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U.S. DIST. COURT
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SIGN
RICHARD T. MARTIN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

BAYER AG, Plaintiff, vs. NOVARTIS CROP PROTECTION, INC., NOVARTIS CROP PROTECTION AG, and NOVARTIS AG, Defendants.	§ § § § § § § § § § §	Civil Action No. 98-996-C-2 (Jury Demanded)

COMPLAINT AND JURY DEMAND

Plaintiff, Bayer AG ("Bayer"), for its complaint against Defendants, alleges as follows:

PARTIES

1. Plaintiff, Bayer AG is a German corporation, having its principal place of business in Leverkeusen, Germany.

2. Defendant, Novartis Crop Protection, Inc., is a corporation organized under the laws of Delaware, having its principal place of business at Greensboro, North Carolina and/or St. Gabriel, Louisiana, and being registered to do business in the state of Louisiana.

3. Defendant, Novartis Crop Protection AG is a Swiss corporation, having its principal place of business in Basel, Switzerland.

4. Defendant, Novartis AG is a Swiss corporation, having its principal place of business in Basel, Switzerland.

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c: SF, Waiver

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35, United States Code, and more particularly under 35 U.S.C. §§ 100 et seq.

6. Jurisdiction of this cause is conferred on this Court by Title 28, U.S.C. § 1338(a).

7. Venue is proper in this Judicial District under 28 U.S.C. § 1400(b) in that Defendants reside in this Judicial District, and in that Defendants have committed acts of infringement and have a regular and established place of business in this Judicial District.

8. This Court has personal jurisdiction over Defendant Novartis Crop Protection, Inc.

9. This Court has personal jurisdiction over Defendants Novartis Crop Protection AG and Novartis AG pursuant to La. R.S. 13:3201.

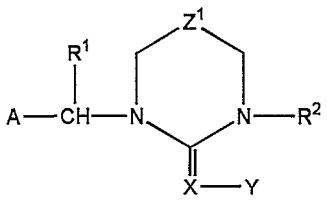
ALLEGATIONS COMMON TO ALL COUNTS

10. United States Letters Patent No. 5,719,146 was duly and legally issued on February 17, 1998.

11. Nihon Bayer Agrochem K.K. is the owner of the entire right, title and interest in and to United States Letters Patent No. 5,719,146 by virtue of an assignment dated February 27, 1990 and recorded at the U.S. Patent and Trademark Office on March 1, 1990 at reel 5246, frame 105, and on July 3, 1991 at reel 5758, frames 464-72.

12. Plaintiff is the exclusive licensee of all rights under United States Letters Patent No. 5,719,146 for all purposes, including the right to sue and recover for past, present and future infringement thereof, by virtue of an Exclusive License Agreement effective as of November 20, 1998.

13. Claim 1 of United States Letters Patent No. 5,719,146 recites "A heterocyclic compound of the formula:



wherein

A represents 2-chloropyridin-5-yl or 2-chlorothiazol-5-yl;

Z^1 represents O;

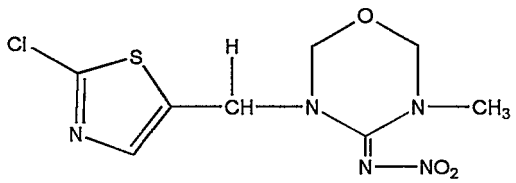
R^2 represents a hydrogen atom, a C_{1-4}-alkyl group or 2-chloropyridin-5-ylmethyl;

X represents CH or N;

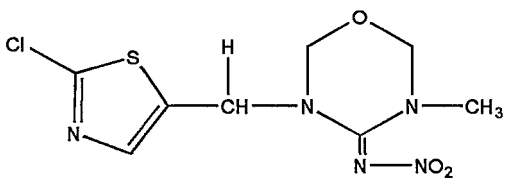
Y represents NO_2 or CN; and

R^1 represents a hydrogen atom or a methyl group.

14. Defendant Novartis Crop Protection, Inc. manufactures a compound having the formula:

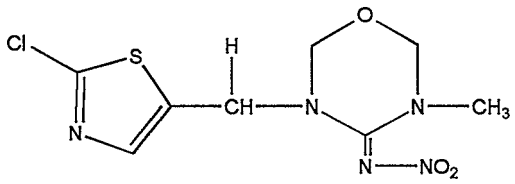


15. Defendant Novartis Crop Protection, Inc. manufactures a compound having the formula:



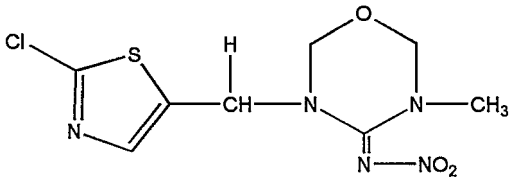
at the direction of Defendants Novartis Crop Protection AG and Novartis AG.

