

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)
MONSANTO TECHNOLOGY LLC,)

Plaintiffs,)

vs.)

E.I. DUPONT DE NEMOURS AND)
COMPANY and)

Case No.

Serve Registered Agent:)
CT Corporation System, Inc.)
120 S. Central Ave.)
Clayton, Missouri 63105)

JURY TRIAL DEMANDED

PIONEER HI-BRED INTERNATIONAL,)
INC.,)

Serve Registered Agent:)
CT Corporation System, Inc.)
120 S. Central Ave.)
Clayton, Missouri 63105)

Defendants.)

COMPLAINT

Plaintiffs, Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”), bring this action for patent infringement, breach of contract, unjust enrichment, and injunctive relief against Defendants, E.I. du Pont de Nemours and Company (“DuPont”) and Pioneer Hi-Bred International, Inc. (“Pioneer”) (collectively “Defendants”), and allege as follows:

The Parties, Jurisdiction, and Venue

1. Plaintiffs Monsanto Company and Monsanto Technology LLC are both corporations organized and existing under the laws of the State of Delaware, having principal places of business at 800 North Lindbergh Boulevard, St. Louis, Missouri. Monsanto Technology LLC is a wholly-owned subsidiary of Monsanto Company.

2. Defendant DuPont operates in more than 70 countries around the world. Upon information and belief, DuPont is a Delaware corporation with its principal place of business in Wilmington, Delaware. Defendant Pioneer is a wholly-owned subsidiary of DuPont. Upon information and belief, Pioneer is an Iowa corporation with its principal place of business in Johnston, Iowa. Upon information and belief, DuPont, as the principal: (i) has the right and ability to supervise its agent, Pioneer, (ii) exercises dominion and control over Pioneer with respect to the activity alleged herein, (iii) controls and directs the policies, business practices, decisions, processes, personnel, and activities directly responsible for the activity alleged herein, and (iv) has an obvious and direct financial interest in the unauthorized and unlawful conduct alleged herein.

3. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a). Jurisdiction under 28 U.S.C. §§ 1331, 1338(a) attaches because this case alleges patent infringement. This Court has supplemental jurisdiction over the remaining claims by virtue of 28 U.S.C. § 1367.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a) and 1400(b).

General Allegations

5. Monsanto is an agricultural company. Monsanto develops crops that have been genetically engineered to express new traits (called transgenic traits) of value to farmers and consumers, such as herbicide resistance and insect resistance.

6. Monsanto has developed a suite of products containing transgenic traits. These products include corn and soybeans containing genes that confer resistance to an herbicide known as glyphosate, an effective and environmentally-friendly herbicide.

Monsanto's CP4 Technology and the Roundup Ready® Invention

7. In the course of its research in the field of transgenic traits, Monsanto discovered a specific gene, called the "CP4" gene, which is capable of imparting glyphosate resistance to plants. Monsanto engineered this gene into soybeans to produce a soybean event (which contains the beneficial transgenic trait) referred to as 40-3-2 (the "40-3-2 Soybean Event"). This invention was commercialized as Monsanto's first generation of Roundup Ready® soybeans (the phrases "40-3-2 Soybean Event," "40-3-2," and "Roundup Ready® soybean technology" are used interchangeably). Monsanto broadly licenses its Roundup Ready® soybean technology to seed companies. Roundup Ready® is a registered trademark of Monsanto under United States Trademark Registration Nos. 1889104 and 2101872 (the "Roundup Ready® mark"). Roundup Ready® technology provides plants, such as soybeans and corn, with tolerance to glyphosate-based herbicides. The CP4 gene and its use in soybean plants is covered by United States Patent No. U.S. RE 39,247E (the "'247 Patent"). The '247 Patent was duly and legally reissued to Monsanto on August 22, 2006 from U.S. Patent No. 5,633,435, which was originally issued to Monsanto on May 27, 1997. A copy of the '247 Patent is attached as Exhibit A to this Complaint.

