

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

MONSANTO COMPANY and)	
)	
MONSANTO TECHNOLOGY, LLC,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL ACTION NO.
)	
JAMES GASTEL,)	
)	
Defendant.)	

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs, Monsanto Company, and Monsanto Technology, LLC (sometimes referred to collectively as "Monsanto"), for their Complaint against James Gastel (hereinafter "Gastel" or "Defendant") make the following allegations:

THE PLAINTIFFS

Monsanto Company

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 Missouri and this judicial district.

2. Monsanto Company 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 Company 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®.

3. This biotechnology has been utilized by Monsanto Company in soybeans. The

genetically improved soybeans are marketed by Monsanto Company as Roundup Ready® soybeans.

4. Monsanto's Roundup Ready® biotechnology is protected under United States Patent Numbers 5,352,605 and RE 39,247 E, which are attached hereto as Exhibits "A" and "B". The 5,352,605 and RE 39,247 E patents (commonly referred to as the '605 and '247 patents, respectively) were issued prior to the events giving rise to this action.

5. Monsanto Company is and has been the exclusive licensee of the '605 and '247 patents from Monsanto Technology, LLC.

Monsanto Technology

6. 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.

7. Monsanto Technology, LLC is and has been the owner of the '605 and '247 patents prior to the events giving rise to this action.

THE DEFENDANT

8. Defendant is an individual who resides in Jasper County, Missouri at 362 SE 90th Road, Jasper, MO.

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, et. seq., including 35 U.S.C. § 271. This court has subject matter jurisdiction 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.

10. Venue in the Western District of Missouri is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §1400 because, on information and belief, a substantial part of

the events or omissions giving rise to Monsanto's claims occurred in this district, and Defendant may be found and/or reside in this district.

GENERAL ALLEGATIONS

11. Roundup® is a non-selective herbicide manufactured by Monsanto, which causes severe injury or crop destruction to soybean varieties that are not Roundup Ready®. Soybeans display a unique and identifiable symptomatology after having been sprayed with Roundup® or other herbicide containing glyphosate, unless said soybeans are Roundup Ready® soybeans.

12. Defendant farms land in Jasper County, Missouri, upon which he produces soybeans.

13. Upon information and belief, Defendant planted approximately 525 acres of soybeans in 2007.

14. Upon information and belief, Defendant knowingly, intentionally, and willfully planted and used saved Roundup Ready® seed without authorization from Monsanto, in violation of Monsanto's patent rights.

15. Defendant applied a weed controlling agent to the soybean fields he planted with saved soybean seed.

16. The weed controlling agent Defendant applied contained glyphosate.

17. The fields farmed by Defendant showed no soybean crop injury even in the presence of a glyphosate-based herbicide. This indicates the presence of Monsanto's patented Roundup Ready® biotechnology. The Affidavit of Dr. Fritz Koppatschek attesting to that observation is attached hereto and incorporated herein as Exhibit C.

18. Defendant harvested the soybean plants that survived the application of a glyphosate-based herbicide and that contained Monsanto's patented seed technology on the fields planted with saved soybean seed.

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

19. 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.

20. On October 4, 1994, the '605 Patent was duly and legally issued to Monsanto for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters.

21. Monsanto is the owner by assignment of all rights, title and interest in and to the '605 Patent.

22. On information and belief, Defendant has infringed the '605 Patent by making, using, offering for sale or selling Roundup Ready® soybean seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

23. Defendant's actions have damaged Monsanto and will continue to injure Monsanto, unless and until such infringement is enjoined by this Court.

24. 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.

25. 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, on information and belief, 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.

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

COUNT II
PATENT INFRINGEMENT-Patent No. RE 39,247 E

27. 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.

28. On August 22, 2006, United States Patent Number 5,633,435 was duly and legally reissued to Monsanto as U.S. Patent No. RE 39,247 E. U.S. Patent No. 5,633,435 was initially issued on May 27, 1997. The '247 patent is for an invention of Glyphosate-Tolerant 5-Enolpyruvylshikimate-3-Phosphate Synthases. This invention is in the fields of genetic engineering and plant biology.

29. Monsanto is the owner by assignment of all rights, title and interest in and to the '247 Patent.

30. On information and belief, Defendant has infringed Monsanto's patent rights by making, using, offering for sale or selling Roundup Ready® soybean seed embodying or using the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this court.

31. Defendant's actions have damaged Monsanto and will continue to injure Monsanto, unless and until such infringement is enjoined by this Court.

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 of 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 interest and costs to be taxed to the infringer. Further, on information and belief, 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.

34. 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.

PRAYER FOR RELIEF

WHEREFORE, Monsanto prays that process and due form of law issue to Defendant requiring him to appear and answer the allegations of this complaint, and that after due proceedings are had, there be judgment in favor of Plaintiffs and against the Defendant, providing the following remedies to Plaintiffs:

- A. Entry of judgment that Defendant is infringing and has infringed the '605 and '247 Patents, and that such infringement has been willful and deliberate;
- B. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the Defendant's patent infringement;
- C. Find this case exception under 35 U.S.C. § 285, thereby trebling of damages awarded for the infringement of patents together with reasonable attorney's fees;
- D. Entry of an order prohibiting the Defendant from planting infringing articles;
- E. Entry of an order prohibiting the Defendant from selling or otherwise transferring infringing articles to a third party;
- F. 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;
- G. Entry of judgment for costs, expenses, and reasonable attorney's fees incurred by Monsanto; and
- H. Such other relief as the Court may deem appropriate.

Respectfully submitted,

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