

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SYNGENTA CROP PROTECTION,)
LLC,)

Plaintiff,)

v.)

1:15-CV-274

WILLOWOOD AZOXYSTROBIN,)
LLC, et al.,)

Defendants.)

ORDER

Syngenta contends that the Willowood defendants infringed four Syngenta patents, causing millions of dollars in lost profits on Syngenta fungicides. Here, Willowood seeks to exclude the opinions of Syngenta’s expert witness on damages, Dr. Benjamin Wilner, as speculative and unreliable, contending Dr. Wilner used inaccurate budget projections and irrelevant gross profit figures to calculate lost profits. *See* Doc. 147.

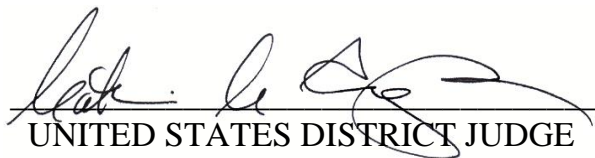
In his report, Dr. Wilner calculated what Syngenta’s gross profits would have been in a hypothetical, non-infringing market unaffected by Willowood’s infringement. Under well-established case law on benchmarks, Dr. Wilner’s opinions as to lost profits for infringement of the two compound patents are based on sufficient facts and data applied using a reasonable method in a justifiable manner. As to the two process patents, however, Dr. Wilner has not provided an adequate basis for use of his key benchmark, the Crop Protection Fungicides. Additionally, Dr. Wilner has also not shown but-for causation for the ‘761 Patent. The Court will exclude his opinions on the ‘138 and ‘761

Patents as speculative and unreliable. However, he may testify as to his opinion that lost profits for infringement of the process patents are at least as great as the lost profits for infringement of the compound patents.

Willowood also seeks to exclude testimony by Dr. Wilner about Willowood's successful effort to obtain EPA registration of its azoxystrobin fungicides, which was based on infringing activities. This evidence is admissible to explain how Willowood's "head start" in the market caused Syngenta's lost profits. Beyond this, however, it does not appear that Willowood's allegedly false representations to the EPA as part of the registration process are relevant to Dr. Wilner's calculations or opinions, nor does it appear that Dr. Wilner otherwise is competent to testify as to those facts. Therefore Dr. Wilner will not be allowed to testify as to any misconduct or false assertions in the registration applications.

A more detailed opinion and order will follow as time permits.

SO ORDERED, this the 19th day of June, 2017.


UNITED STATES DISTRICT JUDGE