

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CORTEVA AGRISCIENCE LLC,	)	
PIONEER HI-BRED INTERNATIONAL,	)	
INC. and AGRIGENETICS, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 23-1059 (RGA)
	)	
INARI AGRICULTURE, INC. and	)	
INARI AGRICULTURE NV,	)	
	)	
Defendants.	)	

**OPENING BRIEF IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

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I. INTRODUCTION

Plaintiffs, Corteva Agriscience LLC, Pioneer Hi-Bred International, Inc., and Agrigenetics, Inc. (collectively “Corteva”) made deposits of seeds with the American Type Culture Collection (“ATCC”) to comply with the requirements of 35 U.S.C. § 112 to obtain numerous United States utility patents. Corteva filed an initial Complaint alleging Defendants Inari Agriculture, Inc. (“Inari US”) and Inari Agriculture NV (“Inari Belgium”) (collectively “Inari”) infringed its U.S. intellectual property rights by obtaining seeds from these patent deposits and shipping them to Belgium to conduct research. In its motion to dismiss the initial Complaint, Inari argued that those patent deposits are an integral part of the written description of the patents Corteva obtained and are available to the public without restriction as a matter of law. In its First Amended Complaint (“FA Complaint”), Corteva ignores this threshold legal impediment to its claims. Corteva seeks to deprive the public of the unrestricted availability of patent deposits and renege on the promise it made to obtain its patents. Every cause of action in Corteva’s FA Complaint is based on this improper attempt to restrict availability to patent deposits and should be dismissed.

II. NATURE AND STAGE OF THE PROCEEDINGS

Corteva filed the initial Complaint against Defendants on September 27, 2023. The Complaint was served on Inari US on September 29, 2023. Inari moved to dismiss all Counts I-VI in the initial Complaint under Federal Rule of Civil Procedure 12(b)(6) on November 6, 2023. Corteva filed its First Amended Complaint on November 27, 2023. Inari now moves to dismiss all Counts I-VII in the First Amended Complaint.

III. SUMMARY OF THE ARGUMENT

The seeds Corteva accuses Inari of misappropriating from the American Type Culture Collection (“ATCC”) were from patent deposits made by Corteva to meet the patentability requirements under 35 U.S.C. § 112 to obtain U.S. patents. These patent deposits are an integral

part of the written description of the patents for which the deposits were made. Section 112 requires a patent applicant to assure access to the deposited biological material by the public upon issuance of the patent so “the public, will in fact receive something in return for the patent grant.” *Feldman v. Aunstrup*, 517 F.2d. 1351, 1354-55 (CCPA 1975) *cert. denied*, 424 U.S. 912 (1976) (quoting *In re Argoudelis*, 434 F.2d 1390 at 1394 (CCPA 1970) (Baldwin, J. concurring)); *Ex parte Hildebrand*, 15 U.S.P.Q.2d 1662 (B.P.A.I. Apr. 23, 1990). In exchange for the grant of these patents, Corteva assured the public that the deposits would be available to the public without restriction when the patents issued. Corteva now seeks to renege on that promise.

Corteva’s amended allegations remain premised on the incorrect position that the lawful act of exporting seeds from ATCC patent deposits to Belgium is: an infringement under the Plant Variety Protection Act (“PVPA”); an infringement of U.S. Patent No. 8,575,434 (“the ’434 patent”) under 35 U.S.C. § 271(a) and (f)(2); an inducement of the ATCC to infringe these rights; a breach of Inari Belgium’s material transfer agreement (“MTA”) with the ATCC; and a violation of state unfair competition and conversion laws. In fact, by depositing seeds to meet the requirements for obtaining utility patents, Corteva authorized the unrestricted availability to the public of those seeds and their transportation in commerce, the very acts it now alleges are unlawful. The operative Inari Belgium ATCC MTA expressly provides that the law on patent deposits supersedes any other restrictions in the MTA. To the extent Corteva retained PVP or patent rights in the deposited seeds purchased by Inari Belgium, Corteva cannot restrict their use outside of the United States by an attempted extraterritorial application of U.S. intellectual property laws.

The unrestricted public availability is the bargain Corteva made to obtain its patents. *See* 37 C.F.R. § 1.808(a)(2). Inari Belgium, just as any member of the public, has the unfettered right

to buy the deposited, patented seeds from the ATCC without restrictions. All counts of the FA Complaint suffer from this incurable defect.

Given this deficiency, and because any further amendment would be futile, the Court should dismiss with prejudice the First Amended Complaint.

