



UNITED STATES SUPREME COURT VICTORY FOR ST. LOUIS-BASED MONSANTO
***BOWMAN V. MONSANTO Co.*, --- S.Ct. ---, 2013 WL 1942397**
ARGUED FEBRUARY 19, 2013, DECIDED MAY 13, 2013

The U.S. Supreme Court, in a unanimous opinion, has held in favor of Monsanto on a patent infringement suit arising from the St. Louis-based company's Roundup Ready soybean seeds. Monsanto invented and patented a genetic modification that enables soybean plants to survive exposure to glyphosate, which is the active ingredient in many herbicides (including another Monsanto product, Roundup). According to the opinion, Monsanto sells Roundup Ready soybean seeds to farmers through a special licensing agreement, which permits a grower to use the seeds in one and only one growing season and then consume the resulting crop or sell it as a commodity. The agreement prohibits the grower saving any of the harvested soybeans for replanting or supplying them to anyone else for replanting. This is because each harvested soybean produced from a Roundup Ready seed itself produces a new generation of Roundup Ready seed.

Plaintiff Bowman is an Indiana farmer who, for the first crop of each season, purchased Roundup Ready soybean seeds, planted them all, and then sold the crop to a grain elevator. For his second crop of each season, however, he purchased soybeans meant for consumption from a grain elevator, most of which had come from other local farmers who had used Roundup Ready seed, and planted those seeds. Thus, when he applied a glyphosate-based herbicide to his fields, a significant portion of this second crop survived. Bowman then saved seed from that crop to use in his late-season planting the next year and for several years thereafter.

After discovering Bowman's practice, Monsanto sued him for infringing on the Roundup Ready seed patents. Bowman argued there had been no infringement because the seeds were the subject of the prior authorized sale from local farmers to the grain elevator. The District Court rejected Bowman's argument and awarded Monsanto damages of \$84,456. The United States Court of Appeals for the Federal Circuit affirmed, holding Bowman could not "replicate" Monsanto's patented technology by planting it in the ground to create newly infringing genetic material and seeds. The Supreme Court granted certiorari and has now affirmed. According to the Court, while the initial authorized sale of a patented article terminates all patent rights to *that item* (known as the patent exhaustion doctrine), the patentee retains the right to prevent a buyer from making new copies of the patented item. By planting and harvesting (and re-planting and re-harvesting) Monsanto's patented seeds, Bowman made additional copies of the patented invention without paying for it, thus falling outside the protection of the patent exhaustion doctrine. According to the Court, "[t]he exhaustion doctrine is limited to the 'particular item' sold to avoid just such a mismatch between invention and reward."

SUBMITTED BY

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