IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CORTEVA AGRISCIENCE LLC, PIONEER HI-BRED INTERNATIONAL, INC., and AGRIGENETICS, INC.,
Plaintiff,

v.

INARI AGRICULTURE, INC. and INARI AGRICULTURE NV,

Defendant.

C.A. No. 23-1059 (JFM)

CORTEVA'S ANSWERING BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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I. INTRODUCTION

Defendants' core argument—that they may willfully infringe Corteva's IP rights under the Patent Act and the Plant Variety Protection Act ("PVPA"), knowingly breach binding contracts, and violate other applicable laws simply because they obtained Corteva's IP-protected seeds from an accredited seed depository—has no basis in law or logic. No district court or appellate court has ever adopted this extraordinary proposition. This Court should not be the first.

Corteva deposited seeds with ATCC to comply with certain statutory requirements to obtain patent protection. Upon issuance of the relevant patents, the seeds became accessible for public inspection. But the right of the public to inspect does not include or create any right of Defendants to infringe. Yet, this is precisely what Defendants have done here by testing, exporting, copying, modifying, and profiting from Corteva's IP-protected seeds for ***hundreds*** of protected varieties. Defendants' motion now brazenly asks this Court to ignore their unlawful conduct on the theory that they could freely infringe the intellectual property protecting Corteva's seeds after acquiring them from ATCC. Defendants' theory that depositing seeds to obtain patent protection destroys any right to enforce the intellectual property protecting the seeds, including the very patents for which the deposits were made, has no support in any statute, treaty, or case law.

Defendants' very premise would wipe out the ability to obtain enforceable patents and PVP certificates for novel plant varieties, where seed deposit is the norm, and with it any incentive for innovators like Corteva to develop novel varieties in the first place. In short, Defendants' arguments, if accepted, would wreak havoc with well-established principles of intellectual property protection.

While Defendants focus their motion on the insupportable notion that the right to access confers the right to infringe, their other arguments are meritless as addressed separately below. Nothing in their motion warrants the dismissal of any claim at this early stage of the proceedings.

II. NATURE AND STAGE OF PROCEEDINGS

On September 27, 2023, Corteva filed this lawsuit against Defendants for infringement of U.S. Plant Variety Protection Certificates ("PVP certificates"), induced infringement of U.S. Patent No. 8,575,434 (the "'434 patent"), breach of material transfer agreements ("MTAs"), violation of Massachusetts General Law Chapter 93A, and conversion. (D.I. 1.) Defendants moved to dismiss the Complaint on November 6, 2023. (D.I. 16.) On November 27, 2023, Corteva filed its First Amended Complaint which, among other things, added a claim of direct infringement of the '434 patent under 35 U.S.C. § 271(a). (D.I. 19, the "FAC.") On December 8, 2023, Defendants filed a renewed motion to dismiss. (D.I. 21.) Corteva now opposes Defendants' renewed motion.

III. SUMMARY OF ARGUMENT

The lynchpin of Defendants' motion, 37 C.F.R. § 1.808(a)(2) and the Budapest Treaty,[1] requires nothing more than "all restrictions imposed by [Corteva] on the ***availability*** to the public of the [seeds Corteva deposited with ATCC] will be irrevocably removed upon the granting of the patent."[2] 37 C.F.R. § 1.808(a)(2). Consistent with this regulation, Corteva's seeds deposited with ATCC became ***available*** to any member of the public upon issuance of the relevant U.S. patent—that is how Defendants were able to obtain them. But 37 C.F.R. § 1.808(a)(2) does ***not*** permit Defendants to then violate federal and state law and their own contractual obligations ***after*** taking possession of those seeds. At this stage of the proceedings, there can be no dispute that Defendants did just that as alleged in the FAC.

[1] The Budapest Treaty imposes no additional requirements regarding the right to access and inspection beyond those set forth in 37 C.F.R. § 1.808(a)(2). Moreover, use of the Budapest Treaty is optional and many of Corteva's seeds were not deposited under its procedures. Finally, the Budapest Treaty is related only to patents. It has nothing to do with the PVPA, which has its own deposit requirements. *See* 7 C.F.R. § 97.7. Defendant addresses none of these issues.

[2] All emphasis is added unless otherwise indicated.

The facts underlying each of Corteva's claims are alleged in painstaking detail in the FAC, which more than satisfies Corteva's pleading obligations under Rule 8. Despite this, Defendants ask this Court to conclude that the Patent Act, PVPA, and contract law simply do not apply to seeds deposited with ATCC ***even though such a deposit was made for the very purpose of obtaining patent protection***. For obvious reasons, that is not the law. If Defendants' arguments were credited, it would become open season on every patented seed deposit (or indeed, any other patented biological material supported by a deposit) in the country. Any member of the public could acquire those seeds and use them for their own commercial purposes, wiping out any incentive for companies like Corteva to invest the exorbitant amounts of time and money required to develop those seeds in the first place. This meritless argument, which underlies Defendants' entire motion, should be rejected. Defendants' remaining arguments are unavailing or improperly ask the Court to decide factual disputes that are not suitable for resolution on a Rule 12(b)(6) motion.