IV. STATEMENT OF FACTS

Plaintiff Corteva is one of two giant agribusiness companies that sell roughly 70% of the corn seeds in the United States. Defendant Inari is a small venture-funded company formed in 2016 to develop a pioneering technology to selectively edit plant genes to enhance agronomic traits and increase crop yields. As alleged in the FA Complaint, Inari is partnering with small, independent seed companies to develop improved seeds made with Inari's technology. (D.I. 19 at ¶ 17). Even though seeds developed with Inari technology have not yet been introduced to the market, Inari has the potential to transform agriculture and create strong competition in the farm seed business.

Corteva has been in business for nearly one hundred years. (D.I. 19 at ¶ 2). It is the biggest seed company in the world and has amassed thousands of patents and Plant Variety Protection Certificates. Corteva has used time-consuming traditional breeding techniques to develop its plants (D.I. 19 at ¶ 42, 113) and uses genetic engineering technology to introduce foreign genes into plants. Corteva sells its seeds to customers subject to Technology Use Agreements that restrict the sale and use of Corteva seeds. (D.I. 19 at ¶ 45).

Inari's technology analyzes data to determine which genes in a plant to edit to improve agronomic traits such as yield and drought resistance. Inari's technology works with the natural DNA of plants so that the resulting genetic modifications are like those from traditional plant breeding but are achieved far more quickly. Inari plans to develop seeds modified using its

technology with seed companies that will produce and market the modified seeds with improved agronomic traits for greater productivity and sustainability.

The ATCC is an independent organization located in Virginia that is qualified to act as a depository of biological materials for patent purposes. (D.I. 19 at ¶¶ 60-61). A member of the public in Europe cannot obtain seeds directly from the ATCC but, instead, must go through LGC Standards (hereafter “LGC”), ATCC’s exclusive European distribution partner. (D.I. 19 at ¶ 61). Inari Belgium opened an account with LGC in 2019 and LGC placed orders with the ATCC on behalf of Inari Belgium in 2020. (D.I. 19 at ¶ 86). In 2020, Inari Belgium purchased seeds of the varieties listed in Exhibit A to the FA Complaint from the ATCC through LGC. (D.I. 19 at ¶ 92). Inari Belgium entered an MTA with the ATCC on July 14, 2019. (D.I. 19 Ex. C). The MTA provides that disputes are to be tried exclusively in the U.S. District Court for the Eastern District of Virginia. Infinite-Eversole Strategic Crop Services (“IE-SCS”) obtained the required phytosanitary certificates and packaged and shipped the seeds to Inari Belgium. (D.I. 19 at ¶ 92).

Every PVP Certificate listed in Exhibit A to the FA Complaint is also the subject of an ATCC patent deposit for a granted U.S. utility patent. (D.I. 19 at ¶ 60).¹ Each deposit in Corteva’s Exhibit A was made to obtain a utility patent. Separate distinct deposits with the United States Department of Agriculture (“USDA”) may also have been made by Corteva to obtain PVP certificates. The FA Complaint provides one example, ATCC-PTA-11340, PVP certificate 200900369, as exemplary of all the Exhibit A varieties obtained by Inari. (D.I. 19 at ¶ 123; Scheibeler Decl. Ex. B). ATCC-PTA-11340 was deposited to meet the enablement requirements

¹ An ATCC “PTA” designation indicates it was made for U.S. utility patent purposes. The last entry in Exhibit A, PVP certificate 9700229 identifies PH79A, which has a corresponding patent deposit identified as ATCC 209913 without a “PTA” prefix. The product sheet for the ATCC deposit states that the deposit was made for the international patent requirements and identifies U.S. Pat. No. 5,866,767 as the relevant patent. (See Scheibeler Decl. Ex. A).

for at least ten Corteva patents. (Scheibeler Decl. at ¶ 7). One of these patents – U.S. Patent No. 7,847,167 (“the ’167 patent”) (Scheibeler Decl. Ex. C), which issued on December 7, 2010 – states that “[u]pon allowance of any claims in the application, the Applicant will make the deposit available to the public pursuant to 37 C.F.R. § 1.808.” (Scheibeler Decl. Ex. C, ’167 patent at 43:49-63). In making the deposits to obtain patents, Corteva promised that the deposits would be available to the public without restriction. (D.I. 19 at ¶ 91).

Deposits made for a PVP certificate application for a new plant variety are treated differently than patent deposits made to satisfy the requirements for a utility patent to satisfy 35 U.S.C. § 112. PVP deposits are made with the USDA and are not available until the relevant PVP certificate expires. *See* 7 U.S.C. § 2426; 7 C.F.R. § 97.7(h)(1). Inari Belgium did not and could not access any PVP deposits during the term of any of the PVP certificates and Corteva does not allege that it did.

Through LGC, Inari Belgium purchased seeds of ATCC accession number PTA-11506, deposited by Corteva to obtain the asserted ’434 patent. (D.I. 19 at ¶ 87). In the ’434 patent, Corteva stated that the deposit would be available to the public pursuant to 37 C.F.R. § 1.808 upon patent grant. (D.I. 19 Ex. B, ’434 patent at 6:66) (quoting 37 C.F.R. § 1.808(a)(2) that all restrictions would be irrevocably removed on grant).

