 Patent Infringement: Beware of the Giant
Monsanto's Operating, Non-exhausted GMO Patent*

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I. Introduction

Suppose one of your neighbors gave you a basketful of beans. You did not suspect whether they were genetically engineered beans, and planted them in your farm. When you harvested those beans, and saved the crops for following years as you have done traditionally.

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You planted them as you did in previous years. One day you were accused by a genetically modified organism (GMO) company of violating its GMO patent, and by other neighboring farm of contaminating their organic species of beans.

Like the above happening, the ongoing, controversial issues related to GMOs are the protection of patent rights of GMO patent-holders, and the invasion of GMOs to non-GMO, organic seeds.

Monsanto’s lawsuits against farmers have been increasing, alleging infringement of its GMO patents and violation of its technology agreement.1) On the other hand, in the first GMO lawsuit in the U.S. Supreme Court in June, 2010, farmers’s complaints against Monsanto to prevent future planting of genetically altered alfalfas were turned down because farmers failed to show their irreparable injury by GMO planting in their neighboring fields.2)

In the mid of such conflicts between farmers and Monsanto, a patent infringement decision against a farmer by the U.S. highest court must adversely impact farmers. On May 13, 2013, the Supreme Court unanimously recognized Monsanto’s patent rights on its Roundup Ready soybeans resistant to glyphosate, a herbicide, holding that a farmer infringed Monsanto’s patent rights which have not been


2) The Supreme overruled the lower court’s decision to enjoin a federal agency, Animal and Plant health Inspection Service (APHIS), from effecting the deregulation of Monsanto’s Roundup Ready alfalfa plant. Monsanto v. Geertson Seed Farms, 130 S.Ct 2743 (2010). It held that farmers failed to show that they would suffer irreparable injury if APHIS were allowed to proceed with any partial deregulation. Monsanto v. Geertson Seed Farms, 130 S.Ct at 2759–2762.