

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)	
MONSANTO TECHNOLOGY LLC,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	
MYRON ALEXANDER, JOHN SULLIVAN)	
and JAMON ANDREASEN,)	
)	
Defendants.)	

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”) make the following allegations for their Complaint against Myron Alexander, John Sullivan, and Jamon Andreasen (collectively “Defendants”):

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 develops, manufactures, licenses, and sells agricultural biotechnology, agricultural chemicals, and agricultural products. After the investment of substantial time, expense, and expertise, Monsanto Company developed plant biotechnology with gene transfer that results in plants having resistance to glyphosate-based herbicides (such as Roundup Ultra®, Roundup UltraMAX®, Roundup WeatherMAX®, and Touchdown®).
3. Monsanto Company utilized this technology in soybeans and markets the genetically

improved soybeans as Roundup Ready® soybeans.

4. Monsanto's Roundup Ready® soybean 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 LLC

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 '247 and '605 patents prior to the events giving rise to this action.

THE DEFENDANTS

8. Defendant Myron Alexander is an individual residing in Linn County, Missouri.

9. Defendant John Sullivan is an individual residing in Sullivan County, Missouri.

10. Defendant Jamon Andreasen is an individual residing in Linn County, Missouri.

11. Defendants are engaged in a farming operation that involves the planting of crops, including soybeans. Defendants farm land in Linn and Sullivan Counties in Missouri.

JURISDICTION AND VENUE

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

13. This Court has personal jurisdiction over Defendants because the parties in this action agreed to personal jurisdiction in the Eastern District of Missouri and have designated this judicial district as the exclusive forum and venue for all disputes arising under the licensing agreements executed by Defendants. A true and accurate copy of the licensing agreement executed by Myron Alexander in 2011 is attached hereto as Exhibit C. A true and accurate copy of the licensing agreement executed by John Sullivan in 2011 is attached hereto as Exhibit D. A true and accurate copy of the licensing agreement executed by Jamon Andreasen in 2011 is attached hereto as Exhibit E.

GENERAL ALLEGATIONS

14. 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 being sprayed with Roundup® or other herbicides containing glyphosate, unless they are Roundup Ready®.

15. Monsanto's Roundup Ready® technology is protected under the '605 and '247 patents. These patents were issued and assigned to Monsanto prior to the events giving rise to this action.

16. Monsanto licenses the use of Roundup Ready® seed technologies to farmers at the retail marketing level through a limited use license, called a Technology Agreement.

17. Farmers are not authorized to use Monsanto's patented seed technologies unless they sign a Technology Agreement.

18. Among others things, the express terms of the limited use license prohibit licensees from saving harvested seed containing the Roundup Ready® trait for planting purposes, or from selling, transferring or supplying saved Roundup Ready® seed to others for planting. Meaning, the use of the seed is limited to the production of a single commercial crop.

19. In addition to the price of the base germplasm, authorized purchasers of Roundup Ready® seed are required to pay an established royalty (formerly called a “technology fee”) for each commercial unit of seed.

20. Monsanto places the required statutory notice that its Roundup Ready® technology is patented on the labeling of all bags containing Roundup Ready® seed. In particular, each bag of Roundup Ready® seed is marked with notice of at least U.S. Patent Nos. RE 39,247 and 5,352,605.

21. Monsanto does not authorize the planting of saved Roundup Ready® soybeans. The planting of saved Roundup Ready® seed is a direct infringement of Monsanto’s patent rights, including the ’247 and ’605 patents.

22. In 2011, and in prior years, Defendants knowingly, intentionally, and willfully planted and used saved Roundup Ready® soybeans without authorization from Monsanto, in violation of Monsanto’s patent rights.

23. Defendants harvested the soybean plants that survived the 2011 growing season.

COUNT I
PATENT INFRINGEMENT-Patent No. 5,352,605
(All Defendants)

24. 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.

25. 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.

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

27. Defendants infringed the '605 Patent by making, using, offering for sale or selling soybean seed having the Roundup Ready® trait 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 conducted with full knowledge and with notice that Defendants were in violation of Monsanto's patent rights.

29. Defendant's actions damaged Monsanto and will continue to injure Monsanto, unless and until such infringement is 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. Defendants' infringing activity 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
(All Defendants)

33. 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.

34. 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. 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.

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

36. Defendants infringed the '247 patent by making, using, offering for sale or selling soybean seed having the Roundup Ready® trait embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

37. Defendants' infringing activities were conducted with full knowledge and with notice that the Defendants were in violation of Monsanto's patent rights.

38. The Defendants' actions damaged Monsanto.

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

40. Defendants' infringing activity 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 III – CONVERSION
(All Defendants)

41. 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.

42. By making, using, offering to sell or selling soybean seed containing the Roundup Ready® trait without authority, Defendants intentionally and wrongfully exercised dominion, ownership and control over Monsanto's patented seed technologies which were the property of Monsanto under the terms of the '247, and '605 patents and which are only legitimately available to third parties through a license agreement with Monsanto.

43. As a result, Monsanto is entitled, at a minimum, to damages equal to the value of the Roundup Ready® seed at the time of the conversion; which is an amount equal to the applicable technology fee and the purchase price which the Defendant would otherwise have been required to pay.