The deposits obtained by Inari Belgium were all patent deposits for issued utility patents and available to the public without restriction under 37 C.F.R. § 1.808(a)(2). Inari Belgium used the purchased seeds in research and development experiments outside the U.S. without violating Corteva’s U.S. patent or PVP rights.

In September 2021, Inari contacted Corteva to initiate discussions on a possible collaboration. (D.I. 19 at ¶ 98). During those discussions and correspondence, which continued

until April 2022, Inari informed Corteva that Inari Belgium had obtained from the ATCC seed from corn plant event DP-004114-3, ATCC number PTA-11506, and had used it in research and development in Belgium. (D.I. 19 at ¶¶ 100, 104). Inari further informed Corteva that it had filed a patent application on this research and resulting modifications made to the transgenic locus in DP-004114-3. (D.I. 19 at ¶ 104). Inari's patent, U.S. Pat. No. 11,214,811 ("the '811 patent"), issued on January 4, 2022, during the parties' discussions. (D.I. 19 at ¶¶ 96, 104). The Inari patent states that corn plant event DP-004114-3 is the subject of the '434 patent and that representative seed has been deposited with the ATCC under Accession No. PTA-11506. (D.I. 19 at ¶ 153; Scheibeler Decl. Ex. D, '811 patent at 5:22-29).

V. ARGUMENT

A. Legal Standards

Federal Rule of Civil Procedure 12(b)(6) authorizes a court to dismiss a claim for failing to state a claim upon which relief can be granted. To withstand dismissal, a party must allege facts sufficient to allow the Court to "draw the reasonable inference that the defendant is liable for the misconduct alleged" and "permit the court to infer more than mere possibility of misconduct." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In ruling on a motion to dismiss, courts "must take all of the factual allegations in the complaint as true," but "are not bound to accept as true a legal conclusion couched as a factual allegation." *Wood v. Moss*, 572 U.S. 744, 755 (2014) (citation omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, "merely saying so does not make it so for pleading-sufficiency purposes." *Howard Hess Dental Lab'ys, Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 258 (3d Cir. 2010).

In certain circumstances, a court may consider facts outside of the pleadings when deciding a motion to dismiss. As public records referenced by, and therefore incorporated into, the

complaint, the Court may consider patents and prosecution histories without converting a motion to dismiss into one for summary judgment. *See, e.g., Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 256 n.5 (3d Cir. 2006); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196-97 (3d Cir. 1993); *Amgen Inc. v. Coherus Biosciences Inc.*, No. 17-cv-546-LPS-CJB, 2017 U.S. Dist. LEXIS 219791, at *6 n.6 (D. Del. Dec. 7, 2017). A court may also look beyond the complaint to “court files, records, and letters of official actions or decisions of government agencies and administrative bodies.” *Lenahan v. Johnson*, No. 15-cv-00763, 2016 U.S. Dist. LEXIS 11992, at *3 n.1 (E.D. Pa. Feb. 1, 2016).

In addition to exhibits attached to the complaint, a court also may consider documents that are referred to or incorporated by reference in the complaint and documents that form the basis of a claim – *i.e.*, documents that are integral or explicitly relied upon – so that a plaintiff with a legally deficient claim cannot escape dismissal by failing to attach documents relied upon to the complaint. *New York ex rel. Schneiderman v. Intel Corp.*, 827 F. Supp. 369, 375 (D. Del. 2011); *see also Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2010).

B. Count I (Infringement of U.S. PVP Certificates) Should Be Dismissed

Corteva alleges Inari violated Corteva’s rights under 7 U.S.C. §§ 2402, 2483, 2541(a)(1) and (2) of hundreds of PVP certificates listed in the 77 pages of Exhibit A, by exporting from the United States seeds protected by the listed certificates. (D.I. 19 at ¶ 122).

Corteva alleges that Inari Belgium ordered the seeds from Europe through ATCC’s exclusive European distributor, LGC. (D.I. 19 at ¶ 86). Inari US was not a party to the transaction. Inari Belgium did not have access to the PVP deposits made with the USDA. The seeds Inari Belgium purchased from the ATCC were deposits made by Corteva to obtain patents that meet the requirements of 35 U.S.C. § 112 and subject to 37 C.F.R. § 1.808(a)(2). Corteva authorized the

ATCC to make the deposits available to the public upon patent issuance, without restriction. *Ajinomoto Co. Inc. v. Archer-Daniels-Midland Co.*, 228 F. 3d 1338, 1345-1346 (Fed. Cir. 2000).

