

3. This Court has personal jurisdiction over DeKalb and Monsanto, both Delaware corporations.

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

5. Plaintiff Syngenta Biotechnology, Inc. is a corporation duly organized under the laws of the State of Delaware with its principal place of business at 3054 Cornwallis Rd., Research Triangle Park, North Carolina 27709.

6. Plaintiff Garwood Seed Co. is a corporation duly organized under the laws of the State of Illinois with its principal place of business in Stonington, Illinois.

7. Plaintiff Golden Seed Company, L.L.C. is a limited liability corporation duly organized under the laws of the State of Illinois with its principal place of business in Cordova, Illinois.

8. Plaintiff Thorp Seed Co. is a corporation duly organized under the laws of the State of Illinois with its principal place of business in Clinton, Illinois.

9. Defendant DeKalb Genetics Corp. is a corporation duly organized under the laws of the State of Delaware with a principal place of business at 800 North Lindberg Blvd., St. Louis, Missouri 63167.

10. DeKalb is engaged in the business of developing and selling crop seeds in Delaware and elsewhere in the United States.

11. Defendant Monsanto Company is a corporation duly organized under the laws of the State of Delaware with a principal place of business at 800 North Lindberg Blvd., St. Louis, Missouri 63167.

12. Monsanto, the parent company of DeKalb, is engaged in the business of developing and selling crop seeds and the herbicide glyphosate in Delaware and elsewhere in the United States.

AN ACTUAL CASE AND CONTROVERSY EXISTS BETWEEN PLAINTIFFS AND DEFENDANTS REGARDING GA21 CORN AND THE LUNDQUIST '798 PATENT

13. Since 1996, there have been a number of commercially available biotechnology traits for corn seeds. One of the most common of these traits is glyphosate resistance. Glyphosate-resistant corn is resistant to the effects of the herbicide glyphosate. As a result, growers that plant glyphosate-resistant corn may apply glyphosate over an entire field, killing the weeds while allowing the corn crop to survive.

14. This case concerns a glyphosate-resistant transgenic corn line known as "GA21" corn. The GA21 corn event was created by DeKalb in 1993-94 using a chimeric gene developed by Rhone-Poulenc Agro ("RPA").

15. Genetically engineered products made by Monsanto that have the glyphosate-resistance trait, including DeKalb branded corn, are sold under the trademark Roundup Ready[®] in Delaware and elsewhere in the United States.

16. Plaintiffs have a reasonable apprehension of being sued by DeKalb and its parent Monsanto, as DeKalb and Monsanto have already filed three patent infringement lawsuits against Plaintiffs since May 2004 relating to GA21 corn, including a lawsuit based on the alleged infringement of the '798 patent.

17. Within the past two-and-a-half years DeKalb and Monsanto have sued Plaintiffs three separate times for patent infringement, in three separate courts, on four separate patents (including the '798 patent), all relating to the same allegedly infringing product: glyphosate-resistant GA21 corn.

A. The Delaware Action

18. The first in the series of GA21 lawsuits was brought in this Court by Monsanto on May 12, 2004. Monsanto alleged that the Plaintiffs' (and other affiliated corporations') proposed making and using of GA21 corn infringed U.S. Patent No. 4,940,835 ("the Shah patent"), entitled "Glyphosate-Resistant Plants." *Monsanto Co. v. Syngenta Seeds, Inc.*, No. 04-305-SLR (D. Del. filed May 12, 2004).

B. The Illinois Action

19. Shortly thereafter, on July 27, 2004, DeKalb sued Plaintiffs (and other affiliated corporations) in the Northern District of Illinois, alleging that Plaintiffs had infringed U.S. Patent Nos. 5,538,880 ("the Lundquist '880 patent"), entitled "Method for Preparing Fertile Transgenic Corn Plants," and 6,013,863 ("the Lundquist '863 patent"), entitled "Fertile Transgenic Corn Plants." *DeKalb Corp. v. Syngenta Seeds, Inc.*, No. 04-CV-50323 (N.D. Ill. filed July 27, 2004) ("the Lundquist action"). True and correct copies of the Lundquist '880 and '863 patents are attached as Exhibits B and C, respectively.

20. Although DeKalb was the named plaintiff in that action, it was Monsanto that authorized the lawsuit and issued a press release announcing DeKalb's suit against Plaintiffs.