IV. STATEMENT OF FACTS

Corteva is a leading global agriculture innovator, at the forefront of research and development of novel seeds, including staples such as corn and soybean. (FAC at ¶ 1.) For more than 100 years, the companies that make up Corteva have invested billions of dollars developing genetically modified seed varieties with highly desirable traits, resulting in crops that, *inter alia*, produce greater yields, survive unfavorable weather conditions, and withstand environmental hazards like insects and other pests. (*Id.* at ¶¶ 1, 2, 13.) Corteva depends on its intellectual property rights, including its patents and PVP certificates, to protect these long-standing and substantial research and development investments. (*Id.* at ¶ 2.)

Inari USA and Inari Belgium are run by former executives from some of the largest agricultural companies in the world. (*Id.* at ¶ 3.) They are focused on genetically modifying seeds

and ultimately commercializing seeds containing those modifications. (*Id.* at ¶¶ 3, 14-16.) Defendants do not, however, have their own breeding program to develop their own seeds. (*Id.* at ¶¶ 3, 17.) Instead, Defendants purloin high-quality seeds from other companies. (*Id*. at ¶ 3.)

Defendants misappropriated Corteva's seeds by exporting, misusing, and modifying seed deposits at ATCC for their own commercial purposes—which is prohibited not only by the Patent Act and the PVPA, but by the MTA that Inari Belgium signed to access the seeds. (*Id.* at ¶¶ 95-112.) ATCC is a nonprofit organization that collects, stores, and distributes standard reference microorganisms, cell lines, seeds, and other biological materials for ***research purposes only***. (*Id.* at ¶ 5.) Corteva made seed deposits with ATCC to satisfy the statutory written description and enablement requirements of 35 U.S.C. § 112, which can be met, in the case of a plant-related utility patent, with either a textual description in the patent specification (e.g., providing genetic sequences) or by depositing seeds with a depository. (*Id.*) Until the patent applied for issues, any seeds deposited are unavailable to the public without the patent applicant's consent. (*Id.* at ¶¶ 61, 91.) Once patented, the seeds become available to the public for inspection. (*Id*.) However, the public is prohibited from using the seeds for commercial purposes, from transferring them outside their organization, or from using them in contravention of the depositor's intellectual property rights. (*Id.*) ATCC requires all purchasers to execute an MTA reflecting these prohibitions. (*Id.* at ¶ 63.) Among other things, the purchaser agrees that the purchased seeds will not be used to infringe the depositor's intellectual property rights and will be used for research purposes only—any commercial use of the purchased seeds is expressly prohibited. (*Id.* at ¶¶ 5, 63-84.)

Despite these prohibitions, Defendants—through an elaborate scheme aimed at concealing their actions—obtained Corteva's protected seeds for ***hundreds*** of varieties from ATCC and illegally exported them to Belgium for commercial purposes. (*Id.* at ¶¶ 6, 95-97, 112, 113, 188,

197.) With the help of their U.S. agent IE-SCS, Defendants purchased Corteva's protected seeds from ATCC, used them in the United States at least to test them for bacterial pathogens, exported them in a transparent attempt to avoid the reach of United States intellectual property laws, and genetically modified them abroad—all with the admitted goal to, bring these genetic modifications to market in the United States. (*Id.* at ¶¶ 134-139, 180.)

V. LEGAL STANDARD

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When deciding motions to dismiss under Rule 12(b)(6), a court must accept all factual allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, the Court concludes that those allegations "could not raise a claim of entitlement to relief." *Id*.

VI. ARGUMENT

Congress grants plant breeders multiple ***independent*** forms of intellectual property protection for plant innovation, including utility patents under 35 U.S.C. § 101 and PVP certificates under 7 U.S.C. § 2321 et seq.[3] *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l.*, 534 U.S. 124, 144 (2002). There are differences in the requirements for obtaining, and the protections afforded by, utility patents and PVP certificates. *Id.* at 142. Importantly here, to obtain a utility patent in compliance with 35 U.S.C. § 112, a plant "breeder must describe the plant with sufficient specificity to enable others to 'make and use' the invention after the patent term expires." *Id.* (citations omitted). This requirement may be satisfied by "a deposit of biological material, for

[3] Also included are plant patents under 35 U.S.C. §§ 161-164, which are not at issue in this case.

example, seeds, and mandates that such material be ***accessible*** to the public." *Id.* (citations omitted).

Defendants' motion rests on the false premise that Corteva has made an "improper attempt to restrict availability to patent deposits." (*See, e.g.*, D.I. 22 at 1.) That is untrue. As alleged in the FAC, Corteva's patented seeds were available to and provided to Defendants. (FAC at ¶¶ 86, 162.) Corteva did ***not*** restrict Defendants' right to access its patented seed deposits for a lawful purpose, and this lawsuit is not about Defendants' right to access Corteva's patented seed deposits. Rather, Corteva seeks to enforce the Patent Act, the PVPA, and Defendants' own contractual obligations under the applicable MTAs, each of which impose restrictions on what can be done with the seeds ***after*** Defendants accessed them.