The allegations of Count I suggest that the Exhibit A seed deposits are only subject to PVP certificates and were not made to comply with 35 U.S.C. § 112 to obtain patents. Yet each deposit of a seed strain in Exhibit A was made for U.S. utility patent purposes. Deposits made with the ATCC for patent purposes to comply with 35 U.S.C. § 112 must be made available to the public without restriction by the depositor upon the issuance of the patent under 37 C.F.R. § 1.808(a)(2). Under Section 112, assurance of access to the deposit by the public is required in exchange for the patent grant. *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l. Inc.*, 534 U.S. 124, 141 (2001); *In re Lundak*, 773 F.2d 1216, 1221 (Fed. Cir. 1985); *Feldman*, 517 F.2d. at 1354; *Ex parte Hildebrand*, 15 U.S.P.Q.2d 1662.

1. The Supreme Court Has Addressed the More Stringent Disclosure Requirements of Utility Patents as Compared to PVP Certificates and the Availability of Patent Deposits to the Public

In *J.E.M. Ag Supply*, the Supreme Court considered whether utility patents could be issued for plants that also benefited from protection under the PVPA. 534 U.S. at 127. The Court concluded that plants were proper subject matter for utility patents under 35 U.S.C. § 101 and discussed the differences between the PVPA and the utility patent statute. *Id.* The Court noted that it is harder to qualify for a utility patent than for a PVP certificate given that utility patents would confer a greater scope of protection. *Id.* at 142. The greater scope of protection comes at the cost of a more detailed disclosure. The Court emphasized that a key distinction is that a utility patent must describe the plant with sufficient specificity to enable others to make and use the invention and that the description requirement may be met by a deposit of biological material such as seeds. The Court pointed out that the description requirement mandates that such deposited biological material be accessible to the public, citing 37 C.F.R. §§ 1.801-1.809. *Id.* In contrast,

the PVP disclosure is far less extensive than that required by the patent statute and the regulations do not require that the PVP deposit be accessible to the public. *Id.* at 142-43.

2. Corteva Assured the PTO and the Public that Its Patent Deposits Would Be Available to the Public on Patent Issuance

The only example provided in Count I as exemplary of all the listed varieties in Exhibit A, is PVP certificate 200900369, ATCC-PTA-11340. That certificate serves to illustrate the distinction of disclosure requirements between utility patents and PVP certificates. ATCC-PTA-11340 was deposited with the ATCC to meet the enablement requirements in at least ten Corteva patents claiming PTA-11340, the earliest of which, the '167 patent (Scheibeler Decl. Ex. C), issued on December 7, 2010. Having obtained and benefitted from the broader protection of utility patents for each of the varieties in Exhibit A, Corteva cannot undo the *quid pro quo* disclosure requirement for that protection by asserting PVP rights.

Once the first of these patents issued in 2010, all restrictions on the availability of the ATCC deposit were irrevocably removed. 37 C.F.R. § 1.808(a)(2). The '167 patent indeed states that “upon allowance of any claims in the application, the Applicant will make the deposit available to the public pursuant to 37 C.F.R. § 1.808.” (Scheibeler Decl. Ex. C at 43:49-51). On grant of the '167 patent, any member of the public had the right to obtain and export the patented seeds without restriction. Corteva, by making the patent deposits and obtaining utility patents waived any right to assert infringement of a PVP certificate resulting from the purchase and transport of patent deposit seeds. That is true for every PVP certificate covering a patented seed, i.e., all of those in Exhibit A. A claim of infringement under 7 U.S.C. § 2541(a)(1) and (2) cannot be sustained.

3. The Patent and Trademark Office Rejected the Restrictions on Patent Deposits that Corteva Seeks to Impose

The regulations of the Patent and Trademark Office (“PTO”) governing the deposit of biological materials for patent purposes were amended effective January 1, 1990. The notice of final rulemaking for the amendments is found at 54 Fed. Reg. 34864-34883 (August 22, 1989). (Scheibeler Decl. Ex. E). It describes the process followed for the proposed rulemaking and compiles the comments received, the PTO responses, and the changes made in arriving at the final rules 37 C.F.R. §§ 1.801-1.809. Several comments proposed implementing preconditions before making the deposit available. These included: that the requester agrees to use the biological material only for experimental purposes; that the material could not be exported to a country where no relevant patent was granted; that the requester could not make the material or a derivative available to another party; or that the requester agree to comply with the provisions of 35 U.S.C. § 271. The PTO declined to adopt each of these proposals for several practical reasons, but principally because no greater restriction on access to the deposit should be permitted than is permitted on access to the written description itself upon issuance of the patent. *See* 54 Fed. Reg. 34872-34873. Corteva, by asserting infringement of PVP certificates, attempts to invoke the very restrictions on the availability of patent deposits that the PTO considered and rejected as contrary to the enablement and written description requirements of 35 U.S.C. § 112.

