

1 David S. Elkins (SBN: 148077)  
david.elkins@squirepb.com  
2 Tamara D. Fraizer (SBN: 215942)  
tamara.fraizer@squirepb.com  
3 SQUIRE PATTON BOGGS (US) LLP  
4 1841 Page Mill Road, Suite 150  
Palo Alto, CA 94304  
5 Telephone: (650) 856-6500  
Facsimile: (650) 843-8777

6 *Attorneys for Plaintiff*  
7 SAKATA SEED AMERICA, INC.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SAKATA SEED AMERICA, INC.,

11 Plaintiff,

12 v.

13 PRIORITY SEED PRODUCTION,  
14 LLC, and DOE NO. 1,

15 Defendants.  
16

Case No. '24CV0722 LL AHG

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

SQUIRE PATTON BOGGS (US) LLP  
1841 Page Mill Road, Suite 150  
Palo Alto, California 94304

1 Plaintiff SAKATA SEED AMERICA, INC. (“Plaintiff” or “Sakata”), by and  
2 through its undersigned counsel, files this complaint against PRIORITY SEED  
3 PRODUCTION, LLC (“Priority”) and DOE NO. 1 (“Doe No. 1” or “Defendant  
4 Doe”) (each a “Defendant” and together “Defendants”), and alleges as follows:  
5

6 **NATURE OF THE ACTION**

7 1. This is an action for patent infringement arising from the unauthorized  
8 acquisition and/or breeding of CMS versions of Plaintiff’s GKO-1 line of broccoli  
9 (“Accused Plants”) by Defendant Doe, either in the U.S. or abroad; by the growing  
10 of the Accused Plants by Defendant Priority Seed in the U.S.; and/or by  
11 Defendants’ use of the Accused Plants in the U.S. for producing hybrid seed  
12 (together, “the Accused Acts”) in violation of at least claims 1, 2, 18, 19, 23, 34 and  
13 35 of U.S. Patent No. RE41,114 (“the ’114 Patent”).

14 2. This action arises under the patent laws of the United States, 35 U.S.C.  
15 §§ 271(a), (b), (c) and/or (g), based on Defendants’ use (including unauthorized  
16 breeding, reproduction, growing, and hybridization), importation, offer for sale  
17 and/or sale in the United States of the Accused Plants and/or material or products  
18 thereof.

19 3. By virtue of this action, Plaintiff seeks monetary damages and a  
20 preliminary and/or permanent injunction that prohibits Defendants from making,  
21 using, selling, offering to sell and importing the Accused Plants and/or material or  
22 products thereof, and further prohibits Defendants from assisting any other  
23 individual and/or entity in directly infringing the ’114 Patent.

24 **THE PARTIES**

25 4. Plaintiff Sakata Seed America, Inc. is a California corporation with a  
26 principal place of business located at 13459 County Road 100, Woodland,  
27 California, 95776.

28 5. Upon information and belief, Defendant Priority Seed Production,

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1841 Page Mill Road, Suite 150  
Palo Alto, California 94304

1 LLC is an Arizona limited liability company with an address of 3274 Appaloosa  
2 Way, Yuma, Arizona 85365.

3 6. Defendant Priority Seed Production LLC is registered with the  
4 California Secretary of State as Entity No. 202358610999 having a California  
5 Office at 821 Bixby Road, San Juan Bautista, CA 95045.

6 7. Upon information and belief, Defendant Doe is a foreign entity or a  
7 domestic entity owned at least in part by a foreign entity that developed the  
8 Accused Plant and has acted in concert with Defendant Priority Seed to grow and  
9 use the Accused Plants in the U.S.

### 10 JURISDICTION AND VENUE

11 8. The Court has subject matter jurisdiction over this action pursuant to  
12 28 U.S.C. §§ 1331, 1332, and 1338(a)-(b) under the patent laws of the United  
13 States, 35 U.S.C. . §§ 100 *et seq.*

14 9. Upon information and belief, this Court has personal jurisdiction over  
15 Defendants because each Defendant has purposefully availed itself of the privilege  
16 of doing business in the State of California and/or derives substantial revenue from  
17 goods and/or services provided to individuals and/or entities in this District.