Corteva's seeds were deposited with ATCC to supplement the written description of the inventions disclosed in the specifications of Corteva's patents. As such, the seeds themselves became part of the patent specification. *See Enzo Biochem, Inc. v. Gen-Probe Inc.*, 323 F.3d 956, 965-66 (Fed. Cir. 2002). Like any other part of a patent specification, the public has unfettered ***access*** to the seeds, but does not enjoy unfettered rights to ***use, export, or combine*** the seeds—because the public does not have any right to infringe a patented invention or PVP certificate.

The U.S. Department of Agriculture (the "USDA")—the agency responsible for administering the PVPA and provide guidance to plant breeders—recognizes this important distinction:

> [R]eceipt of a patent deposit material does not imply a right to use that material if it is still covered by a patent in force. Deposits are made available to enable the invention; however, patent law allows patent owners to exclude others from making, using, offering to sell, or selling the claimed invention for a limited term. Deposits accessed from an International Depositary Authority may still be subject to patent restrictions.

Ex. A at 2. Inari Belgium recognized this same distinction when it signed the MTA:

> Use of the Biological Materials may be subject to the intellectual property rights of a person or entity not party to this MTA, the existence of which rights may or may not be identified in the ATCC catalog or website, and ATCC makes no representation or warranty regarding the existence or the validity of such rights. Purchaser shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of the Biological Materials.

(FAC, Ex. C at 2 (the "2019 MTA").)

Indeed, every source that Defendants cite as purportedly supporting their position makes this same distinction. For example, *J.E.M. Ag. Supply* acknowledges that deposited biological material must "be accessible to the public" (D.I. 22 at 8), but it also recognizes that this right to access does not equate to a right to infringe during the term of the patent: "[T]o obtain a utility patent, a breeder must describe the plant with sufficient specificity to enable others to 'make and use' the invention ***after the patent term expires***. The disclosure required by the Patent Act is 'the quid pro quo ***of the right to exclude***.'" *J.E.M. Ag Supply*, 534 U.S. at 142 (quoting *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 484 (1974)). Similarly, while Corteva's patents reference 37 C.F.R. § 1.808 (D.I. 22 at 9, 14-15), they also state that "Applicant(s) do not waive any infringement of their rights granted under this patent or rights applicable to event DP-004114-3 under the Plant Variety Protection Act (7 USC §§ 2321 et seq.)." (*See* FAC, Ex. B (the '434 patent) at 7:2-6; *see also* D.I. 22 at 9; D.I. 23, Ex. C (the '167 patent) at 43:63-67.)

Defendants cite the notice of final rulemaking for 7 C.F.R. §§ 1.801-1.809 at 54 Fed. Reg. 34864-34889 (Aug. 22, 1989), to argue that Corteva seeks to invoke restrictions on the availability of patent deposits that the Patent and Trademark Office ("PTO") considered and rejected. (D.I. 22 at 10 (citing D.I. 23, Ex. E).) But the PTO rejected requiring "an agreement not to infringe a corresponding valid patent" because it was "***something which a requesting party is already bound***

not to do under law." (D.I. 23, Ex. E at 17.) In other words, 37 C.F.R. §§ 1.801-1.809 cannot allow—and does not need to restrict—conduct that the Patent Act already forbids.

Defendants do not provide a single citation supporting their argument that their unrestricted ***access*** to Corteva's patented seed deposits from ATCC somehow equates to an unrestricted right to ***infringe*** Corteva's patents and PVP certificates. Of course, it does not. It is unclear why anyone would ever deposit seeds to comply with the written description and enablement requirements of 35 U.S.C. § 112 for the patents protecting those seeds if, as Defendants suggest, doing so grants the public the unrestricted right to infringe those patents and any PVP certificates for the patented variety. If Defendants were correct, the Patent Act would be self-defeating. The same act performed to obtain patent protection (depositing the seeds) would obliterate any protection under those laws. Thankfully, for the protection of plant breeders everywhere, Defendants are wrong. Although Defendants ***did*** have the right to access and inspect Corteva's deposited seeds, they did ***not*** have a right to use, export, and combine those seeds in contravention of the Patent Act, the PVPA, and Inari Belgium's own contractual obligations under the applicable MTAs.

A. Count I: Infringement of Corteva's PVP Certificates

The PVPA provides that it is infringement of an owner's rights in a protected variety to deliver, ship, cosign, exchange, and/or export a protected variety from the United States without authority. 7 U.S.C. § 2541(a). The 230 seeds listed in Exhibit A are protected varieties as set forth in the listed PVP certificates, and Defendants exported those protected varieties from the United States. (FAC at ¶¶ 121-133.) Defendants suggest they could ignore the PVPA's prohibition on exporting the seeds because this prohibition somehow interferes with their right to access the seeds.