44. The Defendants' conversion of Monsanto's property rights was malicious and willful, entitling Monsanto to punitive damages.

COUNT IV - UNJUST ENRICHMENT
(All Defendants)

45. 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.

46. Defendants' unauthorized use of Roundup Ready® soybean seed resulted in a benefit being conferred upon Defendants.

47. Defendants appreciated the benefit conferred by their unauthorized use of Monsanto's Roundup Ready® technology.

48. As a result, Defendants were unjustly enriched and obtained benefits and profits that in equity and good conscience belong to Monsanto.

49. Defendants accepted and retained these benefits under inequitable circumstances.

50. As a result, Monsanto is entitled to damages.

COUNT V – BREACH OF CONTRACT
(Myron Alexander)

51. 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.

52. In 2011, Myron Alexander entered into the “2011 Monsanto Technology/Stewardship Agreement” attached as Exhibit C. The Agreement was signed by Defendant Myron Alexander.

53. This Agreement gave the Defendant Myron Alexander the opportunity to purchase and plant seed containing Monsanto's Roundup Ready® technology. The Agreement also placed Defendant Myron Alexander on notice of the limitations on Defendants' use of seed containing Monsanto's Roundup Ready® technology.

54. The conduct of Defendant Myron Alexander, as set forth above, is a breach of this Agreement, which, among other provisions, prohibits the saving, planting and/or transfer or sale of saved Roundup Ready® soybean seed or use of any portion of seed grown from newly purchased Roundup Ready® soybean seed for anything other than marketing the crop derived therefrom into a terminal market as a commodity.

55. As a direct and proximate result of this breach, Monsanto has been damaged and is entitled to damages for breach of the Agreements, as well as reasonable attorneys' fees under the Agreements.

COUNT VI – BREACH OF CONTRACT
(John Sullivan)

56. 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.

57. In 2011, John Sullivan entered into the “2011 Monsanto Technology/Stewardship Agreement” attached as Exhibit D. The Agreement was signed by Defendant John Sullivan.

58. This Agreement gave the Defendant John Sullivan the opportunity to purchase and plant seed containing Monsanto’s Roundup Ready® technology. The Agreement also placed Defendant John Sullivan on notice of the limitations on Defendants’ use of seed containing Monsanto’s Roundup Ready® technology.

59. The conduct of Defendant John Sullivan, as set forth above, is a breach of this Agreement, which, among other provisions, prohibits the saving, planting and/or transfer or sale of saved Roundup Ready® soybean seed or use of any portion of seed grown from newly purchased Roundup Ready® soybean seed for anything other than marketing the crop derived therefrom into a terminal market as a commodity.

60. As a direct and proximate result of this breach, Monsanto has been damaged and is entitled to damages for breach of the Agreements, as well as reasonable attorneys’ fees under the Agreements.

COUNT VII – BREACH OF CONTRACT
(Jamon Andreasen)

61. 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.

62. In 2011, Jamon Andreasen entered into the “2011 Monsanto Technology/Stewardship Agreement” attached as Exhibit E. The Agreement was signed by Defendant Jamon Andreasen.

63. This Agreement gave the Defendant Jamon Andreasen the opportunity to purchase and plant seed containing Monsanto's Roundup Ready® technology. The Agreement also placed Defendant Jamon Andreasen on notice of the limitations on Defendants' use of seed containing Monsanto's Roundup Ready® technology.

64. The conduct of Defendant Jamon Andreasen, as set forth above, is a breach of this Agreement, which, among other provisions, prohibits the saving, planting and/or transfer or sale of saved Roundup Ready® soybean seed or use of any portion of seed grown from newly purchased Roundup Ready® soybean seed for anything other than marketing the crop derived therefrom into a terminal market as a commodity.

65. As a direct and proximate result of this breach, Monsanto has been damaged and is entitled to damages for breach of the Agreements, as well as reasonable attorneys' fees under the Agreements.

PRAYER FOR RELIEF

WHEREFORE, Monsanto prays that process and due form of law issue to Defendants requiring them 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 Defendants, providing the following remedies to Plaintiffs:

- A. Entry of judgment that the Defendants are infringing and have infringed the '247 and '605 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 Defendants' patent infringement;
- C. Find this case exceptional under 35 U.S.C. § 285, thereby trebling of damages awarded for the infringement of patents together with reasonable attorneys' fees;

- D. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for Defendants' conversion of Plaintiffs' property rights;
- E. Entry of an enhanced (treble) damages award against Defendants for their willful and malicious conversion of Monsanto's property;
- F. Entry of judgment for damages, together with interest and costs to compensate Monsanto for Defendants' unjust enrichment and the profits obtained that in equity and good conscience belong to Monsanto;
- G. Entry of a permanent injunction against Defendants to prevent Defendants from making, using, saving, cleaning, planting, selling, offering to sell or otherwise transferring, any of Monsanto's proprietary seed technologies, without express written permission from Monsanto;
- H. Entry of judgment for breach of contract;
- I. Entry of judgment for costs, expenses, and reasonable attorneys' fees incurred by Monsanto; and
- J. Such other relief as the Court may deem appropriate.

Respectfully submitted,

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