16. Defendant Novartis Crop Protection, Inc. manufactures a compound having the formula:



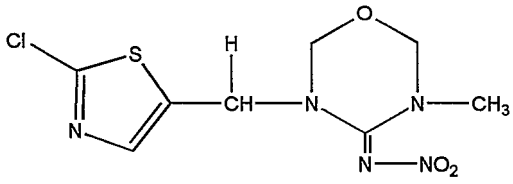
using technology provided by Defendants Novartis Crop Protection AG and Novartis AG.

17. On information and belief, Defendant Novartis Crop Protection, Inc. manufactures a compound having the formula:

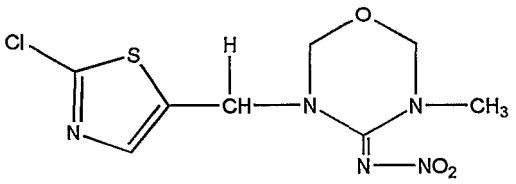


at its St. Gabriel, Louisiana location.

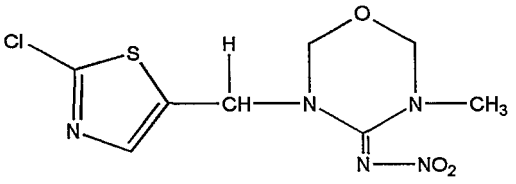
18. On information and belief, Defendant Novartis Crop Protection, Inc. intends to sell and distribute in this Judicial District and elsewhere in the United States a compound having the formula:



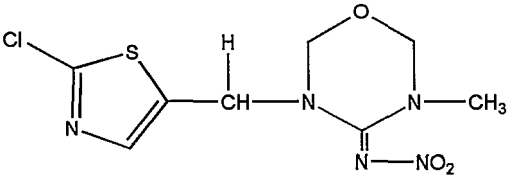
19. On information and belief, Defendant Novartis Crop Protection, Inc. intends to use for export and sale outside the United States a compound having the formula:



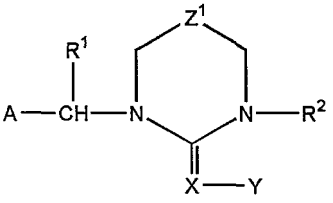
20. On information and belief, Defendant Novartis Crop Protection, Inc. intends for further use by distribution and sales in this Judicial District and elsewhere in the United States a compound having the formula:



21. The compound identified by the formula:



corresponds to the formula:



where

A is 2-chlorothiazol-5-yl;

Z^1 is O;

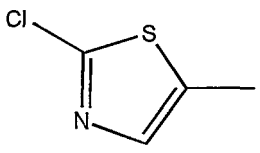
R^2 is a methyl group;

X is N;

Y is NO_2; and

R^1 is a Hydrogen atom.

22. The functional group identified by the formula:

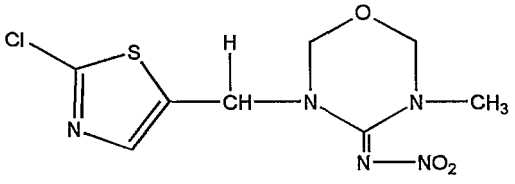


is a 2-chlorothiazol-5-yl functional group.

23. A methyl group is a C_1-alkyl group.

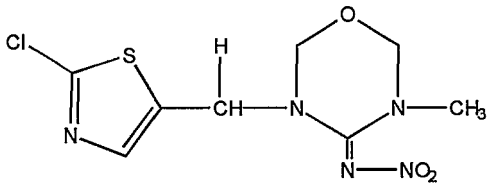
24. Claim 2 of United States Letters Patent No. 5,719,146 recites: [a]n insecticidal composition comprising an insecticidally effective amount of a compound according to claim 1 and a diluent.