Under Defendants' argument, deposits made to comply with § 112 of the Patent Act would eliminate intellectual property protection for PVP certificates under the PVPA. Defendants' argument fails for several reasons. First, it is tethered to 37 C.F.R. § 1.808, which is a regulation

promulgated by the PTO relating to the Patent Act, not the PVPA (which is administered by the USDA). The right of access under 37 C.F.R. § 1.808 has no relation to—and certainly cannot negate—the PVPA's prohibition on export of protected seeds.

Second, Defendants' argument assumes that PVPA rights are completely negated when seed deposits are made to obtain a U.S. utility patent because the deposits must be accessible to the public after issuance of the relevant patent, thereby enabling Defendants to export seeds protected by PVP certificates out of the U.S.—notwithstanding the prohibition on exportation in the PVPA. Nothing in either the Patent Act or the PVPA supports this conclusion. Quite to the contrary, these statutes and protections are independent and are designed to coexist. "[T]he two statutes establish[] different, but not conflicting schemes." *Bowman v. Monsanto Co.*, 569 U.S. 278, 286 (2013) (citing *J.E.M. Ag Supply*, 534 U.S. at 142). "Indeed, 'when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.'" *J.E.M. Ag Supply*, 534 U.S. at 143 (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). "Certainly the patent policy of encouraging invention is not disturbed by the existence of another form of incentive to invention." *Id.* at 144 (quoting *Kewanee*, 416 U.S. at 484).

Congress granted multiple ***independent*** protections to seeds and plants, e.g., the Patent Act and the PVPA. Corteva is entitled to enforce its rights under both statutes.[4] Through Count I, Corteva seeks to enforce its rights under the PVPA to prevent Defendants from exporting seeds protected by PVP certificates. Corteva's right to prevent unlawful exportation of its PVPA

[4] 7 U.S.C. § 2581 states: "It is the intent of Congress to provide the indicated protection for new varieties by exercise of any constitutional power needed for that end, so as to afford adequate encouragement for research, and for marketing when appropriate, to yield for the public the benefits of new varieties. Constitutional clauses 3 and 8 of article I, section 8 are both relied upon."

protected seeds is critically important to the enforcement of its intellectual property rights, especially those that cover self-replicating technologies such as the seeds that underpin Corteva's FAC. It prevents ***exactly*** what Defendants have done here—they unlawfully exported protected varieties to circumvent the breeder's U.S. intellectual property rights. Indeed, Defendants' twisted interpretation of the PVPA runs counter to its legislative history, which emphasizes the necessity of "***providing protection for those who breed and develop them, thus promoting the growth and well-being of agriculture***." Ex. B at 47.

B. Count II: Infringement of the '434 Patent Under 35 U.S.C. § 271(a)

Corteva alleges that "[t]he '434 patent discloses and claims corn seeds . . . that include plant event DP-004114-3," that "seeds that incorporate the invention . . . [were] deposited with ATCC and given an ATCC accession number: PTA-11506," and that "IE-SCS, as agent of Inari Belgium, used the patented seeds in the United States to conduct, or have conducted, the required testing and inspection to obtain a USDA phytosanitary certificate." (FAC at ¶¶ 135-138; *see also* D.I. 16 at 4 ("[IE-SCS] acted as Inari Belgium's agent to process the seeds for the required USDA phytosanitary certificate.").) Inari contends that "[p]ackaging seeds and obtaining phytosanitary certificates to ship seeds to Belgium . . . is not an infringement under § 271(a)." (D.I. 22 at 11-12.)

Inari is wrong. "In terms of the infringing act of 'use,' courts have interpreted the term 'use' broadly." *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1316 (Fed. Cir. 2005). Testing may be a "use" under § 271(a). *Waymark Corp. v. Porta Sys. Corp.*, 245 F.3d 1364, 1366 (Fed. Cir. 2001) ("This court has established that testing is a use of the invention that may infringe under § 271(a).") (citing *Roche Prods. v. Bolar Pharm. Co.*, 733 F.2d 858, 863 (Fed. Cir. 1984), *superseded-in-part by* 35 U.S.C. § 271(e)); *see also Lubrizol Specialty Prods., Inc. v. Flowchem LLC*, 165 F. Supp. 3d 534, 539 (S.D. Tex. 2016) (testing in the United States is adequate to state a claim of direct infringement under § 271(a)); *Amgen, Inc. v. Elanex Pharms., Inc.*, No. C93-

1483D, 1996 WL 84590, at *3-5 (W.D. Wash. Feb. 6, 1996) (testing a patented cell line is infringement under § 271(a)). Even if the testing occurs infrequently, or only once, "there is [] no de minimis exception to infringement." *AOS Holding Co. v. Bradford White Corp.*, No. 18-412-LPS, 2021 WL 5411103, at *30 (D. Del. Mar. 31, 2021). Corteva has alleged that Defendants (through their agent) performed one or more laboratory tests on Corteva's patented seeds in the United States to obtain a phytosanitary certificate. (FAC at ¶ 138.) This constitutes infringement under § 271(a).

