

3336634

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MONSANTO COMPANY and)
MONSANTO TECHNOLOGY, LLC)
Plaintiffs)
VERSUS)
HAROLD SINN)
Defendant)

3:07CV0288 TS

CASE NO.:

2007 JUN 22 PM 12:11
U.S. DISTRICT COURT
FOR THE DISTRICT OF INDIANA

Filed

COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiffs, Monsanto Company, and Monsanto Technology, LLC (sometimes referred to collectively as "Monsanto") through undersigned counsel, and for its Complaint at law against Harold Sinn (hereinafter "Sinn" or "Defendant") makes the following allegations:

THE PLAINTIFFS

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 Indiana and this judicial district.
2. 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.

THE DEFENDANT

3. Defendant, Harold Sinn, is an individual who has attained the age of majority and is a resident and domiciliary of Starke County, Indiana.

SCANNED

/

JURISDICTION AND VENUE

4. 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.

5. Venue is proper in this district pursuant to 28 U.S.C. §1400 as Harold Sinn resides in this judicial district, and as a substantial number of the events giving rise to Monsanto's claims of patent infringement occurred within this judicial district.

GENERAL ALLEGATIONS

6. 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®.

7. This biotechnology has been utilized by Monsanto Company in soybeans. The genetically improved soybeans are marketed by Monsanto Company as Roundup Ready® soybeans.

8. 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.

9. Monsanto Technology, LLC is and has been the owner of the '605 and '247 patents

prior to the events giving rise to this action.¹

10. Monsanto Company is and has been the exclusive licensee of the '605 and '247 patents from Monsanto Technology, LLC prior to the events giving rise to this action.

11. Since the Roundup Ready® technology was commercially introduced, Monsanto Company has labeled all bags of Roundup Ready® soybeans sold in the United States with the required statutory notice that the Roundup Ready® soybean seed was patented.

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

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

14. Monsanto does not authorize the planting of saved (sometimes referred to as bin run and/or brown bag) Roundup Ready® soybeans. The planting of saved Roundup Ready® soybean seed is an infringement of Monsanto's patent rights.

15. Defendant farms land in the Indiana Counties of Starke and LaPorte, upon which he produces soybeans. In particular, Defendant planted approximately 565 acres of soybeans in 2006.

16. In summer of 2006, Monsanto requested information from Harold Sinn about his 2006 soybean farming operations, and particularly concerning his use of Roundup Ready® soybeans. The information sought included the number of acres planted, the source of the

¹ Monsanto Technology, LLC is a holding company for the intellectual property rights of Monsanto Company.

soybean seed planted, and the defendants' permission to collect records pertaining to his soybean crop.

17. The purpose of asking Defendant for this information was to determine the extent of his use of Roundup Ready® soybeans and to ascertain whether he had planted saved Roundup Ready® soybeans. This information can only be obtained from the grower.

18. Defendant admitted that he had planted saved Roundup Ready® soybeans during the 2006 crop year, but he has refused to settle Monsanto's infringement claim, despite twice agreeing in principal to settle.

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

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

20. 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.

21. On October 4, 1994, United States Patent Number 5,352,605 was duly and legally issued to Monsanto for an invention in Chimeric Genes for Transforming Plant Cells Using Viral Promoters, and since that date, Monsanto has been the owner of this patent. This invention is in the fields of genetic engineering and plant biology.

22. Monsanto placed the required statutory notice that its Roundup Ready® technology was protected by United States Patent Number 5,352,605 on the labeling of all bags containing Roundup Ready® soybean seed in compliance with 35 U.S.C. §287.

23. Defendant's conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent Number 5,352,605, all in

violation of 35 U.S.C. § 271. Accordingly, Monsanto has a right of civil action against the Defendant pursuant to 35 U.S.C. §281.

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

25. 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.

26. 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 Defendant's knowing, willful, conscious, and deliberate infringement of the patent rights at issue.

27. 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.

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

28. 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.

29. 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.

30. Defendant's conduct, as set forth above, constitutes the unauthorized use of a patented invention within the United States during the term of Patent Number RE 39,247 E, all in violation of 35 U.S.C. § 271. Accordingly, Monsanto has a right of civil action against the Defendant pursuant to 35 U.S.C. §281.

31. Defendant has infringed Monsanto's patent rights by making, using, offering for sale, selling, or otherwise transferring Roundup Ready® soybean seed embodying the patented invention without authorization from Monsanto, and will continue to do so unless 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, 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.

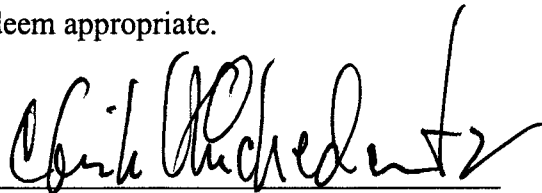
34. The infringing activity of the Defendant brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. §285, thus Monsanto requests the award of reasonable attorneys fees and costs.

35. Monsanto demands trial by jury.

WHEREFORE, Plaintiffs, Monsanto Company and Monsanto Technology, LLC prays that process and due form of law issue to Defendant, Harold Sinn, 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:

1. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the Defendant's patent infringement;
2. Trebling of damages awarded for the infringement of patents together with reasonable attorney's fees;
3. Entry of an order prohibiting the Defendant from planting, transferring, or selling the infringing articles to a third party;
4. 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;
5. Entry of judgment for costs, expenses, and reasonable attorney's fees incurred by Monsanto; and
6. Such other relief as the Court may deem appropriate.


C. ERIK CHICKEDANTZ (IN #3209-02)


JEFFREY P. SMITH (IN #18889-49)

**HAWK, HAYNIE, KAMMEYER
& CHICKEDANTZ LLP**
116 E. Berry Street, Suite 302
Fort Wayne, IN 46802
Telephone: (260) 422-1515
Facsimile: (260) 424-2656

and

JOEL E. CAPE (La. #26001)
JEFF A. MASSON (La. #28674)
FRILOT PARTRIDGE, L.C.
1100 Poydras Street, Suite 3600
New Orleans, LA 70163-3600
Telephone: (504) 599-8000
Facsimile: (504) 599-8100

**Attorneys for Monsanto Company and
Monsanto Technology, LLC**