

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)	
)	
MONSANTO TECHNOLOGY, LLC,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL ACTION NO.
)	
BRENT M. HARGROVE and)	
)	
H & H FARMS,)	
)	
)	
Defendants.)	
)	

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs, Monsanto Company, and Monsanto Technology, LLC (sometimes referred to collectively as "Monsanto"), for their Complaint against Brent M. Hargrove and H & H Farms (sometimes referred to as "Defendants") 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 cotton. The genetically improved cotton is marketed by Monsanto Company as Roundup Ready® cotton.

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

THE DEFENDANTS

8. Defendant Brent M. Hargrove is an individual who resides at 701 Avenue Q, Anson, Texas 79501. Upon information and belief, Brent M. Hargrove is a partner of H & H Farms.

9. Upon information and belief, Defendant H & H Farms is a general partnership, not registered with the Texas Secretary of State, with its principal place of business at 701 Avenue Q, Anson, Texas 79501.

10. Defendants are engaged in a farming business that involves the planting of crops, including cotton. Upon information and belief, the Defendants farm land in Anson, Texas.

JURISDICTION AND VENUE

11. 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 all of Monsanto's non-federal question claims, such that they form part of the same case or controversy.

12. This Court has personal jurisdiction over the Defendants and venue is proper in this judicial district because the parties entered into a Monsanto Technology Agreement containing a forum selection clause. In the Agreement, both parties consented to the exclusive jurisdiction of the U.S. District Court for the Eastern District of Missouri.

GENERAL ALLEGATIONS

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

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

15. Monsanto licenses the use of Roundup Ready® seed technology to farmers at the retail marketing level through a limited use license commonly referred to as a Technology Agreement.

16. Among other things, the express terms of the limited use license prohibits licensees from saving harvested Roundup Ready® cotton seed for planting purposes, or from selling, transferring or supplying saved Roundup Ready® cotton seed to others for planting. The use of the seed is limited to the production of a single commercial crop.

17. Authorized purchasers of Roundup Ready® seed are required to pay an established royalty (once referred to as a “technology fee”) for each commercial unit of seed in addition to the price of the base germplasm.

18. 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 No. 5,352,605.

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

20. In 2008, at least, the Defendants knowingly, intentionally, and willfully planted and used saved Roundup Ready® seed (produced from Roundup Ready® cotton seed planted in 2007, or earlier) without authorization from Monsanto, in violation of Monsanto’s patent rights.

21. Monsanto requested information from Defendants about Defendants’ 2008 cotton farming operations, and particularly concerning their use of Roundup Ready® cotton. The information sought included the number of acres planted and the source of the cotton seed planted.

22. According to Farm Service Agency records, Defendants planted over 5000 acres of cotton during the 2008 growing season.

23. A sampling of Defendants' fields demonstrates that a substantial amount of acreage was planted with Roundup Ready® cotton seed.

24. Defendants are unable to demonstrate sufficient Roundup Ready® cotton seed purchase receipts for their acreage planted with Roundup Ready® cotton.

25. Defendants harvested the cotton that survived the 2008 growing season.

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

26. 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.

27. 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.

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

29. 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 all bags containing Roundup Ready® cotton seed sold to growers during the 2008 growing season.

30. The Defendants have infringed the '605 Patent by making, using, offering for sale or selling Roundup Ready® cotton seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

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

32. Defendants actions have damaged Monsanto and will continue to injure Monsanto, unless and until such infringement is enjoined by this Court.

33. 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.

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

35. The infringing activity of the Defendants 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

36. 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.

37. 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.

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

39. The Defendants have infringed Monsanto's patent rights by making, using, offering for sale or selling Roundup Ready® cotton seed embodying or using the patented invention without authorization from Monsanto, and will continue to do so unless enjoined by this Court.

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

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

42. 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.

43. 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.

44. The infringing activity of the Defendants 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.

COUNT III - CONVERSION

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. By making, using, offering to sell or selling Roundup Ready® cotton seed without authority, the Defendants intentionally and wrongfully exercised dominion, ownership and control over Roundup Ready® technology which was the property of Monsanto under the terms of the '605 and '247 Patents and which is only legitimately available to third parties through a license agreement with Monsanto.

47. As a result of Defendants' conversion, Monsanto has been damaged.

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

COUNT IV - UNJUST ENRICHMENT

49. 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.

50. The Defendants' conduct has resulted in a benefit being conferred upon the Defendants. Defendants' appreciation of the benefit in that the Defendants illegally made, used, sold and/or offered to sell, or otherwise used transferred unlicensed Roundup Ready® cotton seed, in at least 2008, in contravention of Monsanto's patent rights and in violation of the license agreement system.

51. As a result, the Defendants have been unjustly enriched and obtained benefits and profits that in equity and good conscience belong to Monsanto.

52. Defendants' acceptance and retention of this benefit under the circumstances renders the Defendants' retention of these benefits inequitable.

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

COUNT V - BREACH OF CONTRACT

54. Each and every material allegation set out in the above-numbered paragraphs is hereby incorporated by reference just as if it was explicitly set forth hereunder.

55. On January 5, 1998, Defendants entered into the Monsanto Technology Agreement attached as Exhibit "C". The Agreement was signed by Defendant Brent Hargrove. In February 2001, Defendants entered into the Monsanto Technology Agreement attached as Exhibit "D". This Agreement was also signed by Defendant Brent Hargrove.

56. These Agreements gave Defendants the opportunity to purchase and plant seed containing Monsanto's Roundup Ready® technology. These Agreements also placed Defendants on notice of the limitations on Defendants' use of seed containing Monsanto's Roundup Ready® technology.

57. The conduct of the Defendants, as set forth above, is a breach of these Agreements, which, among other provisions, prohibit the saving, planting and/or transfer or sale of saved Roundup Ready® cotton seed or use of any portion of seed grown from newly purchased Roundup Ready® cotton seed for anything other than marketing the crop derived therefrom into a terminal market as a commodity.

58. 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 the 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 the Defendants, providing the following remedies to Plaintiffs:

- A. Entry of judgment that the Defendants are infringing and have 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 Defendants' 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 judgment for damages, together with interest and costs, to compensate Monsanto for the Defendants' conversion of Plaintiffs' property rights;
- E. Entry of a punitive damages award against the 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 the Defendants to prevent them 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 attorney's fees incurred by Monsanto; and
- J. Such other relief as the Court may deem appropriate.

Respectfully submitted,

THOMPSON COBURN LLP

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