The cases on which Defendants rely do not suggest otherwise. (D.I. 22 at 11-12.) These cases discuss "use" of a "system claim" where the use of elements of the claimed system is performed both inside and outside the United States (*NTP*) or by more than one actor (*Centillion*). *NTP, Inc.*, 418 F.3d at 1316-17; *Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1283-84 (Fed. Cir. 2011). None of Corteva's asserted claims is a system claim and, as alleged, Defendants' infringing use was performed in the United States by Defendants' agent. Moreover, Defendants' reliance on *Med. Sols., Inc. v. C Change Surgical LLC*, 541 F3d. 1136 (Fed. Cir. 2008) is inapposite. Corteva does not allege that Defendants directly infringed its patent by displaying or demonstrating the device at a trade show. Instead, Defendants directly infringed the '434 patent by conducting laboratory testing of Corteva's protected seeds for a bacterial pathogen in the United States—a prohibited "use" under section § 271(a).

C. Count III: Infringement of the '434 Patent Under 35 U.S.C. § 271(f)(2)

Section 271(f) "expands the definition of infringement to include supplying from the United States a patented invention's components." *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 444-45 (2007). It contains two provisions, § 271(f)(1) and § 271(f)(2), that work in tandem by addressing different scenarios. *WesternGeco LLC v. ION Geophysical Corp.*, 138 S.Ct. 2129, 2134 (2018) (citing *Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140, 150 (2017)). "Section 271(f)(2),

the provision at issue here, addresses the act of exporting components that are specifically adapted for an invention." *Id*. at 2135.

To be clear, Corteva does not allege in Count III that Defendants infringed the '434 patent by exporting seeds alone. Rather, Corteva alleges that Defendants infringed the '434 patent under § 271(f)(2) because they intended to, and did, "combine[] the exported seed or cells or tissue therefrom with, *inter alia*, sufficient water, nutrients, light, air, and physical support to obtain a 'plant.'" (FAC at ¶ 151.) Consistent with Congress's intent, Corteva relies on § 271(f)(2) "to fill a gap in the enforceability of patent rights by reaching components that are manufactured in the United States but assembled overseas." *Life Techs. Corp.*, 580 U.S. at 141 (citing *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518 (1972)).

Defendants argue that the seeds deposited as PTA-11506 are not an unpatented component of a multicomponent invention because (1) the seed itself is the claimed invention and (2) claim 9 is not a multicomponent claim. (D.I. 22 at 12-13.) Defendants are wrong on both points.

First, the seeds deposited as PTA-11506 are not the claimed invention of claim 9. Claim 9 recites: "A corn plant, or part thereof, grown from the seed of claim 8." (FAC, Ex. B (the '434 patent) at claim 9.) "[E]ach claim of a patent defines a separate invention."[5] *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 258 F. Supp. 2d 355, 360 n.2 (D. Del. 2003) (citations omitted). The seed of claim 8 (PTA-11506) is a component of the corn plant of claim 9. (FAC at ¶¶ 141, 148.) Moreover, it is not until the "DNA construct, DP-004114-3 corn event, and/or seed is combined with at least

[5] This is in contrast to plant patents under the Plant Patent Act ("PPA") which can only have one claim and the claim must be to the plant itself. 35 USC § 162; 37 CFR § 1.164. But even in the PPA, Congress recognized that a plant may have multiple parts: "In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, ***or any of its parts***, throughout the United States, or from importing the plant so reproduced, or ***any parts thereof***, into the United States." 35 U.S.C. § 163.

water, nutrients, light air, and physical support" that a plant will grow. (*Id.* at ¶ 148); *see Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc.*, No. 95 CIV 8833, 2001 WL 1263299, at *2-3 (S.D.N.Y. Oct. 19, 2001) (a molecule consists of components for purposes of § 271(f)(2)). A component for purposes of § 271(f) will vary by industry and requires a factual analysis from the perspective of one skilled in the relevant art. *See Bristol-Myers Squibb Co.*, 2001 WL 1263299, at *3 ("applying the term 'component' from the viewpoint of a hypothetical person of ordinary skill in the art of organic chemistry"). "Nowhere in the statute or its legislative history is there a limitation to components of machines and other structural combinations." *W.R. Grace & Co.-Conn. v. Intercat, Inc.*, 60 F.Supp.2d 316, 319-21 (D. Del. 1999) (sales of a chemical catalyst mixture of components violated Section 271(f)); *Lubrizol Corp. v. Exxon Corp.*, 696 F. Supp. 302, 325 (N.D. Ohio 1988) (shipments of certain compositions from the U.S. violated Section 271(f)). The finding Inari asks the Court to make is a quintessential factual determination inappropriate for resolution on a motion to dismiss.