25. On information and belief, Defendant Novartis Crop Protection, Inc. manufactures a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:



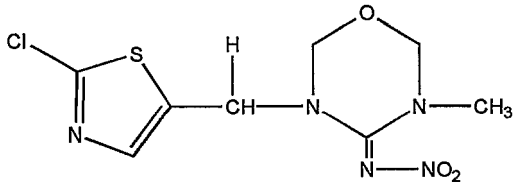
at the direction of Defendants Novartis Crop Protection AG and Novartis AG.

26. On information and belief, Defendant Novartis Crop Protection, Inc. manufactures a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:



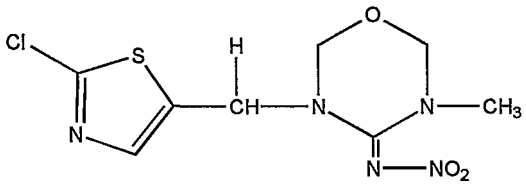
using technology provided by Defendant Novartis Crop Protection AG.

27. On information and belief, Defendant Novartis Crop Protection, Inc. manufactures a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:



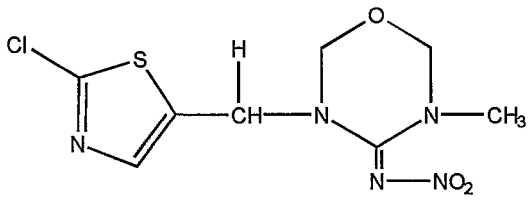
at its St. Gabriel, Louisiana location at the direction of Defendants Novartis Crop Protection AG and Novartis AG.

28. On information and belief, Defendant Novartis Crop Protection, Inc. manufactures a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:

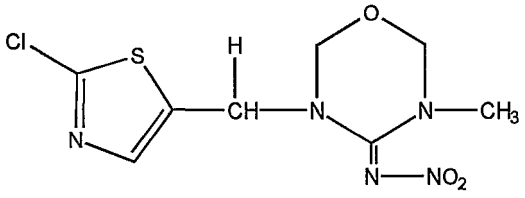


at its St. Gabriel, Louisiana location using technology provided by Defendants Novartis Crop Protection AG and Novartis AG.

29. On information and belief, Defendant Novartis Crop Protection, Inc. intends to sell and distribute in this Judicial District and elsewhere in the United States a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:

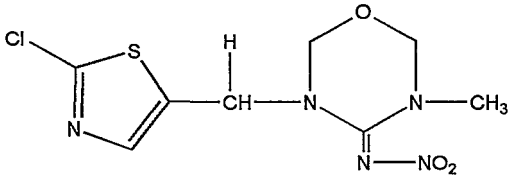


30. On information and belief, Defendant Novartis Crop Protection, Inc. intends to cause a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:



to be used in this Judicial District and elsewhere in the United States.

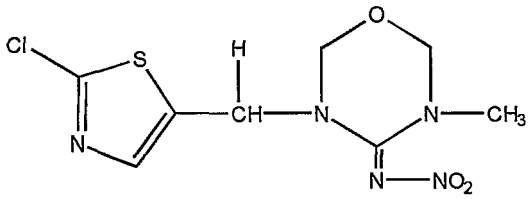
31. On information and belief, Defendant Novartis Crop Protection, Inc. intends to cause a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:



to be used for export and sale outside the United States.

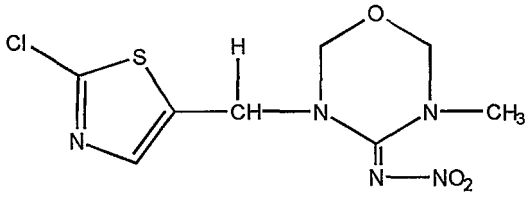
32. Claim 3 of United States Letters Patent No. 5,719,146 recites: [a] method of combating insects which comprises applying to such insects or to an insect habitat an insecticidally effective amount of a compound according to claim 1.

33. Defendant Novartis Crop Protection, Inc. practices and causes to be practiced in this Judicial District and elsewhere in the United States a method of combating insects which comprises applying to such insects or to an insect habitat an insecticidally effective amount of a compound having the formula:



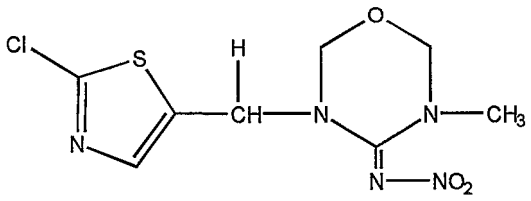
at the direction of Defendants Novartis Crop Protection AG and Novartis AG.