4. The Operative 2019 MTA Does Not Trump Applicable Law and Regulations

The July 14, 2019 MTA between the ATCC and Inari Belgium differs critically from the hypothetical 2022 MTA on which Corteva relies (see Section F below). The 2019 MTA specifically acknowledges that Budapest Treaty² patent deposits are made in compliance with the

² The United States is a signatory to the Budapest Treaty, which sets forth the conditions for recognition of deposits for patent purposes and the recognition of deposits at a depositary approved

Treaty and related 37 C.F.R. provisions (i.e., 37 C.F.R. §§ 1.801-1.809), and that in the event of a conflict between the MTA terms and any applicable law or regulation, the terms of the applicable law and the Treaty shall govern (D.I. 19 Ex. C at 3). Thus, by the terms of the 2019 MTA, the 37 C.F.R. provisions trump and void the restrictive use clauses of Inari Belgium's MTA.

Inari Belgium had a legal right to obtain the deposits listed in Exhibit A from the ATCC without restriction. Exporting such a sample of biological material deposited to satisfy 35 U.S.C. § 112 to obtain a patent is not a violation of PVP rights under 7 U.S.C. § 2321 et seq.

Corteva has not plausibly pled violation of 7 U.S.C. § 2321 et seq. because the ATCC deposits for all the varieties listed in Exhibit A were made to meet the enablement requirements for a U.S. patent under 35 U.S.C. § 112. Inari Belgium obtained the deposits legally without restrictions.

C. Count II (Infringement of the '434 Patent Under 35 U.S.C. § 271(a)) Should Be Dismissed

Count II alleges infringement under 35 U.S.C. § 271(a) by the acts of Inari's alleged agent, IE-SCS, in packaging and obtaining the required phytosanitary certificates to export the ATCC PTA-11506 seeds to Belgium. Corteva has not identified the specific claims IE-SCS was alleged to have directly infringed or sufficiently pled acts by IE-SCS that amount to a direct infringement under § 271(a). Obtaining phytosanitary certificates and packaging seeds for shipment are not infringing uses contemplated by § 271(a). The ordinary meaning of "use" as acknowledged by the Federal Circuit is to put into action or service. *NTP, Inc. v. Research In Motion, Ltd.*, 418 F. 3d 1282, 1317 (Fed. Cir. 2005). Packaging seeds and obtaining phytosanitary certificates to ship seeds to Belgium does not amount to putting the invention of the '434 patent into action or service

by the World Intellectual Property Organization. The ATCC is an approved patent depository. A deposit for purposes of a U.S. utility patent in addition to complying with the Budapest Treaty requirements must also meet the separate requirements of 37 C.F.R. §§ 1.801-1.809.

and is not an infringement under § 271(a). *Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011) (to “use” a system for purposes of infringement, a party must put the invention into service, i.e., control the system as a whole and obtain benefit from it.); *see Medical Solutions, Inc. v. C Change Surgical LLC*, 541 F. 3d 1136, 1141 (Fed. Cir. 2008) (display and demonstration of device at trade show did not constitute a “use” of the allegedly infringing product). There is no allegation that IE-SCS put the invention into service, that it controlled the invention or obtained any benefit from it. Corteva has also not plausibly pled that IE-SCS was acting as Inari’s agent (D.I. 19 at ¶ 88), as opposed to performing services offered in its business, as needed to impose vicarious liability on Inari. Corteva has not plausibly pled infringement under § 271(a) and Count II should be dismissed.

D. Count III (Infringement of the ’434 Patent Under 35 U.S.C. § 271(f)(2)) Should Be Dismissed

1. Corteva’s Incorrect Application of Section 271(f)(2) Amounts to a Prohibited Extraterritorial Application of U.S. Patent Law

Corteva alleges that Inari infringed claim 9 of the ’434 patent under 35 U.S.C. § 271(f)(2) by shipping a component (seeds) of a multicomponent patented invention for assembly outside of the United States. Section 271(f)(2) was enacted in response to the decision in *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518 (1972), to protect against the export of an unpatented component of a patented invention with the intention of combining that component with other components in a manner that would infringe the patent if such combination occurred in the U.S. *See Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140, 152 (2017). Section 271(f) is an exception to the rule that U.S. patent law does not apply extraterritorially and should not be given an expansive interpretation. *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 442 (2007). Section 271(f)(2) is directed to supplying a component of a multicomponent invention with the

intent to assemble the multicomponent invention outside the United States. *Life Techs. Corp.*, 580 U.S. at 152.

Count III alleges direct infringement of '434 patent, claim 9, in violation of 35 U.S.C. § 271(f)(2). Claim 9 provides:

9. A corn plant, or part thereof, grown from the seed of claim 8.

Claim 9 is simply not a multicomponent claim. It defines a plant and its inherent parts grown from the seed deposited with the ATCC Accession No. PTA-11506.