8. Shortly after developing Roundup Ready® soybeans, Monsanto developed similar technology for corn. Monsanto engineered the CP4 gene into corn to produce corn line NK603, which was commercialized as Roundup Ready® Corn 2 (the phrases “NK603 Corn Event,” “NK603,” and “Roundup Ready® corn technology” are used interchangeably). Like the 40-3-2 Soybean Event, Monsanto broadly licenses its Roundup Ready® corn technology to seed companies. The CP4 gene and its use in corn plants is also covered by the ‘247 Patent.

9. On April 1, 2002, Monsanto and Pioneer entered into an Amended and Restated Roundup Ready® Soybean License Agreement (referred to hereinafter as the “Soybean License Agreement”), attached as Exhibit B hereto and filed under seal. DuPont’s lawyers were intimately involved in the negotiations of the Soybean License Agreement. Pursuant to the Soybean License Agreement, Monsanto granted Pioneer a limited, non-exclusive, royalty-bearing license to Monsanto’s Roundup Ready® soybean technology. Defendants have commercially exploited the licensed Monsanto Roundup Ready® soybean technology, and have made hundreds of millions of dollars selling Roundup Ready® soybeans.

10. On April 1, 2002, Monsanto and Pioneer entered into a Roundup Ready® Corn License Agreement (referred to hereinafter as the “Corn License Agreement”), attached as Exhibit C hereto and filed under seal. DuPont’s lawyers were also intimately involved in the negotiations of the Corn License Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. Over the past several years, DuPont and Pioneer have attempted to develop their own glyphosate-tolerant soybean and corn traits. In 2006, DuPont and Pioneer announced that they had developed a glyphosate-tolerant trait, called Optimum® GAT®. In 2006, DuPont and Pioneer made their intentions clear with respect to their stand-alone product, announcing to the world that they “will gradually retire [their] Roundup Ready varieties and replace them with Optimum GAT.” In fact, DuPont’s Public Affairs Manager, Doyle Karr, stated: “Almost all herbicide resistant soybean varieties currently carry the Roundup Ready gene. With the commercialization of Optimum GAT, we hope to capture some of the Roundup Ready market.” However, for reasons just recently disclosed to the marketplace by DuPont and Pioneer (and discussed below), they have not yet made any commercial sales of seed containing this new, stand-alone trait to farmers.

12. Despite DuPont’s and Pioneer’s claims of developing their own stand-alone glyphosate-tolerant technology that would purportedly “capture some of the Roundup Ready® market,” Defendants have recently announced that they are now combining (commonly referred to as “stacking”) their Optimum® GAT® gene with Monsanto’s patented Roundup Ready® soybean technology in the same product, i.e., the same seeds.

13. Upon information and belief, DuPont and Pioneer have also recently stacked their Optimum® GAT® gene with Monsanto’s NK603 Corn Event.

14. [REDACTED] Defendants have, among other things, materially breached the Soybean License Agreement and the Corn License Agreement, and are infringing Monsanto’s patent rights.

15. In addition, DuPont and Pioneer wrongfully filed U.S. Patent Application Publication No. U.S. 2009/0011938 published January 8, 2009 (the “938 Application”). The

'938 Application lists two assignees of the invention – DuPont and Pioneer. DuPont's role as assignee of the '938 Patent demonstrates DuPont's control over, and direct financial interest in, the unlawful conduct alleged herein. The '938 Application relates to an alleged invention of Defendants that involves the [REDACTED] stacking of the Optimum® GAT® gene with Monsanto's Roundup Ready® soybean technology. The sole examples cited by Defendants in support of their claims in the '938 Patent Application are data from tests performed on soybean plants in violation of Monsanto's contract and patent rights.

[REDACTED]

16. [REDACTED]

[REDACTED].

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

23. [REDACTED]

[REDACTED]

24. [REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

27. [REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

30. It is undisputed that Defendants are making and/or using such [REDACTED] stacks in the United States. Example 1 in Pioneer's '938 Application, listing DuPont and Pioneer as assignees, discloses tests of the stacked product performed in West Memphis, Arkansas, while Example 2 discloses tests of the stacked product performed in Napoleon, Ohio.