18 10. Upon information and belief, Defendant Priority Seed has a regular  
19 and established place of business in this District by virtue of its ownership or  
20 control and use of the field in Bard, California, just south of Ross Rd. and Levee  
21 Rd. (the “Field”) located in this District.

22 11. Upon information and belief, Defendant Doe developed the Accused  
23 Plants and supplied seeds from and for the Accused Plants to at least Defendant  
24 Priority Seed to be grown in the Field located in this District.

25 12. Additionally and alternatively, to the extent Defendant Doe is not  
26 subject to the jurisdiction of the courts of general jurisdiction of the State of  
27 California, Defendant Doe is likewise not subject to the jurisdiction of the courts of  
28

1 general jurisdiction of any state, and accordingly is amendable to service of process  
2 based on its aggregate contacts with the United States, including but not limited to  
3 the above described contacts, as authorized by Federal Rule of Civil Procedure  
4 4(k)(2).

5 13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and  
6 1400(b) because Defendants have each and together committed acts of patent  
7 infringement within this District and at least Priority Seed has a regular and  
8 established place of business, namely, the location at which the Accused Plants are  
9 being grown.

10 **THE PATENTED GKO-1 PLANTS AND METHODS**

11 14. U.S. Patent No. RE 41,114 (“the ’114 Patent”) is entitled “Inbred  
12 Broccoli Line GKO-1,” and names Junichi Sasayama as inventor.

13 15. A true and correct copy of the ’114 Patent is provided herewith as  
14 Exhibit A.

15 16. Plaintiff Sakata Seed America, Inc. is the owner, under applicable law  
16 and by assignment of all right, title, and interest in the ’114 Patent, including the  
17 rights to sue, recover damages and obtain equitable relief for infringement of  
18 the ’114 Patent.

19 17. The ’114 Patent describes a novel inbred broccoli line designated  
20 GKO-1, including transformants, hybrids, and variants thereof, together with  
21 methods of producing hybrid broccoli using the GKO-1 broccoli line, including  
22 CMS-GKO, as a parental line.

23 18. The application for the ’114 Patent was filed on September 9, 2008,  
24 and issued on February 9, 2010, with 36 claims.

25 19. Claim 1 is directed to “[a] seed of inbred broccoli line designated  
26 GKO-1, wherein a representative sample of seed of said broccoli line was deposited  
27 under NCIMB No. 41436,” and Claim 2 is directed to “[a] broccoli plant, or a part  
28

1 thereof, produced by growing the seed of claim 1.”

2 20. Claim 18 is directed to “[a] method of introducing a desired trait into  
3 inbred broccoli line GKO-1,” and comprises the steps of: “(a) crossing a GKO-1  
4 plant ... with a plant of another broccoli line that comprises a desired trait to  
5 produce progeny plants,” “(b) selecting one or more progeny plants that have the  
6 desired trait to produce selected progeny plants;” “(c) crossing the selected progeny  
7 plants with the GKO-1 plants to produce backcross progeny plants;” “(d) selecting  
8 for backcross progeny plants that have [i] the desired trait and [ii] all of the  
9 physiological and morphological characteristics of broccoli line GKO-1 listed in  
10 Table 1 to produce selected backcross progeny;” and “(e) repeating steps (c) and (d)  
11 three or more times in succession to produce selected fourth or higher backcross  
12 progeny plants” that comprise the desired trait and all of the physiological and  
13 morphological characteristics of broccoli line GKO-1 listed in Table 1.