Second, claim 9 should be construed as a multicomponent claim. While Defendants argue that Corteva "improperly seeks to import water, nutrients, light, air, and physical support as components of the claim," (D.I. 22 at 13), it appears that Defendants are confusing a "component" for purposes of section 271(f)(2) with an express limitation of a claim. The text of section 271(f)(2) does not speak to exporting recited claim "limitations," but rather refers to "any ***component*** of a patented invention . . . intending that such ***component*** will be combined outside of the United States." 35 U.S.C. § 271(f)(2). And the statute expressly premises infringement on export of a single ***component***. *See Life Techs. Corp.*, 580 U.S. at 150. Defendants' argument contradicts the plain language of the statute.

Moreover, as discussed above, claim 9 does recite the seed as a component, requiring the plant be "grown from the seed of claim 8." (FAC, Ex. B (the '434 patent) at claim 9.) And the seed of claim 8 is itself comprised of components: "A seed comprising corn event DP-004114-3, wherein said seed comprises the DNA construct of claim 1 . . . ." (FAC, Ex. B (the '434 patent) at claim 8.) In *Microsoft*, the Supreme Court relied on a dictionary definition of the term "component," noting that "'[c]omponent' is commonly defined as 'a constituent part,' 'element,' or 'ingredient.'" 550 U.S. at 449, n. 11 (citing Webster's 3rd New Int'l Dict. of the English Language 466 (1981)). The seed, DNA construct, and DP-004114-3 corn event are all physical and tangible ingredients—or components—used to grow the plant in claim 9. *Microsoft* also considered that software in a disk, similar to DNA in a seed, would be a combinable component that if exported could be used to make infringing devices in violation of section 271(f). *Id.* at 449-53.

Corteva's allegations are more than sufficient to plausibly state a claim for relief under section 271(f)(2). *See Janssen Biotech, Inc. v. Celltrion Healthcare Co.*, No. 17-11008-MLW, 2018 WL 10910774, at *1 (D. Mass. Feb. 20, 2018) (denying motion to dismiss infringement claim under section 271(f) after accepting the allegations in the complaint as true and drawing all reasonable inferences in favor of plaintiffs). To the extent that Defendants contend that claim 9 should not be construed as a multicomponent claim, that is a claim construction issue which should not be decided on a pre-trial motion to dismiss. *See, e.g.*, *In re Bill of Lading Transmission & Processing Sys. Patent Litig. v. Drivertech LLC*, 681 F.3d 1323, 1343, n.13 (Fed. Cir. 2012) (claim construction should not be decided at the Rule 12(b)(6) stage).

D. Count IV: Induced Infringement Under 35 U.S.C. § 271(b)

"For an allegation of induced infringement to survive a motion to dismiss, a complaint must plead facts plausibly showing that the accused infringer 'specifically intended [another party]

to infringe [the patent] and knew that the [other party]'s acts constituted infringement.'" *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d 1372, 1379 (Fed. Cir. 2017) (alterations in original) (quoting *Bill of Lading*, 681 F.3d at 1339). The FAC alleges that Defendants induced ATCC to sell Corteva's patented seeds deposited as PTA-11506 to Defendants for commercial purposes—an act of direct infringement—with knowledge of the '434 patent and knowledge that no commercial use of the patented seeds was permitted. (FAC at ¶¶ 164-170.)

Defendants argue that there can be no induced infringement of the '434 patent because there was no act of direct infringement. According to Defendants, ATCC's sale of Corteva's patented seeds to Defendants was not an act of direct infringement because ATCC was required to provide the deposited seeds to the public under 37 C.F.R. § 1.808 without restriction. Defendants ignore the allegations of the FAC. The FAC alleges that ATCC had no authorization or right to sell or transfer Corteva's patented seeds to Inari ***for commercial use and without notification to Corteva***.[6] (FAC at ¶¶ 68-84, 160-170.) The 2019 MTA states that "Any Commercial Use of the Biological Material is strictly prohibited without ATCC's prior written consent." (*Id.* at ¶ 70 (citing Ex. C at 2).) The prohibited "Commercial Uses" include, *inter alia*, "the sale, license, lease, export, transfer or other distribution of the Biological Materials to a person or entity not party to this MTA for financial gain or other commercial purposes." *(Id*.) The 2022 MTA also prohibits Inari Belgium from using seeds acquired from ATCC for commercial purposes. (*Id.* at ¶¶ 78-84.) Defendants induced ATCC to transfer Corteva's patented seeds to Defendants for commercial exploitation—which is outside of ATCC's authority—thereby creating an act of direct infringement when ATCC sold Corteva's patented seeds.

[6] Nothing in the MTA or Corteva's patents suggests otherwise. (*See* Section E (Count V).)

