

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEERE & COMPANY;

PRECISION PLANTING LLC;
and

MONSANTO COMPANY,

Defendants.

Civil Action No. 1:16-cv-08515

Judge Chang

Magistrate Judge Weisman

**ORDER GOVERNING DESIGNATION AND USE OF CONFIDENTIAL
INFORMATION AT TRIAL**

In the interests of ensuring an efficient trial; protecting the public's right of access to trials and judicial records; and protecting confidential information from improper disclosure or use, and pursuant to Federal Rule of Civil Procedure 26(c)(1)(G), the Court enters the following Order:

1. DEFINITIONS

- a. The term "Trial Confidential Information" means information containing trade secrets or other categories of bona fide confidentiality. *E.g., Baxter Int'l Inc. v. Abbot Labs.*, 297 F.3d 544, 545, 546-47 (7th Cir. 2005).
- b. The term "days" means calendar days.

- c. The term “Party” means Plaintiff or any Defendant.
- d. The term “Protected Person” has the meaning set forth in the Stipulated Confidentiality Protective Order (ECF No. 51) (“Protective Order”).

2. DOCUMENTS ON PARTIES’ EXHIBIT LISTS AND DESIGNATED DEPOSITION TESTIMONY

To allow parties and non-parties a full opportunity to seek protection for their Trial Confidential Information that may be offered at trial, the following process shall apply:

- a. The Parties are to exchange exhibits lists on December 30, 2016. The Parties shall limit the number of exhibits that they may designate for trial to 500 per side. For any document containing material designated as Confidential Information under the Protective Order, if the document is 10 or more pages, the Parties shall identify the specific portion of the document which they intend to use.
- b. Non-Parties:
 - i. On or before January 6, 2017, each Party will send a copy of this order and notice to each Non-Party Protected Person who (1) produced a document containing material designated as containing Confidential Information under the Protective Order (a “Protected Document”) the Party has identified on its exhibit list, or (2) provided deposition

testimony containing material designated Confidential Information under the Protective Order that the Party included in proposed deposition designations. The notice shall identify each such Protected Document and any specific testimony designated by the Party. Notice to such Protected Persons may be provided by electronic mail, facsimile, or overnight delivery and shall be copied to designated counsel for the other Party.

- ii. By January 13, 2017 or within seven days after the notice described in the above paragraph was sent (whichever is earlier), the receiving Protected Person must advise the Party (or Parties) providing the notice whether it objects to the potential public disclosure of each Protected Document identified or testimony designated at trial and, if so, the basis for the objection. If the Protected Person objects to public disclosure of any Protected Document identified or testimony designated at trial, it shall make a specific proposal for limiting, including through redactions, disclosure of the assertedly Trial Confidential Information contained therein. Notice by the Protected Person should be provided by electronic mail or in accordance with instructions provided by the noticing

Party and shall be copied to designated counsel for the other side. If the Non-Party Protected Person and the Party or Parties agree that particular documents or designated testimony should be accorded confidential treatment at trial, the Protected Person shall prepare, and the Party providing the initial notice pursuant to the above paragraph shall within seven days, file a notice of presentment of such a motion for a protective order pursuant to L. R. 5.3, specifying February 14, 2017 at 9:15 a.m. as the date and time for presentment of the motion, accompanied by a motion setting forth the specific information by exhibit number and deposition page and line designation that the Protected Person seeks to protect and the restriction sought. No supporting brief need be filed.

- iii. If, by February 7, 2017, the Protected Person continues to object to potential public disclosure at trial of any Protected Document or testimony designated, the Protected Person must file a notice of presentment of a motion for a protective order pursuant to L. R. 5.3, specifying February 14, 2017 at 9:15 a.m. as the date and time for presentment of the motion, accompanied by a

motion setting forth the specific information by exhibit number and deposition page and line designation it seeks to protect and the restriction sought. No supporting brief need be filed.

c. Parties:

- i. On or before January 6, 2017, Plaintiff shall disclose to Defendants a representative sample of 50 Protected Documents on Plaintiff's Exhibit List which, at that time, it reasonably expects to use during trial and which represent a good-faith effort to identify a representative sample of documents.
- ii. Defendants must advise Plaintiff whether they object to the potential public disclosure at trial of each such Protected Document or portion thereof identified and, if so, the basis for the objection. Defendants shall make a specific proposal for limiting, including through redactions, disclosure of the assertedly Trial Confidential Information contained therein. Notice by Defendant shall be provided by electronic mail. January 11, 2017 is the deadline for the notice as to 25 of the sample exhibits. January 13, 2017 is the deadline for the other 25 sample exhibits.

- iii. If the Parties do not agree that particular documents should be accorded confidential treatment at trial, the Parties shall jointly brief to the Court on or before January 18, 2017, their respective positions related to the confidential treatment that should be accorded the documents in dispute and file a Notice of Presentment for a motion for a protective order pursuant to L.R. 5.3, specifying presentment of the motion for January 20, 2017, at 1 p.m.
- iv. Within 7 days of the Court's ruling on any dispute encompassed within Paragraph 2.c.iii above, and in no event later than February 1, 2017, Defendants must advise Plaintiff whether they object to the potential public disclosure at trial of each remaining Protected Document or portion thereof on Plaintiff's exhibit list and deposition testimony containing material designated as Confidential Information that Plaintiff included in its proposed deposition designations, and, if so, the basis for the objection. Defendants shall make a specific proposal for limiting, including through redactions, disclosure of the assertedly Trial Confidential Information contained therein. Notice by Defendant shall be provided by electronic mail.

- v. On or before February 6, 2017, the Parties shall meet and confer regarding Defendants' objections to and specific proposals for limiting each remaining Protected Document or portion thereof on Plaintiff's exhibit list and deposition testimony containing Trial Confidential Information that Plaintiff included in its proposed deposition designations.
- vi. If the Parties do not agree that particular documents should be accorded confidential treatment at trial, the Parties shall jointly brief to the Court on or before February 9, 2017, their respective positions related to the confidential treatment that should be accorded the documents in dispute and file a Notice of Presentment for a motion for a protective order pursuant to L.R. 5.3, specifying February 14, 2017 at 9:15 a.m. as the date and time for presentment of the motion.

3. OTHER DOCUMENTS

In the rare circumstance where counsel for a Party intends to use at trial a Protected Document or deposition transcript not previously identified through the processes described above, counsel intending to use a Protected Document shall inform the Protected Person before using the document or testimony. If the Protected Person objects to public disclosure of the Confidential Information contained in the document, the Party or Parties seeking to use the Protected Document will seek the Court's guidance before using the information publicly.

4. TESTIMONY REGARDING CONFIDENTIAL INFORMATION

When presenting testimony that references Trial Confidential Information, the Parties will make every effort:

- a. To present testimony, wherever possible, in a manner such that a redacted version of a Protected Document could be shown to the public at the time that the witness views the Protected Document in its entirety;
- b. To provide any witness being shown Confidential Information a copy of this Order;
- c. To not reveal Trial Confidential Information to a witness that is not affiliated with the Producing Party, not an expert, or otherwise not understood to have knowledge of the document; and
- d. To aggregate all portions of testimony from a particular witness that relate to Trial Confidential Information that might require sealing the Courtroom and to minimize the testimony presented in that manner.

5. GALLERY MONITORS

- a. In order to prevent inadvertent disclosure, avoid delay, and expedite witness examinations, the Court will not turn on the gallery monitors during the trial. This decision does not mean, of course, that the exhibits themselves are under seal, only that

they will not be displayed on the gallery monitors during the trial.

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: December 20, 2016