34. Defendant Novartis Crop Protection, Inc. practices and causes to be practiced in this Judicial District and elsewhere in the United States a method of combating insects which comprises applying to such insects or to an insect habitat an insecticidally effective amount of a compound having the formula:



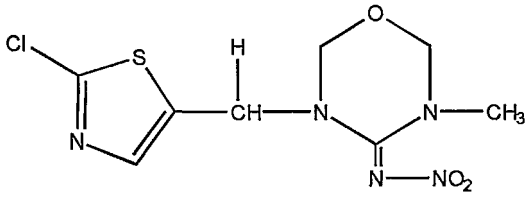
using technology provided by Defendants Novartis Crop Protection AG and Novartis AG.

35. On information and belief, Defendants Novartis Crop Protection AG, Novartis Crop Protection, Inc., and Novartis AG publish and distribute advertisements, instructions and other literature intended to persuade others to use the compound having the formula:

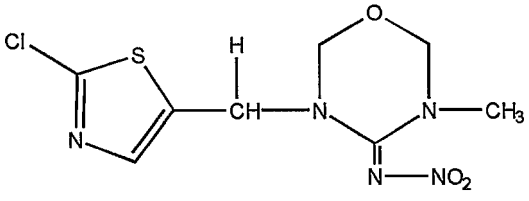


in methods for combating insects.

36. On information and belief, Defendants Novartis Crop Protection, Inc., Novartis Crop Protection AG, and Novartis AG have applied for EPA approval for commercial sale and use in the United States of an insecticidal composition that includes an active compound having the formula:



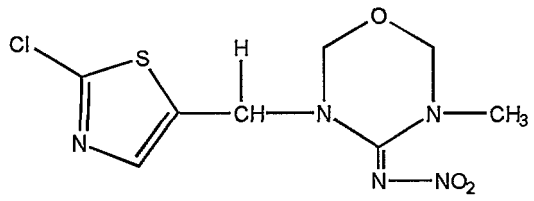
37. On information and belief, Defendants Novartis Crop Protection, Inc., Novartis Crop Protection AG, and Novartis AG have applied for EPA approval for commercial sale and use in the United States of a composition, for use in methods for combating insects, that includes an active compound having the formula:



FIRST CLAIM FOR RELIEF
(Direct Patent Infringement)

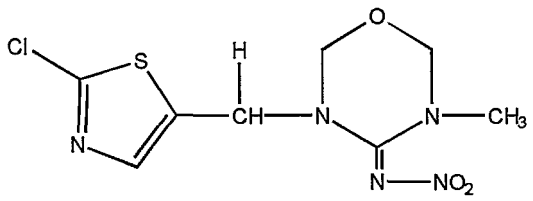
38. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 37 as if fully repeated here.

39. Defendant Novartis Crop Protection, Inc. has infringed and is infringing the aforesaid U.S. Patent No. 5,719,146 by making, selling and using in this Judicial District and elsewhere in the United States a compound having the following chemical formula:



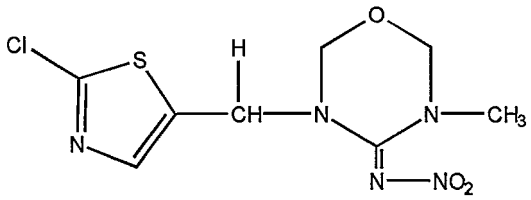
embodying the claimed inventions of said United States Patent No. 5,719,146.

40. Defendant Novartis Crop Protection, Inc. has infringed and is infringing the aforesaid U.S. Patent No. 5,719,146 by making, selling and using in this Judicial District a composition comprising a diluent and an insecticidally effective amount of a compound having the formula:



41. Defendant Novartis Crop Protection, Inc. has infringed and is infringing the aforesaid U.S. Patent No. 5,719,146 in this Judicial District and elsewhere by carrying out a method of combating insects which comprises applying to insects or to an insect habitat an insecticidally effective amount of

a compound having the formula:



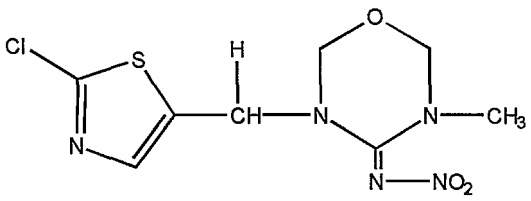
42. Plaintiff has been damaged and will continue to be damaged by the aforesaid infringing acts of Defendant.