Inari relies on 37 C.F.R § 1.808(a)(2), but this provision itself limits ATCC's authorization to distribute Corteva's seeds "***[s]ubject to paragraph (b) of this section***." Paragraph (b) provides that "[t]he depositor may contract with the depository to require that samples of a deposited biological material shall be furnished ***only if*** a request for a sample . . . ***[i]s communicated in writing by the depository to the depositor*** along with the date on which the sample was furnished and the name and address of the party to whom the sample was furnished." 37 C.F.R § 1.808(b). Defendants' request was ***not communicated*** to Corteva as required. (*See e.g.*, FAC at ¶¶ 86, 105-112.) ATCC was not authorized to sell Corteva's seeds to Inari absent notice—let alone for commercial use and in contravention of the Patent Act, the PVPA, and its own MTAs. An unauthorized sale is an act of direct infringement. *See Apple Inc. v. Wi-Lan Inc.*, 25 F.4th 960, 974-975 (Fed. Cir. 2022) (reversing summary judgement of noninfringement for sales made outside of the limited license).

E. Count V: Breach of Material Transfer Agreements

The FAC pleads the following facts: (1) Inari Belgium is a party to the 2019 MTA and 2022 MTA; (2) both contracts contain clauses expressly prohibiting any "commercial use" of the seeds Inari obtained from ATCC; (3) Inari Belgium has, in fact, used the seeds obtained from ATCC for commercial purposes; and (4) Corteva, as a third-party beneficiary, may enforce the terms of the MTAs. (*See* FAC at ¶¶ 66, 69-70, 76, 78-79, 94, 172-183.) Inari Belgium's ***only*** substantive argument is that the commercial use restriction in the 2019 MTA—not the 2022 MTA—was purportedly "void" from the moment the contract was signed because, in Inari's view, such a restriction violates 37 C.F.R. § 1.808(a)(2). (D.I. 22 at 11.)

The 2022 MTA expressly "supersedes all previous agreements" relating to the material Inari Belgium purchased from ATCC and thus governs this claim. (FAC at ¶ 77.) But it does not matter which of the two contracts applies because they ***both*** prohibit Inari Belgium's commercial

use of Corteva's seeds. (FAC at ¶¶ 69-70; 78-79.) To the extent Inari Belgium claims the 2022 MTA was *not* intended to supersede the 2019 MTA in certain respects relevant to this breach of contract claim, that presents a question of fact that cannot be resolved at this stage. *See, e.g., John F. Harkins Co., Inc. v. Waldinger Corp.*, 796 F.2d 657, 659-60 (3d Cir. 1986).

Even if the 2019 MTA governs, 37 C.F.R. § 1.808(a)(2) does not nullify the commercial use restriction. Such a conclusion would violate basic principles of contract interpretation. *See, e.g.*, *Citisteel USA, Inc. v. Gen. Elec. Co.*, 78 Fed. Appx. 832, 837 (3d Cir. 2003) ("Courts must strive to give effect to all provisions of a contract and not render any provision meaningless."). 37 C.F.R. § 1.808(a)(2) states that the public needs to have "access" to the seeds and the "depositor" cannot impose "restrictions" on their "availability." The commercial use restrictions in the MTAs are not restrictions on "availability" as noted *supra*, but they also are not restrictions imposed "by the depositor." The MTAs were signed by ATCC and Inari Belgium, meaning any restrictions contained in the MTAs ***were imposed by Inari Belgium on itself***. Inari Belgium cites no authority suggesting that 37 C.F.R. § 1.808(a)(2) relieves it from its own contractual obligations.

Moreover, Inari Belgium's position that 37 C.F.R. § 1.808(a)(2) "trump[s] and void[s] the restrictive clauses of Inari Belgium's MTA" makes no sense. (D.I. 22 at 11.) Inari Belgium is arguing that it and ATCC, both sophisticated parties who certainly were aware of the federal regulations governing seed deposits, never intended for the commercial use restrictions in the MTAs to have any meaning because, according to Inari Belgium, those terms were "void" from the moment the MTAs were signed. (*Id.*) But if that were true, why sign the MTAs in the first place? It cannot possibly be correct that the signatories to the MTAs intended for those agreements

to be meaningless.[7] *See, e.g.*, *Baldwin v. Univ. of Pittsburgh Med. Ctr.*, 636 F.3d 69, 75 (3d Cir. 2011) ("The paramount goal of contract interpretation is to determine the intent of the parties") (quotation omitted). At minimum, Corteva's claim is adequately pleaded, and it is entitled to discovery on the signatories' intent before Inari Belgium's tortured interpretation is accepted. *See, e.g., Universal Am. Corp. v. Partners Healthcare Sols. Holdings, L.P.,* 61 F. Supp. 3d 391, 400 (D. Del. 2014) ("[Q]uestions involv[ing] disputed issues of fact and contract interpretation [are] not suitable to resolution on a motion to dismiss.").