As set forth above, ATCC PTA-11506 is a deposit made to comply with 35 U.S.C. § 112. ATCC PTA-11506 is an integral part of the written description of the '434 patent. This is especially so given that ATCC PTA-11506 is the specific subject of claims 5, 6, 8, and 9 of the '434 patent. It is the claimed invention of the '434 patent, not an unpatented component of a multicomponent invention. It is available to the public without restriction as part of the '434 patent written description and its exportation is not an act of infringement.

The ATCC PTA-11506 seed sent to Belgium is not a component of a multicomponent patented invention. Claim 9 does not define any combination of components. Corteva's claim construction (D.I. 19 at ¶ 148) improperly seeks to import water, nutrients, light, air, and physical support as components of the claim. (D.I. 19 at ¶ 151). However, this cannot transform claim 9 into a multicomponent claim because there is no logical or textual context in the claim to support the inclusion of those limitations. Limitations, especially those not described in the specification, cannot be imported into the claim to preserve validity or to find infringement. *See White v. Dunbar*, 119 U.S. 47, 51-52 (1886) (claims not "a nose of wax which may be turned and twisted in any direction"); *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1325 (Fed. Cir. 2003) ("danger of improperly importing a limitation is even greater when the purported limitation

is based upon a term not appearing in the claim”). Count III is an improper attempt at extraterritorial application of U.S. patent law to activities that occurred in Belgium.

In addition, the act that Corteva alleges as infringement is the supplying of seeds from patent deposit ATCC PTA-11506 by export to Inari Belgium. (D.I. 19 at ¶¶ 142-147). Corteva cannot now allege that the export of that patent deposit seed is an infringement by conjuring it up as a component in an allegation of infringement under 35 U.S.C. § 271(f)(2).

Conduct relevant to the statute’s focus on infringement must occur in the United States. 35 U.S.C. § 271; *WesternGeco LLC v. Ion Geophysical Corp.*, 138 S. Ct. 2129, 2136 (2018). The only activity alleged in the FA Complaint that occurred in the United States was phytosanitary certification, packaging and shipping the legitimately obtained patent deposit to Inari Belgium. That activity is permitted as Corteva acknowledged in the ’434 patent. Count III does not allege that Inari made, used, sold or offered to sell the alleged invention of the ’434 patent in the United States. Because the alleged wrongful conduct occurred in another country, Count III involves an impermissible extraterritorial application of U.S. patent law. *Id.* at 2137-38.

E. Count IV (Induced Infringement of the ’434 patent Under 35 U.S.C. § 271(b)) Should Be Dismissed

1. Because the ATCC Did Not Directly Infringe the ’434 Patent, There Can Be No Inducement of Infringement

Corteva alleges that Inari induced infringement of claim 8 of the ’434 patent under 35 U.S.C. § 271(b) by inducing the ATCC to provide DP-004114-3 seeds to it without authorization. (D.I. 19 at ¶ 168).

Liability for inducement of infringement may arise only if there is a direct infringement. *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 341(1961); *Limelight Networks, Inc. v. Akamai Techs.*, 572 U.S. 915, 923 (2014).

Corteva made its deposit ATCC PTA-11506 to comply with 35 U.S.C. § 112 to obtain the '434 patent. (D.I. 19 at ¶ 59; D.I. 19 Ex. B, '434 patent at 6:34-41). When the '434 patent issued on November 5, 2013, the ATCC was required to provide the deposited ATCC PTA-11506 seed to the public under 37 C.F.R. § 1.808(a)(2) without restriction. ATCC was authorized by Corteva to do exactly what it did – sell the seed through LGC to Inari Belgium, consistent with Corteva's expectations. (D.I. 19 at ¶ 59-61). Corteva ratified this arrangement by stating in the '434 patent that the deposit would be available without restriction when the patent was granted (D.I. 19 Ex. B, '434 patent at 6:64-7:6). Furthermore, the MTA between Inari Belgium and the ATCC states that the distribution of patent deposits by the ATCC is governed by the provisions of 37 C.F.R. (i.e., 37 C.F.R. §§ 1.801-1.809) and thus those deposits are distributed without restriction after patent issuance. The ATCC was expressly authorized by Corteva to make the deposited seed available to the public in furtherance of Corteva's obligations and promises to obtain the '434 patent. There was no act of direct infringement.

Because ATCC was authorized by Corteva and legally required to distribute the deposited seed on patent issuance, the ATCC was not a direct infringer of the '434 patent. Under the Section 112 written description and enablement requirements, assurance of access to the deposit by the public is required in exchange for the patent grant. *In re Lundak*, 773 F.2d at 1221; *Feldman*, 517 F.2d at 1354. Since there was no direct infringement by the ATCC, Corteva cannot plausibly plead induced infringement by Inari.

