



Monsanto: The Supreme Court Affirms Patent Owner's Rights

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Yesterday, the U.S. Supreme Court unanimously affirmed that patent exhaustion does not extend to the purchaser of a patented product who then replicates it - but does not pay the patent owner for that replication. *Bowman v. Monsanto Co.*, No. 11-796.

In this decision, a farmer named Vernon Bowman purchase patented soybean seeds from Monsanto that were resistant to the popular RoundUp weed killer. After growing the seeds for a season, Mr. Bowman saved seeds from that harvest and replanted them the following season, instead of purchasing seeds or paying Monsanto for those new seeds that he created.

Monsanto sued Mr. Bowman for patent infringement claiming that he had no right under the patent laws to replicate Monsanto's patented seeds and that he should have purchased them from Monsanto. Mr. Bowman disagreed and argued that, under the doctrine of patent exhaustion, he lawfully purchased those seeds and could replicate them without having to pay Monsanto.

Normally, under the doctrine of patent exhaustion, a patent owner loses the right to enforce its patent on a party who lawfully purchases a product protected under that patent. The Supreme Court, however, found that the doctrine did not extend to situations where a party actively took steps to replicated the patented product. Here, the Supreme Court found that patent exhaustion did not apply because Mr. Bowman took active steps to replicate the seeds (as opposed to the seeds merely replicating themselves), and Monsanto never provided any rights to Mr. Bowman to replicate them.

One significant aspect of the situation was that the Supreme Court paid attention to the huge investment Monsanto made in these seeds and to protect them with patents. It ultimately found that Mr. Bowman's acts to be akin to unlawfully copying the patented seeds to avoid paying Monsanto for its development of this technology. Patent owners looking to protect their rights should always look at the size and scope of their research and development as part of their story on the strength and importance of their patented technology.

Here is a copy of the Supreme Court's Opinion: http://www.supremecourt.gov/opinions/12pdf/11-796_c07d.pdf



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