[REDACTED]

31. [REDACTED]

[REDACTED]

[REDACTED].

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

33. [REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

37. [REDACTED]

38. [REDACTED]

39. [REDACTED]

40. [REDACTED]

41. [REDACTED]

42. [REDACTED]

43. [REDACTED]

44. [REDACTED]

Defendants are Also Inducing Monsanto's Licensees to Create [REDACTED] Soybean Stacks.

45. On January 28, 2009, Defendants publicly announced during an industry conference that they had conducted field tests on soybean products made by stacking Monsanto's patented 40-3-2 soybean technology with the Optimum® GAT® gene.

46. Defendants further announced during this conference that they intended to commercialize this stacked product for the 2011 growing season.

47. On information and belief, Defendants' conduct, including this announcement, has encouraged certain of Monsanto's other 40-3-2 licensees to stack the Optimum® GAT® gene with Monsanto's 40-3-2 soybean technology. In fact, when certain of these independent seed companies, who are licensees of Monsanto's 40-3-2 soybean technology, asked Defendants' representative during this January 28, 2009 conference whether they could make the combination, the representative stated that he thought so, and further stated that he knew of no reason why it would not be allowed.

48. [REDACTED]

[REDACTED] undermine Monsanto's valuable relationships with its seed company licensees, and jeopardize the value of Monsanto's intellectual property.

49. This January 28, 2009 announcement was followed by a February 6, 2009 E-Update from GreenLeaf Genetics, which is a joint venture with Pioneer as a principal partner. This E-Update shows that the foregoing communication was not a solitary event, but part of a company-wide effort to develop and market stacked Optimum® GAT® and Roundup Ready® products:

Pioneer is providing communication materials to its field sales employees and reps about how Pioneer is combining its proprietary Optimum® GAT® trait with the Roundup Ready® trait in elite Pioneer soybean genetics, powered by the Accelerated Yield Technology (AYT™) system. The combination of these technologies has demonstrated solid yield results and efficacy. 2008 research data indicates Optimum GAT lines out-yielded Pioneer leader checks by an average of nearly 6 percent. Pioneer recently advanced nearly 50 Optimum GAT variety candidates, ranging from group 0 to group 5, to the final stages of testing.

Defendants [REDACTED] In Order to Repair Significant Problems with Their Optimum® GAT® Product.

50. As noted above, in 2006, Defendants announced that they were creating their own stand-alone glyphosate-tolerant product that would be ready for commercial launch as early as 2009.

51. In 2006, DuPont and Pioneer stated that they “will gradually retire [their] Roundup Ready varieties and replace them with Optimum GAT.” DuPont’s communications director, Doyle Karr, stated: “Almost all herbicide resistant soybean varieties currently carry the Roundup Ready gene. With the commercialization of Optimum GAT, we hope to capture some of the Roundup Ready market.”

52. On March 2, 2006, DuPont stated as follows: “DuPont expects the Optimum GAT trait to receive full U.S. registration for use in soybeans and corn as early as 2009.”

53. On November 28, 2006, DuPont stated that Defendants were “on track for commercialization of soybean products containing the trait by 2009.”

54. Similarly, on June 13, 2007, Defendants stated: “We are especially excited about our Optimum GAT trait which is on track to enable us to introduce herbicide-tolerant soybeans in 2009.”

55. Once again, on July 2, 2007, Defendants stated: “This keeps us on track for commercial introduction of the Optimum GAT trait in soybeans in 2009.”

56. Finally, as recently as October 17, 2007, DuPont stated: “DuPont is on track for commercial introduction of the Optimum GAT trait in soybeans by 2009, pending regulatory approval.”

57. These statements turned out to be incorrect as revealed by Defendants’ recent abandonment of their plans to market the Optimum® GAT® gene alone. In fact, Defendants

concluded that the Optimum® GAT® gene alone did not work as they had been promoting it to the marketplace. In reality, Defendants have stated that the Optimum® GAT® gene does not provide commercially acceptable glyphosate tolerance by itself and presents an unacceptable risk for growers.

