

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

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SIOUX CITY DIV. OFFICE

BY 

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

PIONEER HI-BRED INTERNATIONAL,
INC.,

Plaintiff,

v.

No. C98-4016DEO

J.E.M. AG SUPPLY, INC. d/b/a
FARM ADVANTAGE, INC.; FARM
ADVANTAGE UNLIMITED CORP.;
FARM ADVANTAGE, INC.; LARRY
BENZ; MERLE PRUETT d/b/a
SIOUXLAND SEEDS, INC.;
SIOUXLAND SEEDS, INC.;
KEVIN WOLFSWINKEL; TIM KAMSTRA;
TOM EISCHEN SEED & CHEMICALS;
and OTTAWA PLANT FOOD, INC.

Defendants.

AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

Plaintiff, Pioneer Hi-Bred International, Inc. (hereinafter
"Pioneer"), for its complaint against Defendants, alleges as
follows:

NATURE OF ACTION, JURISDICTION, VENUE

1. This action is based on patent infringement under 35
U.S.C. § 271. This Court has jurisdiction under 28 U.S.C. §§
1331 and 1338(a) this being an action arising under the patent
laws of the United States.

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2. Venue is proper in this district under 28 U.S.C. § 1400(b) and V.E. Holding Corp. v. Johnson Gas Appliance Co., 917 F.2d 1575 (Fed. Cir. 1990).

THE PARTIES

3. Plaintiff Pioneer is a corporation organized and existing under the laws of the State of Iowa and has its principal place of business in Des Moines, Iowa.

4. Defendants J.E.M. Ag Supply, Inc. and Farm Advantage Unlimited Corporation are corporations organized under the laws of the State of Iowa and doing business as Farm Advantage, Inc. Both Defendants have a registered office and principal place of business in Clarion, Iowa.

5. Defendant Farm Advantage, Inc. is a corporation organized under the laws of the State of Iowa and is now inactive. Defendant Farm Advantage, Inc. continues to operate and has a principal place of business at Clarion, Iowa.

6. Defendant Larry Benz is an individual who is a citizen of Iowa and a resident of Melvin, Iowa.

7. Defendant Merle Pruett is an individual who is a citizen of Iowa, and resides in Cherokee, Iowa. On information and belief, Defendant Pruett is doing business as Siouxland Seeds, Inc., with the principal place of business in Cherokee, Iowa.

8. Defendant Siouxland Seeds, Inc. is a corporation organized under the laws of the State of Iowa and is now

inactive. Defendant Siouxland Seeds, Inc. continues to do business and has a principal place of business in Cherokee, Iowa.

9. Defendant Kevin Wolfswinkel is an individual who is a citizen of Iowa, and a resident of Sibley, Iowa.

10. Defendant Tim Kamstra is an individual who is a citizen of Iowa, and a resident of Sheldon, Iowa.

11. Defendant Tom Eischen Seed & Chemical Sales is an unincorporated organization doing business in Iowa, and has a principal place of business in Algona, Iowa.

11a. Defendant Ottawa Plant Food, Inc. is an Illinois corporation doing business in this district, with a principal place of business in Ottawa, Illinois.

COUNT I: PATENT INFRINGEMENT
35 U.S.C. § 271

12. This action is based on patent infringement and arises under the patent laws of the United States.

13. Pioneer has duly and legally obtained the patents listed below which cover the manufacture, use, sale, and offer for sale of hybrid and inbred corn seed products. A table showing each hybrid, and the patents associated with that specific hybrid, as well as the issue date for each of those patents, is shown:

TABLE OF PATENTS-IN-SUIT

HYBRID	PATENT NO.	ISSUE DATE
3394	Patent 5,491,295	02/13/96
	Patent 5,506,367	04/09/96
	Patent 5,567,861	10/22/96
3489	Patent 5,557,035	09/17/96
	Patent 5,633,427	05/27/97
	Patent 5,444,178	08/22/95
	Patent 5,347,081	09/13/94
3559	Patent 5,453,564	09/26/95
	Patent 5,495,069	02/27/96
	Patent 5,569,822	10/29/96
	Patent 5,534,661	08/09/96
3730	Patent 5,689,036	11/18/97
	Patent 5,545,813	08/13/96
34R06	Patent 5,557,035	09/17/96
	Patent 5,633,427	05/27/97
	Patent 5,444,178	08/22/95
	Patent 5,347,081	09/13/94
35N05	Patent 5,502,272	03/26/96
	Patent 5,463,173	10/31/95
	Patent 5,347,081	09/13/94
34K77	Patent 5,534,661	07/09/96
35R57	Patent 5,689,034	11/18/97
3563	Patent 5,502,272	03/26/96
	Patent 5,463,173	10/31/95
	Patent 5,347,081	09/13/94
3751	Patent 5,082,992	01/21/92

14. Since the issue date of each of the above-referenced patents, Plaintiff Pioneer has been and still is the owner of all

right, title, and interest therein, including the right to sue for infringement for all times material hereto.

15. Plaintiff Pioneer sells products under the aforesaid patents under a limited label license which does not allow for resale, but solely for use "to produce grain and/or forage". No other licenses have been granted to these Defendants.

16. Defendants, none of which are authorized Pioneer Sales Representatives, have for a long-time past been and still are infringing one or more of these letters patent by making, using, selling, or offering for sale corn seed of the above-referenced hybrids in infringement of these patents-in-suit, and will continue to do so unless enjoined by this Court.

17. Plaintiff Pioneer has placed the required statutory notice on all bags and containers of hybrid seeds, identified above, which have been manufactured and sold by Plaintiff Pioneer under said letters patent.

PRAYER

WHEREFORE, Plaintiff demands a preliminary and final injunction against continued infringement, an accounting for damages, and an assessment of interest and costs against Defendants as follows:

A. That Defendants, and any officers, directors, agents, servants, employees, successors, assigns, and all those controlled by them, or in active participation with them, be

temporarily restrained and preliminarily and permanently enjoined from further acts of infringement of the patents-in-suit;

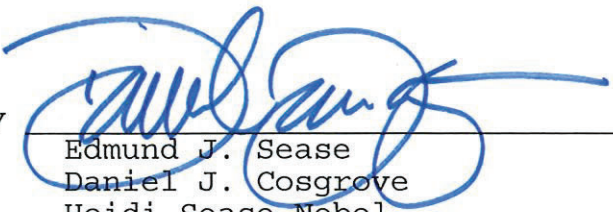
B. That Defendants jointly and severally be required to account for and pay over to Plaintiff all actual damages suffered by Plaintiff and all gains, profits and advantages derived by Defendants from their acts of infringement;

C. That the Court award increased damages to fully compensate Plaintiff, and for the willful and wanton nature of Defendants' aforesaid infringing acts, said award to equal at least three times the amount of Plaintiff's actual damages;

D. That Defendants be ordered to pay pre-judgment interest and costs, and further that Defendants be ordered to pay reasonable attorneys' fees to Plaintiff due to the exceptional nature of this case within the meaning of 35 U.S.C. § 285; and

E. That the Court grant Plaintiff such other further legal and equitable relief as the Court deems just.

PIONEER HI-BRED INTERNATIONAL, INC.

By 

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ATTORNEYS FOR PLAINTIFF

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PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, this 25th day of August, 1998:

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