21. The Lundquist '880 and '863 patents purport to claim processes for producing herbicide- or glyphosate-resistant transgenic corn, respectively. DeKalb alleged that Plaintiffs' proposed making and using of GA21 corn infringed the Lundquist '880 and '863 patents. Specifically, DeKalb's Illinois complaint asserted that Plaintiffs infringed the Lundquist patents "by at least making and using corn containing genes that confer resistance to the herbicide glyphosate." Thus, in both the Shah and Lundquist actions, Monsanto and DeKalb asserted that Plaintiffs had

infringed claims relating to making and using GA21 corn containing a gene that confers resistance to the herbicide glyphosate.

C. The Consolidated Delaware Action

22. On May 19, 2005, the Illinois district court transferred the Lundquist action to this Court in major part because GA21 corn products were accused in both actions and the subject matter of the Lundquist and Shah patents was closely related. On March 24, 2005, this Court consolidated the Shah action with a pending antitrust case brought by Syngenta Seeds, Inc. (an affiliate of Plaintiffs) against Monsanto also relating to GA21 corn products.

23. On May 10, 2006, this Court granted summary judgment in favor of Plaintiffs, finding no infringement of the Lundquist '880 and '863 patents and holding the asserted claims of the Shah patent invalid under 35 U.S.C. § 112. Monsanto appealed this decision to the United States Court of the Appeals for the Federal Circuit, and the appeal is currently pending. *Monsanto Co. v. Syngenta Seeds, Inc.*, Appeal No. 06-1472 (Fed. Cir.). Oral argument is scheduled for February 7, 2007.

D. The Lundquist '798 Patent Action in Missouri

24. Having lost its patent infringement case against Plaintiffs in this Court, on August 11, 2006, DeKalb sued Plaintiffs (and other affiliated corporations) in a different court, the Eastern District of Missouri, alleging infringement of the Lundquist '798 patent, entitled "Fertile Glyphosate-Resistant Transgenic Corn Plants." *DeKalb Genetics Corp. v. Syngenta Seeds, Inc.*, No. 4 06CV01191ERW (E.D. Mo. filed Aug. 11, 2006).

25. DeKalb's Missouri complaint mirrors its complaint in the prior case in this Court and alleges that Plaintiffs have "infringed and continue to infringe one or more claims of the '798 patent by at least making corn containing genes that confer resistance to the herbicide glyphosate."

26. The Lundquist '798 patent was granted to DeKalb by the United States Patent and Trademark Office ("PTO") on September 10, 1996. Exh. A. On information and belief, DeKalb alleges to be the owner of the entire right, title, and interest in the Lundquist '798 patent.

27. The Lundquist '798 patent is in the same patent family as the Lundquist '880 and '863 patents that were previously before this Court in the prior action. The specification of the Lundquist '798 patent is similar to the specifications of the Lundquist '880 and '863 patents. The same alleged inventors (Ronald Lundquist and David Walters) are named on the Lundquist '880, '863, and '798 patents.

28. The claims of the Lundquist '798 patent are closely related to the claims of the Lundquist '880 and '863 patents, which this Court previously determined had not been infringed by Plaintiffs.

29. For example, claim 6 of the '798 patent purports to claim fertile transgenic corn plants exhibiting glyphosate resistance made via the same microprojectile bombardment process that is the subject of the Lundquist '880 and '863 patents that were adjudicated not infringed by this Court in the Lundquist action. Specifically, claim 6 of the '798 patent recites:

The transgenic [glyphosate resistant] plant of claim 1 wherein the plant is obtainable by a process comprising the steps of: (i) bombarding intact regenerable *Zea mays* cells with microprojectiles coated with said heterologous DNA construct; (ii) identifying or selecting a population of transformed cells; and (iii) regenerating a fertile transgenic plant therefrom.

Claim 1 of the Lundquist '863 patent recites:

A process for producing a fertile transgenic *Zea mays* plant comprising the steps of (i) bombarding intact regenerable *Zea mays* cells with DNA-coated microprojectiles, wherein said DNA comprises at least a screenable marker gene; (ii) selecting a population of transformed cells expressing the selectable marker gene; and (iii) regenerating a fertile transgenic plant therefrom, wherein said DNA is expressed so as to impart glyphosate resistance to said transgenic plant and is transmitted through a normal sexual cycle of said transgenic plant to progeny plants.