F. Count V (Breach of Material Transfer Agreements Asserted Against Inari Belgium) Should Be Dismissed

Corteva has not plausibly pled that Inari Belgium entered a 2022 MTA with the ATCC identical to the sample currently on ATCC's website or that such 2022 MTA retroactively

supersedes the express language in the operative 2019 MTA. It is the 2019 MTA that covers the purchases alleged in the FA Complaint.

Each of the PVP Certificates listed in Corteva's Exhibit A, has a purchase order date and an approximate date of export of September 8, 2020. The FA Complaint also acknowledges that, by letter of October 12, 2021, Inari informed Corteva that Inari Belgium obtained DP-0041143, ATCC PTA-11506 patent deposit seeds from the ATCC. (D.I. 19 at ¶ 100). There are no allegations in the FA Complaint based on any patent deposit seeds obtained from the ATCC after 2021. The hypothetical 2022 MTA could not possibly cover the prior purchases of patent deposit seeds that form the basis of the allegations in the FA Complaint. The allegedly infringing acts were all subject to the operative 2019 MTA and all occurred before 2022.

The 2019 MTA provides that patent deposits, despite other provisions in the MTA, are governed by the Budapest Treaty and the 37 C.F.R. regulations. The terms of Inari Belgium's 2019 MTA critically differ from the 2022 website form on which Corteva bases its speculative allegations in important ways that defeat Corteva's allegations of breach.

1. Inari Belgium Did Not Breach the MTA

The crux of Corteva's breach of contract claim is that Inari Belgium used the samples it obtained from the ATCC in ways that violated the restrictions in the ATCC MTA. However, Inari Belgium purchased the seeds under an MTA that expressly provides that in the event of any conflict between the terms of the MTA and the provisions of any statute or regulation or the terms of the Budapest Treaty, the latter provisions shall govern. (D.I. 19 Ex. C at 3). And as explained above, under 37 C.F.R. § 1.808(a)(2), once a patent is granted for which an ATCC deposit was made, the patent deposit must be made available to the public without restrictions. The restrictions on patent deposits that Corteva seeks to impose through its reliance on a hypothetical 2022 MTA were expressly rejected by the PTO in promulgating 37 C.F.R. § 1.808(a)(2). Corteva cannot

plausibly plead that Inari Belgium obtained the samples at issue before issuance of any relevant patents. The purported restrictions in the MTAs that Corteva claims Inari Belgium breached are, therefore, of no effect and Corteva's claim for breach of contract cannot be cured and should be dismissed with prejudice.

Corteva has also not plausibly pled that this court has jurisdiction of the breach of contract claim arising from Inari Belgium's MTA with the ATCC. The 2019 MTA provides that all disputes must be raised in the Eastern District of Virginia. (D.I. 19 Ex. C at 3-4). The Counts I-IV infringement claims are separate and factually distinct from the breach of contract claim in Count V and cannot be the basis to defeat the express jurisdictional provision of the 2019 MTA. *See, River Valley Ingredients, LLC v. Am. Proteins, Inc.*, C.A. No. 19-2358-RGA, 2020 WL 2220148 (D. Del. May 7, 2020).

G. Count VI (Violation of Massachusetts General Law Chapter 93A Asserted Against Inari US) Should Be Dismissed

1. Massachusetts Law Does Not Apply

Corteva alleges violation of Chapter 93A of the Massachusetts General Laws by Inari US. This Count, too, is wrongly premised on Inari US violating its contractual obligations under an MTA with ATCC and allegedly engaging in unfair and deceptive acts.

Inari US did not enter an MTA with the ATCC. As a result, Corteva in amending its Complaint dropped Inari US from its Count V breach of MTA allegations. The premise of the allegations of Count VI, a breach of the MTA by Inari US, is not consistent with the facts and the allegations of Count V. Furthermore, as set forth above for Count V, Inari Belgium did not violate any term of its 2019 MTA with ATCC. Corteva cannot plausibly plead that Inari Belgium ordering seeds through LGC in Europe is an act by Inari US occurring in Massachusetts leading to a claim under Mass Gen. Laws ch. 93A. *Monahan Prod. LLC v. Sam's E., Inc.*, 463 F. Supp. 3d 128, 151

(D. Mass. 2020) (“Section 11 of chapter 93A expressly provides that no action may be brought under the statute unless the complained-of conduct occurred primarily and substantially within the Commonwealth.”). Moreover, after issuance of the relevant patents, the public, including Inari, was free to obtain the patent deposit seeds without restriction by operation of 37 C.F.R. § 1.808(a)(2), and the 2019 MTA at issue here expressly provided that in the event of a conflict between the MTA and any treaty, statute or regulation, the latter govern the parties’ relationship. A critical premise of Corteva’s Chapter 93A claim, therefore, fails.

