prevent the defendants from saving, cleaning, selling 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 attorney's fees incurred by Monsanto; and

f. Such other relief as the Court may deem appropriate.

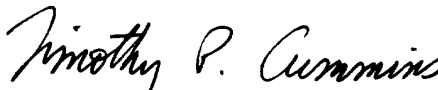
Respectfully submitted,



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**Exhibits too large to
scan—See Original File**