And claim 1 of the Lundquist '880 patent recites:

A process for producing a fertile transgenic *Zea mays* plant comprising the steps of (i) bombarding intact regenerable *Zea mays* cells with DNA-coated microprojectiles, (ii) identifying or selecting a population of transformed cells, and (iii) regenerating a fertile transgenic plant therefrom, wherein said DNA is transmitted through a complete sexual cycle of said transgenic plant to its progeny, and imparts herbicide resistance thereto.

30. Additionally, the claims of the '798 patent contain certain terms, such as progeny and glyphosate resistance, previously construed by this Court.

E. The Eastern District of Missouri Lacks Personal Jurisdiction Over Plaintiffs

31. The Plaintiffs do not have minimum contacts with Missouri. As a consequence, the Missouri district court lacks personal jurisdiction over Plaintiffs, and Plaintiffs have moved to dismiss the action against them in Missouri for lack of personal jurisdiction. That motion is currently pending. Plaintiffs have filed the instant action in this Court, so that the dispute between the parties can be resolved in a proper forum.

COUNTS

**First Count: Declaratory Judgment of
Non-Infringement of U.S. Patent No. 5,554,798**

32. Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1 through 31 of this complaint and incorporate them by reference.

33. An actual controversy exists between the parties as Plaintiffs have a reasonable apprehension of being sued by DeKalb and/or Monsanto for the alleged infringement of the Lundquist '798 patent for at least the following reasons: (1) DeKalb has already sued Plaintiffs on this very same patent in Missouri, and will likely assert the '798 patent against the present Plaintiffs in a different jurisdiction if the claims in Missouri are dismissed for lack of personal jurisdiction; (2) within the past two-and-a-half years DeKalb and Monsanto have sued Plaintiffs three separate times for patent infringement, in three separate courts, on four separate patents, all with respect to GA21

corn products; and (3) the Lundquist '798 patent discloses and claims similar subject matter as the closely-related Lundquist '880 and '863 patents that DeKalb unsuccessfully asserted against Plaintiffs in the prior action in this Court.

34. Plaintiffs have not infringed and are not infringing, literally or under the doctrine of equivalents, any valid and enforceable claim of the Lundquist '798 patent, directly, contributorily, or by inducement.

**Second Count: Declaratory Judgment of
Invalidity of U.S. Patent No. 5,554,798**

35. Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1 through 33 of this complaint and incorporate them by reference.

36. Plaintiffs cannot be liable for infringement of the Lundquist '798 patent because the claims are invalid for failure to satisfy one or more of the statutory requirements of the Patent Laws of the United States, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

**Third Count: Declaratory Judgment of
Unclean Hands**

37. Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1 through 33 of this complaint and incorporate them by reference.

38. Plaintiffs cannot be liable for infringement of the Lundquist '798 patent because DeKalb's claims of patent infringement are barred under the doctrine of unclean hands.

**Fourth Count: Declaratory Judgment of
Issue Preclusion**

39. Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1 through 33 of this complaint and incorporate them by reference.

40. Plaintiffs cannot be liable for infringement of the Lundquist '798 patent because DeKalb's claims of patent infringement are barred under the doctrine of issue preclusion.

**Fifth Count: Declaratory Judgment of
Claim Preclusion**

41. Plaintiffs hereby restate and reallege the allegations set forth in paragraphs 1 through 33 of this complaint and incorporate them by reference.

42. Plaintiffs cannot be liable for infringement of the Lundquist '798 patent because DeKalb's claims of patent infringement are barred under the doctrine of claim preclusion.

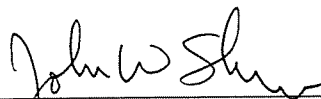
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

1. Declare that Plaintiffs have not infringed any claim of the Lundquist '798 patent;
2. Declare that each claim of the Lundquist '798 patent is invalid;
3. Declare that DeKalb's claims are barred by the doctrine of unclean hands;
4. Declare that DeKalb's claims are barred by the doctrines of issue preclusion and claim preclusion;
5. Permanently enjoin DeKalb, Monsanto, and their officers, agents, servants, employees, and attorneys, and those other persons or entities in active concert or participation with them, from asserting (either in a lawsuit or in any other manner) that Plaintiffs have infringed any claim of the Lundquist '798 patent;
6. Declare that this case is exceptional under 35 U.S.C. § 285 and award Plaintiffs their costs, disbursements, and reasonable attorney fees in connection with this action; and

7. Award Plaintiffs such other and further relief as this Court may deem just and equitable.

Respectfully submitted,



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