To state a claim under Mass. Gen. Laws ch. 93A, Section 11 Corteva must also plausibly plead *actual* damages resulting from the unfair act. G.L. c. 93A § 11; *Manning v. Zuckerman*, 444 N.E.2d 1262, 1264 (Mass. 1983). Corteva has not pled any actual injury or loss arising from the allegedly unfair conduct. Corteva’s speculative plea that Inari US will in the future attempt to extort a favorable business arrangement with Corteva or pursue intellectual property to exclude Corteva and others does not plausibly plead an unfair act, injury or damages. (D.I. 19 ¶ 190). Failure to plead actual injury independently warrants dismissal of Corteva’s Chapter 93A claim. *Duplessis v. Wells Fargo Bank, Nat’l Ass’n*, 86 N.E.3d 250 (2017) (dismissing Ch. 93A claim for failure to plead actual loss).

Corteva has also not plausibly pled that Inari US’s conduct was unfair or deceptive. In fact, the allegations in the Complaint demonstrate that Inari US was far from unfair or deceptive. (D.I. 19 at ¶¶ 96-102, 104). Inari US approached Corteva to consider collaborating and was upfront about the research and development activities in Belgium using the seed Inari Belgium had obtained legitimately. (D.I. 19 at ¶¶ 96-100, 153). Corteva has not plausibly pled a violation of Mass Gen. Laws ch. 93A, Section 11.

H. Count VII (Conversion) Should Be Dismissed

Conversion is a matter of state law and Corteva has not pled which state law applies. By reference to the allegations in Count VI, if Corteva's conversion claim is based on Massachusetts law, which does not apply here, the claim is subject to dismissal because, to state a claim for conversion under Massachusetts law, a plaintiff must plausibly plead that it had an ownership or possessory interest in the property at the time of the alleged conversion. *Evergreen Marine Corp. v. Six Consignment of Frozen Scallops*, 4 F.3d 90, 95 (1st Cir. 1993); *United States v. Peabody Const. Co., Inc.*, 392 F.Supp.2d 36, 37 (D. Mass. 2005). Here, once the patents for which Corteva deposited the samples with ATCC issued, they were available to the public without restriction.

Corteva's conversion claim is premised on the assumption that Inari's possession and use of the patent deposit seed samples were wrongful because it supposedly violated the restrictions under the MTA. However, there was no MTA between Inari US and the ATCC and any restrictions in the Inari Belgium 2019 MTA would have no effect once the relevant patents issued. At that point, Corteva lost any proprietary or possessory right in the physical seed samples it deposited with the ATCC. Although Corteva may have retained U.S. intellectual property rights in the seeds, that is an issue of U.S. patent or PVP law, and it is not a basis for a conversion claim under state law. *Sourcing Unlimited, Inc. v. Elektrotecks, LLC*, C.A. No. 20-cv-11955-ADB, 2021 U.S. Dist. LEXIS 127532, at *31-32 (D. Mass. July 8, 2021) (Massachusetts law does not recognize a claim for conversion of intangible property) (citing *Blake v. Pro Coin Grading Serv.*, 898 F. Supp. 2d 365, 386 (D. Mass. 2012) ("This Court has consistently held that a plaintiff is not entitled to recover for conversion of intellectual property.")). Corteva's claim under the MTA for conversion fails as a matter of law.

To the extent Corteva claims that it has a proprietary interest in the samples because it owns patent rights covering those samples, Corteva's conversion claim is preempted by federal

patent law. *See, e.g., BASF Agrochemical Prods. v. Unkel*, C.A. No. 05 cv 1478, 2006 WL 3533133, *6-7 (W.D. La. Dec. 7, 2006) (conversion claim preempted by federal patent law where tort claim is based on conduct governed by federal patent law); *Malik v. Lynk, Inc.*, No. Civ. A. 99-2015-KHV, 1999 WL 760217, at *3 (D. Kan. Aug. 18, 1999) (conversion claim based on misuse of intangible property preempted by federal patent law: “Plaintiff does not seek the return of his lost property or damages to compensate him for the loss of his tangible property. Plaintiff instead seeks damages based on lost profits and harm to his business because defendant profited from use of plaintiff’s idea.”); *Home Gambling Network, Inc. v. Piche*, Cv. No. 2:05-610-DAE, 2007 WL 9734421, at *10 (D. Nev. Mar. 30, 2007) (conversion claim preempted by federal patent law where patent infringement claim and conversion claim sought to prevent same alleged misuse of plaintiffs’ patent rights).

Corteva has not plausibly pled a claim for conversion against Inari US and cannot plead one against Inari Belgium.

VI. CONCLUSION

Inari respectfully requests an order dismissing with prejudice each claim against it.

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December 8, 2023

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on December 8, 2023, upon the following in the manner indicated:

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