58. In April 2009, Pat Arthur, a Pioneer spokesperson admitted that Pioneer is making the stack with Monsanto's patented 40-3-2 Soybean Event, explaining that "Optimum® GAT® wasn't meeting our standards for glyphosate tolerance by itself."

59. Because of Defendants' conclusion that Optimum® GAT® was not working properly and presented an unacceptable risk for growers, Defendants have reversed course and have decided to stack Optimum® GAT® with Monsanto's patent 40-3-2 Soybean Event.

60. [REDACTED]
[REDACTED], Defendants are [REDACTED] exploiting Monsanto's patented 40-3-2 Soybean Event to fix the problems with the Optimum® GAT® gene. In addition, because Defendants' hopes of creating a stand-alone trait failed, Defendants pushed back their launch to at least 2011.

COUNT I – PATENT INFRINGEMENT ('247 PATENT)

61. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 60 of this Complaint.

62. Monsanto is, and has been, the owner of all right, title, and interest to and under the '247 Patent.

63. [REDACTED]
[REDACTED]
[REDACTED]

64. Defendants have infringed, and induced or contributed to the infringement by others, and continue to infringe and induce or contribute to the infringement by others, one or more claims of the '247 Patent by [REDACTED], by inducing or contributing to such activities by others, and/or by importing into the United States, or offering to sell, selling, or using within the United States such soybeans, and Defendants will continue to do so unless enjoined by this Court.

65. In addition, Defendants have infringed, and continue to infringe, one or more claims of the '247 Patent by [REDACTED] and/or by importing into the United States, or offering to sell, selling, or using within the United States such corn, and Defendants will continue to do so unless enjoined by this Court.

66. Defendants' acts of infringement of the '247 Patent have been carried out in deliberate and willful disregard of Monsanto's patent rights, and have damaged Monsanto.

67. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT II – INDUCEMENT TO INFRINGE MONSANTO'S '247 PATENT

68. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 67 of this Complaint.

69. Monsanto is, and has been, the owner of all right, title, and interest to and under the '247 Patent.

70. [REDACTED]
[REDACTED]
[REDACTED]

71. [REDACTED]

72. [REDACTED]

73. [REDACTED]

74. As a direct and proximate result of Defendants' inducement to infringe Monsanto's '247 Patent, Monsanto has been damaged in an amount to be proven at trial.

75. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT III – BREACH OF CONTRACT – SOYBEAN LICENSE AGREEMENT

76. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 75 of this Complaint.

77. The Soybean License Agreement is a binding and enforceable contract.

78. Monsanto has, at all times, acted consistently with its obligations under the Soybean License Agreement.

79. [REDACTED]

80. [REDACTED]

[REDACTED]

81. In addition, as a direct and proximate result of Defendants' material breach of the Soybean License Agreement, Monsanto has been damaged.

82. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT IV – BREACH OF CONTRACT – SOYBEAN LICENSE AGREEMENT

83. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 82 of this Complaint.

84. [REDACTED]

[REDACTED]

85. [REDACTED]

[REDACTED]

86. Defendants are materially breaching the Soybean License Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87. As a direct and proximate result of Defendants' material breach of the Soybean License Agreement, Monsanto has been damaged.

88. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT V – BREACH OF CONTRACT – SOYBEAN LICENSE AGREEMENT
(PATENT APPLICATION)

89. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 88 of this Complaint.

90. In addition to materially breaching the Soybean License Agreement [REDACTED]
[REDACTED] Defendants have used tests done on [REDACTED] as the sole examples to support its '938 Application. Similar patent filings may have been made internationally.

91. [REDACTED]
[REDACTED]
[REDACTED]

92. As a direct and proximate result of Defendants' material breach of the Soybean License Agreement, Monsanto has been damaged.

93. Monsanto is further entitled to equitable relief for this breach, including but not limited to, ownership and/or co-ownership of the '938 Application, any corresponding U.S. or International Patent Applications, and any patents issued therefrom.

94. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT VI – BREACH OF CONTRACT – SOYBEAN LICENSE AGREEMENT

95. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 94 of this Complaint.