43. Further upon information and belief, the acts of infringement complained of herein have been carried out willfully and with full knowledge by Defendant of Plaintiff's United States Patent No. 5,719,146.

SECOND CLAIM FOR RELIEF
(Inducement to Infringe)

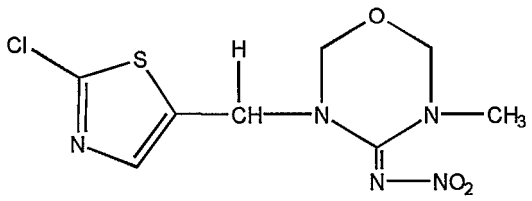
44. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 37 as if fully repeated here.

45. Defendant Novartis Crop Protection Inc. has been and is actively inducing others to infringe claims 1-3 of United States Letters Patent No. 5,719,146 by publishing and otherwise distributing advertisements, instructions and other materials intended to persuade others to use a compound having the formula:



and compositions comprising said compound and a diluent to combat insects.

46. Defendants Novartis Crop Protection AG and Novartis AG have been and are actively inducing at least Novartis Crop Protection, Inc. to infringe claims 1-3 of United States Letters Patent No. 5,719,146 by providing Novartis Crop Protection, Inc. technology to manufacture a compound having the formula:



and compositions comprising said compound and a diluent to combat insects and by directing Novartis Crop Protection, Inc. to use, sell, and encourage others to use and sell the aforementioned compound and compositions.

47. Plaintiff has been damaged and will continue to be damaged by the aforesaid infringing acts of Defendants.

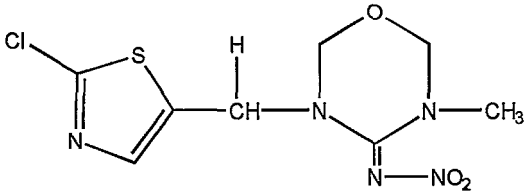
48. Further upon information and belief, the acts of infringement complained of herein have been carried out willfully and with full knowledge by Defendants of Plaintiff's United States Patent No. 5,719,146.

THIRD CLAIM FOR RELIEF
(Contributory Infringement)

49. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 37 as if fully repeated here.

50. Defendant Novartis Crop Protection, Inc. has been contributing to the infringement of claims 1-3 of United States Letters Patent No. 5,719,146 by others by selling to others a compound

having the formula:



which has no substantial use that does not infringe United States Letters Patent No. 5,719,146.

51. Plaintiff has been damaged and will continue to be damaged by the aforesaid infringing acts of Defendant.

52. Further upon information and belief, the acts of infringement complained of herein have been carried out willfully and with full knowledge by Defendant of Plaintiff's United States Patent No. 5,719,146.

WHEREFORE, Plaintiff prays for the following:

a. A permanent injunction against continued infringement of United States Patent No. 5,719,146 by Defendants, its officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with it;

b. An accounting for profits and damages, or general damages to be assessed by or under the Court's direction, occasioned by the acts of Defendants of which Complaint is made, together with pre- and post-judgment interest;

c. An increase of said damages not to exceed three times the amount found or assessed;

d. An award of Plaintiff's costs herein;

e. An award of Plaintiff's reasonable attorney fees; and

f. Judgment for such other and further relief as the Court may deem just and proper.

DATED this 25th day of November, 1998.

Respectfully submitted,

By _____

Daniel J. Balhoff
Louisiana Bar Roll No. 18776
Joseph W. Mengis
Louisiana Bar Roll No. 21751
Atkinson, Perry, Atkinson & Balhoff, L.L.C.
P.O Drawer 83260
Baton Rouge, Louisiana 70884-3260

Robert J. Koch
Fulbright & Jaworski L.L.P.
801 Pennsylvania Ave. N.W.
Washington, D.C. 20004

Attorneys for Plaintiff
BAYER AG

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38, Fed.R.Civ.P., Plaintiff hereby demands a jury trial of the issues raised in the foregoing Complaint.

Date: November 25, 1998

By _____

Daniel J. Balhoff
Louisiana Bar Roll No. 18776
Joseph W. Mengis
Louisiana Bar Roll No. 21751
Atkinson, Perry, Atkinson & Balhoff, L.L.C.
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Attorneys for Plaintiff
BAYER AG