14 21. Claim 18 further requires that the GKO-1 plant be one for which “a  
15 representative sample of seed was deposited under NCIMB No. 41436” and  
16 specifies that “[t]he desired trait is selected from the group consisting of male  
17 sterility, herbicide resistance, insect resistance, modified fatty acid metabolism,  
18 modified carbohydrate metabolism and resistance to bacterial disease, fungal  
19 disease or viral disease.”

20 22. Claim 19 is directed to “[a] plant produced by the method of claim 18”  
21 and specifies that “the plant has the desired trait and all of the physiological and  
22 morphological characteristics of broccoli line GKO-1 listed in Table 1.”

23 23. Claim 23 is directed to “[t]he plant of claim 19” and further specifies  
24 that “the desired trait is male sterility.”

25 24. Claim 34 is for “[a] method of producing an F1 hybrid broccoli seed,  
26 wherein the method comprises crossing the plant of claim 23 with a different  
27 broccoli plant and harvesting the resultant F 1 hybrid broccoli seed.”

28 25. Claim 35 is for “[a] hybrid broccoli seed produced by the method of

1 claim 34.”

2 26. The ’114 Patent is a reissue of US Patent 7,256,328 (“the ’328  
3 Patent”), which was filed on August 31, 2005, as Application No. 11/217,019 and  
4 issued on August 14, 2007, with 33 claims. Claims 34, 35 and 36 of the ’114 Patent  
5 were not present in the ’328 Patent.

6 27. Inbreds such as Sakata’s GKO-1 line of broccoli have low genetic  
7 variability, and self-fertilization results in progeny that are substantially similar,  
8 both genetically and phenotypically, to the parent plant from which they were  
9 derived.

10 28. Sakata’s seed deposited under NCIMB No. 41436GKO-1 is  
11 representative of Sakata’s existing GKO-1 line of broccoli.

12 29. Whether a *Brassica oleracea* plant is a GKO-1 plant can be  
13 determined by phenotypic and/or genotypic comparison of the plant to Sakata’s  
14 GKO-1 line of broccoli.

15 30. Whether a *Brassica oleracea* plant is a GKO-1 plant can be  
16 determined by phenotypic and/or genotypic comparison of the plant to plants grown  
17 from seed deposited under NCIMB No. 41436GKO-1.

### 18 **SAKATA’S GKO-1 BROCCOLI**

19 31. Founded in 1977, Sakata Seed America, Inc. is a subsidiary of Sakata  
20 Seed Corporation – a company with over 100 years’ experience developing new  
21 and improved plant varieties.

22 32. Sakata’s GKO-1 line of broccoli was developed prior to 2006 and  
23 introduced to the U.S. market thereafter.

24 33. As noted in the ’114 Patent, Sakata’s GKO-1 line of broccoli is “a late  
25 maturity inbred having very high yield potential when compared to lines of similar  
26 maturity” and has “excellent agronomic characteristics including a tighter head  
27 (florets and stalks are closer together making it more desirable for the crown-cut  
28

1 market), and better holding ability (the broccoli can remain mature in the field  
2 instead of being harvested immediately) when compared to commercial cultivar  
3 Heritage.”

4 34. Several commercial varieties are hybrids having GKO-1 or CMS-GKO  
5 as one of their parent lines, including broccoli sold under the names of Emerald  
6 Crown, Imperial, Diamante, Avenger, Super Diamante, Eastern Crown, Eastern  
7 Magic, each of which is covered by one or more claims of the '114 Patent.

8 **DEFENDANTS' PLANTS**

9 35. Upon information and belief, Defendant Doe developed the Accused  
10 Plants, which are believed to be cytoplasmic male sterile (CMS), and the seeds  
11 from which they were grown, from one or more Sakata GKO-1 plants or seeds, or  
12 tissue thereof. Upon information and belief, Defendant Doe supplied seeds for the  
13 Accused Plants to Defendant Priority Seed to be grown for production of a hybrid  
14 seed crop.

15 36. Priority Seed grew the seeds supplied by Defendant Doe in the Field in  
16 Bard, California, south of Ross Rd. and Levee Rd.