96. [REDACTED]

97. [REDACTED]

98. [REDACTED]

99. [REDACTED]

100. Defendants have materially breached [REDACTED] the Soybean License Agreement and the Soybean Trademark License Agreement because of their [REDACTED]

101. As a direct and proximate result of Defendants' material breach of the Soybean License Agreement and Soybean Trademark License Agreement, Monsanto has been damaged.

102. [REDACTED]

103. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT VII – UNJUST ENRICHMENT

104. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 103 of this Complaint.

105. [REDACTED]

106. The foregoing enrichment has been at the expense of Monsanto.

107. It would be unjust to allow Defendants to retain the benefit of patent applications that were filed [REDACTED] based upon activities which infringe Monsanto's patent rights.

108. Monsanto is entitled to equitable relief including but not limited to: (i) quantum meruit; (ii) imposition of a constructive trust on the '938 Application and any related patent applications and patents issuing there from; and (iii) an assignment of the '938 Application and any related patent applications and patents issuing therefrom to Monsanto as owner and/or co-owner.

109. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT VIII – BREACH OF CONTRACT – CORN LICENSE AGREEMENT

110. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 109 of this Complaint.

111. The Corn License Agreement is a binding and enforceable contract.

112. Monsanto has, at all times, acted consistently with its obligations under the Corn License Agreement.

113. [REDACTED]

114. [REDACTED]

115. In addition, as a direct and proximate result of Defendants' material breach of the Corn License Agreement, Monsanto has been damaged.

116. Monsanto requests a trial by jury for every issue so triable as of right.

COUNT IX – BREACH OF CONTRACT – CORN LICENSE AGREEMENT

117. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 116 of this Complaint.

118. [REDACTED]

[REDACTED]

119. [REDACTED]

[REDACTED]

120. On information and belief, Defendants are materially breaching the Corn License Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

121. As a direct and proximate result of Defendants' material breach of the Corn License Agreement, Monsanto has been damaged.

122. Monsanto requests a trial by jury for every issue so triable as of right.

PERMANENT INJUNCTIVE RELIEF IS REQUIRED

123. Monsanto incorporates by reference, as though fully set forth herein, paragraphs 1 through 122 of this Complaint.

124. Permanent injunctive relief is required in this case.

125. Permanent injunctive relief is required in this case to prevent Defendants from violating the Soybean License Agreement, violating the Corn License Agreement, violating the Soybean Trademark License Agreement, infringing Monsanto's '247 Patent, and from inducing

Monsanto's licensees to similarly infringe Monsanto's '247 Patent [REDACTED]

[REDACTED].

126. [REDACTED]

[REDACTED]

[REDACTED].

127. Monsanto has no adequate remedy at law because damages will not adequately compensate Monsanto for the threatened injuries.

128. The balance of hardships favors Monsanto. An injunction would not cause harm to Defendants because such an injunction merely enforces the parties' rights under the Soybean License Agreement, including the Soybean Trademark License Agreement, and the Corn License Agreement. Further, such an injunction would aid Monsanto in the protection of its intellectual property rights and its rights under the terms of the Soybean License Agreement and the Corn License Agreement.

129. The issuance of an injunction would further the public interest. There is no public interest that would be injured by the grant of injunctive relief against Defendants. The public interest is not served by allowing Defendants to violate the Soybean License Agreement, to violate the Soybean Trademark License Agreement, to violate the Corn License Agreement, to infringe the '247 Patent, and to induce others to infringe the '247 Patent. On the other hand, the public interest is served by protecting patent rights – in this case Monsanto's patented 40-3-2 Soybean Event and NK603 Corn Event.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Monsanto respectfully requests that the Court:

