

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

BENTON DIVISION

MONSANTO COMPANY
Plaintiff

VS.

AGMAX, LLC, CHRIS YELEY,
and HAROLD BIRCH,
Defendants

)
)
)
)
)
)
)

CASE NO.: 05-4223-JPG

FIRST AMENDED COMPLAINT

COMES NOW, Monsanto Company, plaintiff in the above styled and numbered cause, appearing through undersigned counsel, and for its First Amended Complaint at law against AGMAX, LLC, Chris Yeley, and Harold Birch (hereinafter “AGMAX”, “Yeley”, “Birch” or collectively “defendants”), respectfully avers:

THE PLAINTIFF

1. Monsanto 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 Illinois and within this judicial district.

THE DEFENDANTS

2. Defendant AGMAX, LLC is an Illinois limited liability company with a principal place of business in Clark County, Illinois.

3. Defendant Chris Yeley is an individual who has attained the age of majority and is a resident and domiciliary of Clark County, Illinois.

4. Defendant Harold Birch is an individual who has attained the age of majority and is a resident and domiciliary of Coles County, Illinois.

JURISDICTION AND VENUE

5. Subject matter jurisdiction is conferred upon this Honorable 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.

6. Venue is proper in this district pursuant to 28 U.S.C. §1400, as the defendant business AGMAX, LLC operates in this judicial district, defendant Chris Yeley is a domiciliary of this judicial district, and a substantial number of the events giving rise to Monsanto's claims of patent infringement occurred within this judicial district.

GENERAL ALLEGATIONS

7. Monsanto 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 developed plant biotechnologies that greatly enhance the performance and value of agricultural seed.

8. This new biotechnology has been utilized by Monsanto in corn seed. The genetically improved corn seed is marketed by Monsanto as Roundup Ready® corn, YieldGard® Corn Borer corn, YieldGard® Corn Rootworm corn, YieldGard® Corn Borer with Roundup Ready® corn, YieldGard® Corn Rootworm with Roundup Ready® corn, and YieldGard® Plus with Roundup Ready® corn.

9. Monsanto's Roundup Ready® and YieldGard® seed technologies are protected under a number of U.S. patents. These patents were issued and assigned to Monsanto prior to the events giving rise to this action.

10. Since the Roundup Ready® and YieldGard® seed technologies were commercially introduced, Monsanto has labeled all bags of YieldGard® and Roundup Ready® corn sold in the United States with the required statutory notice that its Roundup Ready® and YieldGard® technologies are patented.

11. Each bag of YieldGard® Plus with Roundup Ready® Corn seed is marked with language which gives notice that the seed therein is protected by patents, including U.S. Patent Nos. 5,023,179; 5,110,732; 5,352,605; 5,484,956; 5,424,412; 5,859,347; 5,593,874; 6,063,597; 6,174,724; 6,180,774; 6,331,665; 4,940,835; 5,188,642; 5,359,142; 5,196,525; 5,322,938; 5,164,316; 5,352,605; 5,554,798; 5,593,874; 5,859,347; 5,424,412; 5,633,435; 5,804,425; 5,641,876; 5,717,084; 5,728,925; 6,083,878; and 6,025,545.

12. Monsanto uses a closed distribution system to market the YieldGard® corn seed traits. Monsanto requires all retailers who seek to market their patented YieldGard® corn traits to obtain a dealer agreement granting those retailers the authority to offer for sale and sell Monsanto's patented traits.

13. Monsanto does not authorize anyone to offer for sale, or sell, corn seed containing its patented biotechnology, without its approval.

14. Defendant AGMAX is an Illinois business which has offered to sell corn and soybean seed containing Monsanto's patented biotechnology.

15. Defendant Chris Yeley is an Illinois resident who has offered to sell corn seed containing Monsanto's patented biotechnology.

16. Defendant Harold Birch is an Illinois resident who has offered to sell corn seed containing Monsanto's patented biotechnology.

17. Defendants are not authorized to offer for sale, or sell, Monsanto's patented biotechnology.

18. Defendants were contacted regarding their unauthorized marketing of Monsanto's patented corn seed technologies; however, they have refused to admit or discuss these allegations.

19. Upon information and belief, the defendants have knowingly, willfully and intentionally offered for sale and sold corn and soybean seed containing Monsanto's patented seed traits without authorization from Monsanto in violation of Monsanto's patent rights.

20. Upon information and belief, the defendants are continuing to offer for sale, or, in the alternative, selling corn seed and/or soybean seed containing Monsanto's patented seed traits in contravention of Monsanto's patent rights.

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

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

22. 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. A copy of U.S. Patent No. 5,352,605 is attached hereto as Exhibit A.

23. Monsanto places the required statutory notice that its YieldGard® and Roundup Ready® technologies are protected by United States Patent Number 5,352,605 on the labeling of all corn and soybean seed bags containing the YieldGard® and Roundup Ready® seed traits in compliance with 35 U.S.C. §287.

24. Defendants' 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 defendants pursuant to 35 U.S.C. §281.

25. Upon information and belief, the defendants have infringed and may be continuing to infringe Monsanto's patent by using, offering for sale, selling, or otherwise transferring YieldGard® and Roundup Ready® corn seed embodying Monsanto's patented inventions without authorization from Monsanto, and will continue to do so unless enjoined by this court.

26. 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.

27. 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 defendants' knowing, willful, conscious, and deliberate infringement of the patent rights at issue.

28. 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.

WHEREFORE, Monsanto Company prays that process in due form of law issue to the defendants, AGMAX, LLC, Chris Yeley, and Harold Birch, requiring them to appear and answer, all and singular, the allegations of this complaint, and that after due proceedings are had, there be judgment in favor of Monsanto Company and against the defendants, providing the following remedies to Monsanto:

1. Entry of judgment for damages, together with interest and costs, to compensate Monsanto for the defendants' patent infringement;
2. Trebling of damages awarded for the infringement of patents together with reasonable attorney's fees;
3. Entry of a preliminary injunction prohibiting the defendants from offering to sell, transferring, or selling the infringing articles to a third party;
4. Entry of a permanent injunction against each defendant to prevent each defendant from using, offering to sell, or selling 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.

Respectfully submitted,

**s/A. COURTNEY COX
HART AND HART**
602 West Public Square
P. O. Box 937
Benton, Illinois 62812-0937
Telephone: (618) 435-8123
Facsimile: (618) 435-2962

AND

MILES P. CLEMENTS, T.A. (La. #4184)
(by consent)
JEFF A. MASSON (La. #28674)
(by consent)
FRILOT, PARTRIDGE, KOHNKE & CLEMENTS, LC
3600 Energy Centre, 1100 Poydras St.
New Orleans, LA 70163-3600
Telephone: (504) 599-8000
Facsimile: (504) 599-8100

ATTORNEYS FOR MONSANTO COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification all counsel who have entered their appearance herein on behalf of Defendant Agmax LLC

Service of the First Amended Complaint, along with appropriate summons, will be made on the additional Defendants, Chris Yeley and Harold Birch, following the filing of this First Amended Complaint, with summons to be filed with the Court following service.

s/A. Courtney Cox