17 37. There are two varieties or lines of broccoli growing in the Field.

18 38. The broccoli in the Field is being grown to produce hybrid seeds.

19 39. The Accused Plants that are growing in the Yuma area have the  
20 phenotypic traits of Sakata's GKO-1 Broccoli when grown in the Yuma area.

21 40. Phenotypic traits exhibited by GKO-1 plants when grown in the Yuma  
22 area for seed production include those identified in the third column of the table in  
23 Exhibit B.

24 41. The Accused Plants have the traits identified in the fourth column of  
25 the table in Exhibit B, including the lack of anthocyanins (a plant pigment that  
26 appears reddish) and characteristic dark green to blue green color of GKO-1.

27 42. The Accused Plants that are growing in the Yuma area have numerous  
28



1 phenotypic traits of Sakata’s GKO-1 Broccoli when grown in the Yuma area for  
2 seed production.

3 43. The Accused Plants that are growing in the Yuma area have numerous  
4 phenotypic traits of Sakata’s GKO-1 Broccoli as grown in the Salinas Valley.

5 44. Phenotypic traits exhibited by GKO-1 plants when grown with 12-inch  
6 spacing in the Salinas Valley include those identified in Table 1 of the ’114 Patent  
7 at about 105 days old, and are indicated in the second column of the table in Exhibit  
8 B.

9 45. Upon information and belief, if seed for the Accused Plants were to be  
10 grown in the Salinas Valley, the resulting plants would exhibit all of the phenotypic  
11 traits listed in Table 1 of the ’114 Patent.

12 46. The seed from which the Accused Plants were derived is seed of  
13 inbred broccoli line designated GKO-1, as required for claim 1 of the ’114 Patent.

14 47. The Accused Plants are plants produced by growing the seed of inbred  
15 broccoli line designated GKO-1, as required for claim 2 of the ’114 Patent.

16 48. The Accused Plants have the trait of male sterility.

17 49. Upon information and believe, Defendant Doe introduced the trait of  
18 male sterility into inbred broccoli line GKO-1 by a) obtaining or creating a GKO-1  
19 plant and crossing the GKO-1 plant ... with a plant of another broccoli line that  
20 comprised male sterility to produce progeny plants,” “(b) selecting one or more  
21 progeny plants that have male sterility to produce selected progeny plants;” “(c)  
22 crossing the selected progeny plants with the GKO-1 plants to produce backcross  
23 progeny plants;” “(d) selecting for backcross progeny plants that have [i] male  
24 sterility and [ii] all of the physiological and morphological characteristics of  
25 broccoli line GKO-1 listed in Table 1 to produce selected backcross progeny;” and  
26 “(e) repeating steps (c) and (d) three or more times in succession to produce  
27 selected fourth or higher backcross progeny plants,” as required by claim 18 of  
28 the ’114 Patent.





1 59. On March 22, 2024, Counsel for Defendant Doe confirmed receipt of  
2 the letter from Counsel for Sakata to Priority Seed dated March 12, 2024, stating  
3 ““My firm represents a customer of Priority Seed Production, LLC whose material  
4 appears to be the subject of your letter dated March 12, 2024.”

5 60. Thereafter, Counsel for Sakata and Counsel for Defendant Doe  
6 discussed and corresponded by email about a potential agreement between their  
7 clients to sample and conduct genetic testing of the Accused Plants.

8 61. The discussions between Counsel for Sakata and Counsel for  
9 Defendant Doe continued through Friday, April 19, when they spoke for about 50  
10 minutes regarding such an agreement.

11 62. Given both the extended nature and the content of the discussions, no  
12 agreement was reached.

13 **COUNT I**  
14 **Direct Infringement of U.S. Patent No. RE41,114**  
15 **by Doe No. 1**

16 63. Plaintiff incorporates by reference and re-alleges all of the foregoing  
17 paragraphs of this Complaint as if fully set forth herein.

