



## **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over ISURF's claims under 38 U.S.C. §§ 1331 and 1338(a) because they are between citizens of different states, involve more than \$75,000 in controversy, and because they arise under the patent statutes of the United States, 35 U.S.C. §§ 271-287 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

6. Venue is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b) by virtue of Monsanto doing business in this district and since acts of which ISURF complains occur at least in part in this district as well as elsewhere in the United States.

## **FACTS COMMON TO ALL COUNTS**

7. At least as early as 1968 professors at Iowa State University began developing soybeans having low linolenic acid content and methods for producing them. Over the years Iowa State University has been recognized as the world leader in developing soybeans having low linolenic acid content.

8. As a result of reliable and new breeding practices, methods and research, Iowa State University professors Walter R. Fehr and Earl G. Hammond have been awarded numerous United States patents relating to low linolenic acid content soybeans and methods of production of those soybeans. Each of those patents has been assigned to ISURF.

9. Commencing at a date after ISURF's patents issued, Monsanto through actions yet to be determined, but on information and belief constituting improper infringement practices, developed and began their Vistive® soybean program, which employs soybeans having low linolenic acid content. Monsanto did so without any license or authority from ISURF and now licenses ISURF's technology to others.

10. ISURF has been assigned the patents emanating from the research of Dr. Walter Fehr and Dr. Earl G. Hammond relating to low linolenic acid content soybeans. ISURF currently owns at least eight United States patents covering those products, methods of breeding and methods of manufacturing soybeans having low linolenic acid content (ISURF's patent rights).

**COUNT I**  
**(PATENT INFRINGEMENT - U.S. PATENT 5,534,425)**

11. United States Letters Patent 5,534,425 was duly and legally issued to Walter R. Fehr and Earl G. Hammond on July 9, 1996.

12. ISURF is now assignee of all right, title and interest in United States Patent 5,534,425, and has the right to sue under United States Letters Patent 5,534,425.

13. Monsanto is infringing certain claims of United States Patent 5,534,425 and has induced others to infringe this patent by making, selling, distributing, importing and/or using within this judicial district and elsewhere throughout the United States product that infringes ISURF's patent.

14. On information and belief, Monsanto will continue to infringe unless enjoined by this Court.

15. On information and belief, Monsanto has actual notice of United States Letters Patent 5,534,425, and in particular that said patent was duly and legally issued and Monsanto is aware or should have been aware of the fact that manufacture, use, and offer for sale of certain low linolenic acid content soybeans infringes U.S. Patent 5,534,425. ISURF also properly patent marks within the meaning of 35 U.S.C. § 287 to provide constructive notice.

16. Monsanto's acts of infringement are in willful and wanton disregard of ISURF's patent rights accorded by U.S. Patent 5,534,425, and this case is exceptional within the meaning of 35 U.S.C. § 285.

**COUNT II**  
**(PATENT INFRINGEMENT - U.S. PATENT 5,710,369)**

17. United States Letters Patent 5,710,369 was duly and legally issued to Walter R. Fehr and Earl G. Hammond on January 20, 1998.

18. ISURF is now assignee of all right, title and interest in United States Patent 5,710,369, and has the right to sue under United States Letters Patent 5,710,369.

19. Monsanto is infringing certain claims of United States Patent 5,710,369 and has induced others to infringe this patent by making, selling, distributing, importing and/or using within this judicial district and elsewhere throughout the United States product that infringes ISURF's patent.

20. On information and belief, Monsanto will continue to infringe unless enjoined by this Court.

21. On information and belief, Monsanto has actual notice of United States Letters Patent 5,710,369, and in particular that said patent was duly and legally issued and Monsanto is aware or should have been aware of the fact that manufacture, use, and offer for sale of certain low linolenic acid content soybeans infringes U.S. Patent 5,710,369. ISURF also properly patent marks within the meaning of 35 U.S.C. § 287 to provide constructive notice.

22. Monsanto's acts of infringement are in willful and wanton disregard of ISURF's patent rights accorded by U.S. Patent 5,710,369, and this case is exceptional within the meaning of 35 U.S.C. § 285.

**COUNT III  
(DECLARATORY JUDGMENT)**

23. When confronted formally with ISURF's patent rights, Monsanto requested a meeting, specifically asking that no lawyers be present and that inventor Dr. Walter Fehr not be present. At this meeting possible settlement terms were discussed, but no agreement was reached. It was communicated to Monsanto representatives present at the meeting, John Eberwine, Theodore Crosbie and Calvin Treat, that any terms would have to be approved by Dr. Walter Fehr.

24. After such meeting, when again confronted by ISURF's patent rights and a proposed license agreement, Monsanto responded with a May 8, 2007, letter of its Director, Trait Licensing, John Eberwine, saying it "stands ready to perform under the agreement reached with ISURF at our meeting of February 28".

25. ISURF denies that any agreement was reached at a February 28, 2007, meeting and pleads affirmatively that terms were discussed with a clear understanding that all terms were subject to approval of Iowa State University professor Dr. Walter Fehr as an inventor of ISURF's patent rights. No such approval was ever given. No agreement was reached. There was no meeting of the minds on material terms of an agreement.

26. ISURF therefore has a case or controversy with Monsanto within the meaning of the Declaratory Judgment Act over whether or not a settlement agreement was reached in the February 28, 2007, meeting, and ISURF seeks a declaration that there was no agreement reached, as there was no meeting of the minds on material terms of an agreement during the February 28, 2007, meeting.

WHEREFORE, ISURF prays for the following as to all patent infringement counts

(Counts I-II):

1. An injunction against Monsanto's continued infringement of each of the specifically enumerated United States Letters Patents.
2. An award of damages on each Count and a trebling of damages due to the knowing willful and wanton nature of the Monsanto's conduct;
3. An award to Plaintiff of attorneys' fees and costs in this action under any and all applicable statutes;
4. An award of prejudgment interest from the date of first patent infringement to entry of judgment;
5. Such other and further relief as the Court deems equitable under the circumstances including where appropriate punitive damages for Defendants' conduct.

As to Count III:

6. Entry of judgment declaring that there has been no settlement agreement reached between ISURF and Monsanto, and specifically that there was no agreement reached at the February 28, 2007, meeting and a declaration that Monsanto's claim otherwise is frivolous, groundless and objectively unreasonable, and for an award of attorneys' fees, and such other and further relief as this Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury as to all issues triable by jury in this case as a matter of right.

Respectfully submitted,

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/s/ Edmund J. Sease

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