

**United States Court of Appeals
for the Federal Circuit**

SYNGENTA CROP PROTECTION, LLC,
Plaintiff-Appellant

v.

**WILLOWOOD, LLC, WILLOWOOD USA, LLC,
WILLOWOOD AZOXYSTROBIN, LLC, WILLOWOOD
LIMITED,**
Defendants-Cross-Appellants

2018-1614, 2018-2044

Appeals from the United States District Court for the Middle District of North Carolina in No. 1:15-cv-00274-CCE-JEP, Judge Catherine C. Eagles.

Decided: December 18, 2019

RUSSELL EVAN LEVINE, Kirkland & Ellis LLP, Chicago, IL, argued for plaintiff-appellant. Also represented by HARI SANTHANAM, MEREDITH ZINANNI.

STEVEN EDWARD TILLER, Whiteford, Taylor & Preston LLP, Baltimore, MD, argued for defendants-cross-appellants. Also represented by PETER JAMES DAVIS; BARRY S. NEUMAN, Washington, DC; ALAN DUNCAN, LESLIE COOPER HARRELL, Mullins Duncan Harrell & Russell PLLC, Greensboro, NC.

MEGAN BARBERO, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for amicus curiae United States. Also represented by MARK R. FREEMAN, JOSEPH H. HUNT; MATTHEW G.T. MARTIN, The United States Attorney's Office, Middle District of North Carolina, United States Department of Justice, Greensboro, NC.

MELVIN C. GARNER, Leason Ellis LLP, White Plains, NY, for amicus curiae New York Intellectual Property Law Association. Also represented by LAUREN BETH EMERSON, ROBERT M. ISACKSON, MARTIN SCHWIMMER.

JAMES PETER RATHVON, Paley Rothman, Bethesda, MD, for amici curiae Aceto Agricultural Chemicals Corp., Aceto Corporation, AgLogic Chemical, LLC, Agro-Gor Corp., Albaugh, LLC, Argite, LLC, Atticus, LLC, Axss Technical Holdings, LLC, Chemstarr, LLC, Consus Chemicals, Inc., Decco US Post-Harvest, Inc., Drexel Chemical Company, Ensystex, Inc., Ensystex II, Inc., Ensystex III, Inc., Ensystex IV, Inc., Extremis, LLC, GeneraTec, LLC, Gharda Chemicals International, Inc., Helm Agro US, Inc., LG Chem, Ltd., MEY Corporation, PBI Gordon Corp., Promika, LLC, Raymat Crop Science, Inc., Raymat Materials, Inc., RedEagle International, LLC, RiceCo, LLC, Rotam Agrochemical Company, Ltd., Rotam Ltd., Rotam North America Inc., Sharda CropChem Ltd., Sharda USA, LLC, Summit Agro US, LLC, Summit Agro North America Holding Corporation, Tacoma AG, LLC, Tide International USA, Inc., Troy Corporation, United Phosphorus, Inc., UPL Delaware Inc., Woodstream Corporation.

JEFFREY PAUL KUSHAN, Sidley Austin LLP, for amici curiae Biotechnology Innovation Organization, CropLife International. Also represented by KATHI A. COVER, iBiquity Digital Corporation, Columbia, MD.

Before REYNA, TARANTO, and STOLL, *Circuit Judges*.

REYNA, *Circuit Judge*.

Syngenta Crop Protection, LLC, sued Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited in the U.S. District Court for the Middle District of North Carolina for copyright infringement and patent infringement, asserting four patents directed to a fungicide compound and its manufacturing processes. Prior to trial, the district court dismissed the copyright infringement claims, determining them to be precluded by the Federal Insecticide Fungicide and Rodenticide Act. The district court granted-in-part and denied-in-part Syngenta Crop Protection, LLC's summary judgment motion with respect to patent infringement. The district court also denied-in-part the defendants' motion to exclude expert testimony on damages.

After a jury trial, the district court entered judgment in favor of Willowood Limited on all patent infringement claims; in favor of all defendants on infringement of one patent at issue; and against Willowood, LLC, and Willowood USA, LLC, on infringement of the remaining three patents. The district court denied Syngenta Crop Protection, LLC's motions for judgment as a matter of law. Syngenta Crop Protection, LLC, appeals the district court's denials of its motions for judgment as a matter of law and its final judgment. Defendants conditionally cross-appeal the district court's partial denial of their motion to exclude expert testimony on damages. For the reasons explained below, we affirm-in-part, reverse-in-part, vacate-in-part, and remand for further proceedings consistent with this opinion.