- a. Enter a judgment that Defendants have infringed and/or induced or contributed to the infringement of one or more claims of the '247 Patent;
- b. Enter a judgment that Defendants have willfully and deliberately infringed one or more claims of the '247 Patent;
- c. Enter a declaration by the Court that any making, using, importing, selling, or offering for sale by Defendants, and/or those acting in concert with Defendants, of glyphosate-resistant soybean and corn products that are within the scope of one or more claims of the '247 Patent, [REDACTED] is an act of infringement of the '247 Patent;
- d. Enter a declaration by the Court that the importation into the United States, or offering for sale, selling, or using within the United States, of soybean or corn containing both the CP4 gene (40-3-2 Soybean Event or NK603 Corn Event) stacked with the Optimum® GAT® gene, is an act of infringement of the '247 Patent;
- e. Enter a permanent injunction enjoining Defendants and all those in privity with them from infringing one or more claims of the '247 Patent;
- f. Enter a permanent injunction enjoining Defendants from inducing third parties to infringe one or more claims of the '247 Patent;
- g. Enter a permanent injunction enjoining Defendants and their officers, agents, servants, employees, and attorneys, and all persons in active concert or

participation with any of them, from violating the Soybean Trademark License Agreement;

- h. Enter an Order terminating the Soybean Trademark License Agreement for cause;
- i. Enter an award of compensatory and exemplary damages, in an amount to be determined at trial, but not less than a reasonable royalty, resulting from Defendants' infringement of Monsanto's patent rights, including allowance of multiplied damages based on Defendants' willful and deliberate infringement;
- j. Enter an award of compensatory damages for Defendants' breaches of contract;
- k. Enter Judgment that Defendants have materially breached the Soybean License Agreement [REDACTED]
[REDACTED]
[REDACTED];
- l. Enter a permanent injunction enjoining Defendants and all those in privity with them from violating the Soybean License Agreement [REDACTED]
[REDACTED]
[REDACTED];
- m. Enter Judgment that Defendants have materially breached the Corn License Agreement [REDACTED]
[REDACTED]
[REDACTED];
- n. Enter a permanent injunction enjoining Defendants and all those in privity with them from violating the Corn License Agreement [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED];

- o. Enter an Order for specific performance that Defendants comply with the Soybean and Corn License Agreement's [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED];

- p. Enter an Order permanently enjoining Defendants and their officers, agents, servants, employees, subsidiaries, affiliates, attorneys and those persons in active concert or participation with them from [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED];

- q. Enter an Order permanently enjoining Defendants and their officers, agents, servants, employees, subsidiaries, affiliates, attorneys and those persons in active concert or participation with them [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED];

- r. Impose a constructive trust for the benefit of Monsanto upon the '938 Application, any related applications, and any patents issuing therefrom;

- s. Enter an Order requiring that Defendants assign the '938 Application, any related applications, and any patents issuing therefrom to Monsanto Company as owner and/or co-owner;
- t. Enter an Order finding that Defendants' actions make this case exceptional under 35 U.S.C. § 285;
- u. Enter an award of interest, costs, and attorneys' fees in favor of Monsanto; and
- v. Grant Monsanto such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

HUSCH BLACKWELL SANDERS LLP

Dated: May 4, 2009

By: /s/ Joseph P. Conran

Joseph P. Conran, E.D.Mo. # 6455

joe.conran@huschblackwell.com

Omri E. Praiss, E.D.Mo. # 35002

omri.praiss@huschblackwell.com

Greg G. Gutzler, E.D.Mo. # 84923

greg.gutzler@huschblackwell.com

Tamara M. Spicer, E.D. Mo. # 122214

tamara.spicer@huschblackwell.com

Steven M. Berezney, E.D.Mo. # 499707

steve.berezney@huschblackwell.com

190 Carondelet Plaza, Suite 600

St. Louis, MO 63105

(314) 480-1500 – telephone

(314) 480-1505 – facsimile

McDermott Will & Emery

Susan K. Knoll

sknoll@mwe.com

Steven G. Spears

sspears@mwe.com

1000 Louisiana Street

Suite 3900

Houston, TX 77002-5005

(713) 653-1700 – telephone

(713) 739-7592 – facsimile

Covington & Burling LLP

Kurt G. Calia

kcalia@cov.com

1201 Pennsylvania Avenue, NW

Washington, DC 20004-2401

(202) 662-6000 – telephone

(202) 662-6291 – facsimile

*Attorneys for Plaintiff Monsanto Company and
Monsanto Technology LLC*