18 64. Defendant Doe has directly infringed under 35 U.S.C. § 271(a) and/or  
19 (g) at least claims 1, 2, 18 and 35 of the '114 Patent, by importing into and/or  
20 making, using, selling, or offering to sell the Accused Plants, and/or seeds therefore  
21 or parts thereof, in the United States without license or authority.

22 65. The seed for the Accused Plants is “a seed of inbred broccoli line  
23 designated GKO-1” according to claims 1 and 2 of the '114 Patent.

24 66. The Accused Plants were obtained by crossing a GKO-1 plant with a  
25 plant of another broccoli line that comprises a desired trait according to claim 18 of  
26 the '114 Patent.

27 67. Defendant Doe’s production, use, sale and/or offer for sale of the seed  
28 being produced in the Field infringes claim 35 of the '114 Patent.

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1841 Page Mill Road, Suite 150  
Palo Alto, California 94304

1 68. Defendant Doe’s direct infringement of the ’114 Patent has damaged  
2 Plaintiff by violating Plaintiff’s right to exclude others from importing into and  
3 making, using, selling and offering to sell covered products in the U.S.

4 69. Defendant Doe’s actions have caused and/or will cause Plaintiff  
5 economic damages compensable under 35 U.S.C. § 284.

6 70. Upon information and belief, Defendant Doe’s infringement of  
7 the ’114 Patent has been willful and in reckless disregard of Sakata’s rights under  
8 the ’114 Patent. Accordingly, Sakata is entitled to enhanced damages under 35  
9 U.S.C. § 284.

10 71. Upon information and belief, Defendant Doe’s infringement of  
11 the ’114 Patent will continue in the future, and Sakata will continue to suffer  
12 damages as a consequence unless Defendant Doe’s infringing acts are enjoined by  
13 this Court pursuant to 35 U.S.C. § 283.

14 **COUNT II**  
15 **Direct Infringement of U.S. Patent No. RE41,114**  
16 **By Priority Seed**

17 72. Plaintiff incorporates by reference and re-alleges all of the foregoing  
18 paragraphs of this Complaint as if fully set forth herein.

19 73. Defendant Priority Seed has directly infringed under 35 U.S.C. §  
20 271(a) at least claims 19, 23, 34 and 35 of the ’114 Patent, by making and/or using  
21 the Accused Plants, and/or seeds therefore or parts thereof, in the United States  
22 without license or authority.

23 74. Seed for the Accused Plants was obtained by crossing a GKO-1 plant  
24 with a plant of another broccoli line that comprises a desired trait according to  
25 claim 18 of the ’114 Patent.

26 75. The Accused Plants have a “desired trait” as recited in claim 19 and  
27 would have, if grown in Salinas, all of the physiological and morphological  
28 characteristics of broccoli line GKO-1 listed in Table 1.

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77. Priority Seed has directly infringed under 35 U.S.C. § 271(a) at least claims 34 and 35 of the '114 Patent by crossing the Accused Plants with another line of broccoli and harvesting the resulting seed.

78. Priority Seed's direct infringement of the '114 Patent has damaged Plaintiff by violating Plaintiff's right to exclude others from importing into and making, using, selling and offering to sell covered products in the U.S.

79. Priority Seed's actions have caused and/or will cause Plaintiff economic damages compensable under 35 U.S.C. § 284.

80. Upon information and belief, Priority Seed's infringement of the '114 Patent has been willful and in reckless disregard of Sakata's rights under the '114 Patent. Accordingly, Sakata is entitled to enhanced damages under 35 U.S.C. § 284.

81. Upon information and belief, Priority Seed's infringement of the '114 Patent will continue in the future, and Sakata will continue to suffer damages as a consequence unless Defendants' infringing acts are enjoined by this Court pursuant to 35 U.S.C. § 283.