BACKGROUND

I. The Asserted Patents

Syngenta Crop Protection, LLC, ("Syngenta") is the assignee of U.S. Patent Nos. 5,602,076 ("the '076 patent"),

5,633,256 (“the ’256 patent”), 5,847,138 (“the ’138 patent”), and 8,124,761 (“the ’761 patent”). The ’076 patent is entitled “Certain Fungicides, Pesticides and Plant Growth Regulators.” The ’256 patent is entitled “Certain Pyrimidinylloxy-phenyl Acrylates, Derivatives Thereof and Their Fungicidal Use.” The ’076 and ’256 patents (collectively, “the Compound Patents”) expired on February 11, 2014. The Compound Patents are directed to a group of chemical compounds, including azoxystrobin, a fungicide commonly used in agriculture to control fungal growth on crops. J.A. 7; Appellant’s Br. 9.

The ’138 patent is entitled “Chemical Process” and expired on December 8, 2015. The ’138 patent is directed to a two-step process for manufacturing azoxystrobin that includes an etherification step followed by a condensation step. Appellant’s Br. 12; J.A. 6672. The etherification step produces an intermediate compound that is then used in the condensation step to produce azoxystrobin. J.A. 6672.

The ’761 patent is entitled “Processes for the Preparation of Azoxystrobin Using DABCO as a Catalyst and Novel Intermediates Used in the Processes” and does not expire until April 15, 2029. The ’761 patent is directed to a process of using the chemical catalyst 1,4-diazabicyclo[2.2.2]octane (“DABCO”) during the condensation step to manufacture azoxystrobin. ’761 patent col. 1 ll. 20–25; J.A. 6682–83. Each claim of the ’761 patent requires at least “the presence of between 0.1 and 2 mol % of [DABCO].” ’761 patent col. 20 ll. 1–2, 25–26.

II. The Asserted Copyrights

Syngenta uses azoxystrobin as an active ingredient in formulating its fungicide end-use products. Appellant’s Br. 7. Syngenta markets and sells these end-use products under several brand names, including QUADRIS® and QUILT XCEL®. *Id.* Both products are sold with detailed labels that provide directions for use, storage, and disposal, as well as first-aid instructions and environmental,

physical, and chemical hazard warnings. *Id.* at 19. The QUADRIS® label comprises fifty-four pages of small-type text and charts. J.A. 276; 424–77. The QUILT XCEL® label comprises twenty-nine pages of small-type text and charts. J.A. 276; 481–509. Syngenta registered these two labels with the U.S. Copyright Office on March 25, 2015. Appellant’s Br. 19; J.A. 276–77, 479.

III. District Court Proceedings

On March 27, 2015, Syngenta brought suit against Willowood, LLC (“Willowood LLC”), Willowood USA, LLC (“Willowood USA”), and Willowood Limited (“Willowood China”) (collectively, “Willowood”)¹ for patent and copyright infringement. Willowood China is a Hong Kong company that contracts for the manufacture of azoxystrobin in China and sells the fungicide to Willowood USA, its Oregon-based affiliate. Willowood USA and Willowood LLC contract with third parties to formulate azoxystrobin into Willowood’s generic end-use fungicide products, and market and sell azoxystrobin and those end-use products in the United States. Shortly before the expiration of the Compound Patents, Willowood filed applications with the Environmental Protection Agency (“EPA”) to register its Azoxy 2SC and AzoxyProp Xtra generic products, which correspond in composition and labeling to Syngenta’s QUADRIS® and QUILT XCEL® fungicides, respectively. J.A. 278, 714; Appellant’s Br. 19.

Syngenta asserted in its suit that Willowood’s Azoxy 2SC and AzoxyProp Xtra products infringed claims 1–4 and 12–14 of the ’076 patent, claims 1–3, 5, and 7 of the ’256 patent, claims 6 and 12–14 of the ’138 patent, and claims 1, 3–5, and 9–10 of the ’761 patent. J.A. 1617–

¹ Syngenta also sued Willowood Azoxystrobin, LLC, but does not appeal the district court’s rulings concerning this entity. Appellant’s Br. 6 n.1.

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