Lastly, Inari Belgium claims this Court lacks subject matter jurisdiction over this claim because the 2019 MTA contains a forum selection clause requiring disputes to be raised in the Eastern District of Virginia. (D.I. 22 at 17.) But "[a] contractual forum selection clause does not deprive the Court of subject matter jurisdiction." *Verance Corp. v. Digimarc Corp.*, No. 10-831, 2011 WL 2182119, *2 (D. Del. June 2, 2011). Instead, the correct vehicle for enforcing a forum selection clause is a motion to transfer, which Inari Belgium ***has not filed***. *See Atlantic Marine Constr. Co., Inc. v. U.S. Dist. Court for Western Dist. Of Texas*, 571 U.S. 49, 52 (2013). But even if Inari were to bring such a motion, no transfer would be warranted here. *Atlantic Marine* recognized that a forum selection clause need not be enforced when there are "extraordinary circumstances unrelated to the convenience of the parties." *Id*. at 52. Such "extraordinary circumstances" exist where, like here, enforcing an arbitration clause "would inefficiently result in fragmentation of the litigation." *See Mikkilineni v. Paypal Inc.*, No. 19-1391-CFC-SRF, 2020 WL 434330, *4 (D. Del. 2020). ***All*** of Corteva's claims arise from the same nucleus of operative

[7] Inari Belgium's argument, if accepted, would suggest that *every* MTA the ATCC has signed with *any* party involving a patented deposit is rendered void by 37 C.F.R. § 1.808(a)(2).

facts and transferring just one of those claims to the Eastern District of Virginia would result in a wholly avoidable waste of judicial resources.

F. Count VI: Violation of Massachusetts General Law Chapter 93A

Inari USA violated Chapter 93A by "misappropriating [Corteva]'s protected seeds for [their] own financial gain." (FAC at ¶ 187.) Inari USA carried out this scheme by disregarding Inari Belgium's known contractual commitment not to allow Corteva's seeds to be used for commercial purposes (*id.* at ¶¶ 66, 69-70, 76, 78-79, 94),[8] concealing its actions from Corteva (*id.* at ¶¶ 187, 188), pressuring Corteva to agree to an abusive *quid pro quo* "under which Inari offered to not sell corn seeds containing . . . two proprietary events that Corteva had developed only if Corteva would provide Inari financial incentive in the form of an agreement to use Inari's soybean products" (*id*. at ¶ 187), and pursuing intellectual property rights to exclude Corteva based on activities accomplished through Inari USA's false and deceptive practices (*id.* at ¶ 190).

Corteva pleads that "the actions and transactions constituting [Inari USA's] unfair business practices occurred primarily or substantially within Massachusetts." (FAC at ¶ 192.) This is true because Inari USA maintains its principal place of business in Cambridge, MA, meaning its senior leadership was located in Massachusetts when this scheme was formed. (*Id*.) Further, Inari USA directed ATCC to ship the protected seeds to Massachusetts (*id.* at ¶¶ 109-112), so that their Massachusetts-based agent could take the necessary actions to export the seeds to Belgium (*id.* at ¶ 92). To the extent Inari USA believes these allegations are insufficient to establish that their unlawful conduct occurred primarily in Massachusetts, that presents a factual dispute.

[8] "Conduct in disregard of known contractual arrangements" is an independently sufficient predicate for a claim under Chapter 93A, even when the party interfering with the contract is not a party to the contract. *See, e.g., Wang Labs., Inc. v. Bus. Incentives, Inc.*, 398 Mass. 854, 869 (Mass. Sup. Ct. 1986).

Additionally, contrary to Inari USA's assertions, a Chapter 93A claim does ***not*** require proof of actual damages where, as here, injunctive relief is sought. *Single Gourmet, Inc. v. Burgos*, No. 20031223C, 2005 WL 1477723, *2 (Mass. Sup. Ct. 2005) (Section 11 of Chapter 93A "authorizes SGI to seek injunctive relief, as it successfully did here, even if it had not suffered any loss of money or property"). In any event, Corteva ***does*** allege that it has been damaged, and will continue to be damaged, because Inari USA is pursuing intellectual property rights that "would not be possible but for Inari USA's false and deceptive practices." (FAC at ¶¶ 190-91.)

G. Count VII: Conversion

Defendants argue that Corteva cannot maintain a claim for conversion of "intangible" property under Massachusetts law and that such a claim would be preempted by federal patent law. (*See* D.I. 22 at 19-20.) But this claim has nothing to do with conversion of intangible property. This claim is based on Defendants' conversion of Corteva's ***physical seed samples*** and thus can be asserted independently of federal patent claims. (FAC at ¶¶ 195-199.)

With respect to Corteva's physical seed samples, Defendants argue that "Corteva lost any proprietary or possessory right in the physical seed samples it deposited with the ATCC" when the applicable patents issued. (D.I. 22 at 19.) But this argument simply ignores Corteva's well-pleaded allegations that it "retained ownership and possessory interests in the protected seeds that had been deposited with ATCC." (FAC at ¶ 195.) It also ignores language in the 2019 and 2022 MTA's recognizing that "**ATCC and/or its Contributors shall retain ownership of all right, title and interest in the ATCC Materials**." (*Id.*) With all reasonable inferences drawn in Corteva's favor, Defendants fail to demonstrate any basis for dismissal.

VII. CONCLUSION

For all the foregoing reasons, Corteva respectfully submits that Defendants' motion to dismiss should be denied.

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