**COUNT III**  
**Indirect Infringement of U.S. Patent No. RE41,114**  
**By Doe No. 1**

82. Plaintiff incorporates by reference and re-alleges all of the foregoing paragraphs of this Complaint as if fully set forth herein.

83. Defendant Doe has indirectly infringed under 35 U.S.C. § 271(b) and/or (c) at least claims 19, 23, 34 and 35 of the '114 Patent, by inducing Priority Seed to make and use the Accused Plants, and/or seeds therefore or thereof, in the United States without license or authority, knowing that the acts induced constitute patent infringement.

84. Defendant Doe has had knowledge of the '114 Patent and its

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Palo Alto, California 94304

1 infringement since at least March 22, 2024, when Counsel for Defendant Doe  
2 confirmed receipt of the letter from Counsel for Sakata to Priority Seed dated  
3 March 12, 2024, indicating that the Accused Plants infringe the '114 Patent.

4 85. Upon information and belief, Defendant Doe contracted with Priority  
5 Seed to grow seeds for the Accused Plants in the Field in a manner in which they  
6 would produce hybrid seed in violation of at least claims 19, 23, 34 and 35 of  
7 the '114 Patent.

8 86. Defendant Doe provided seeds for the Accused Plants to Priority Seed,  
9 the seeds being cytoplasmically male sterile and having no substantial use other  
10 than for growth of a plant in violation of at least claims 19 and 23, and production  
11 of a hybrid seed crop in violation of at least claims 34 and 35 of the '114 Patent.

12 87. Defendant Doe's indirect infringement of the '114 Patent has damaged  
13 Plaintiff by violating Plaintiff's right to exclude others from importing into and  
14 making, using, selling and offering to sell covered products in the U.S.

15 88. Defendant Doe's actions have caused and/or will cause Plaintiff  
16 economic damages compensable under 35 U.S.C. § 284.

17 **PRAYER FOR RELIEF**

18 WHEREFOR, Plaintiff prays judgment in its favor against Defendants that:

19 a. Defendants have each and together infringed the '114 Patent, directly  
20 and/or indirectly;

21 b. Defendants, their officers, directors, agents, servants, employees,  
22 attorneys, affiliates, divisions, branches, parents, and those persons in active concert  
23 or participation with any of them, be permanently restrained and enjoined from  
24 infringing the '114 Patent;

25 c. Awards damages under 35 U.S.C. § 284 sufficient to compensate  
26 Sakata for Defendants' past infringement of the '114 Patent (in all cases no less  
27 than a reasonable royalty), enhanced by three times for willful infringement;  
28

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1 d. Orders an accounting of all of Defendants infringing uses, sales and  
2 damages;

3 e. Awards Sakata its pre-judgment and post-judgment interest and costs  
4 against, in accordance with 35 U.S.C. § 284;

5 f. Deems this case exceptional and directs Defendants to pay Sakata’s  
6 reasonable attorneys’ fees incurred in connection with this action, pursuant to 35  
7 U.S.C. § 285; and

8 g. Awards Sakata such other and further relief as this Court may deem  
9 just and proper.

10 **DEMAND FOR JURY**

11 Sakata respectfully demands a trial by jury or any and all claims and issues  
12 so triable.

13  
14 Respectfully submitted,

15 Dated: April 22, 2024

16 By: Tamara D. Fraizer  
17 David S. Elkins (SBN: 148077)  
18 david.elkins@squirepb.com  
19 Tamara D. Fraizer (SBN: 215942)  
20 tamara.fraizer@squirepb.com  
21 SQUIRE PATTON BOGGS (US) LLP  
22 1841 Page Mill Road, Suite 150  
23 Palo Alto, CA 94304  
24 Telephone: (650) 856-6500  
25 Facsimile: (650) 843-8777

26 *Attorneys for Plaintiff*  
27 SAKATA SEED AMERICA, INC.  
28

SQUIRE PATTON BOGGS (US) LLP  
1841 Page Mill Road, Suite 150  
Palo Alto, California 94304