

Monsanto's European Patent on RR plants, EP 546 090

How the company is prosecuting and controlling farmers

Since 1996 the US company of Monsanto has a European patent on genetically engineered (GE) crops covering several species. The patent is not of practical relevance so far for European farmers because they are growing GE only to a small extent. But farmers of North and South America are already taken step by step under control of Monsanto's monopoly claims. Will the same now come true for European farmers soon?

The patent

The patent covers genetically modified plants (GM plants) which have been made resistant to the company's own Glyphosate herbicide, Roundup Ready (RR). The patent (amongst others) covers Monsanto's genetically modified soybeans grown especially in the US and Argentina and to a large extent exported to markets in Europe and other regions.

Claim 28 of the patent reads: "A glyphosate tolerant plant .. Selected from the group consisting of corn, wheat, rice, soybean, cotton, sugar beet, oilseed rape, canola, flax, sunflower, potato, tobacco, tomato, alfalfa, poplar, pine, apple and grape." Even the agricultural sowing of these plants falls within the scope of the patent. Claim 29 reads: "A method .. planting said crop seeds....and applying to said crop and weeds in said field a sufficient amount of ... herbicide."

The legal challenge

Greenpeace challenged the European patent because it covers plant varieties which are excluded from being covered by patents in Europe, as Art. 53 b of the European Patent Convention (EPC) states:

"European Patents shall not be granted in respect of: ...plant or animal varieties..."

Although the patentee explicitly confirmed in a public hearing before the Opposition Division of the European Patent Office that the patent comprises plant varieties, oppositions to the patent were overruled in April 2000. During the hearing the patent office stated that patents on plant varieties can indeed be granted and upheld, as long as the patent includes more than just one particular variety. Therefore the prohibition of patents on plant varieties can easily be circumvented in all cases if companies apply for more than just single varieties.

Even legal experts within the EPO criticise this legal interpretation, which they compared with trying to prohibit bigamy but at the same time allowing polygamy.

Greenpeace filed an appeal against the decision of the EPO in 2001. In a public hearing in April 2005 the European Patent Office will take the final decision. If the patent will be upheld this decision means that patents on seeds would definitely reach Europe.

Corporate control on all levels of food production

Greenpeace is concerned that the patent law in Europe is eroded in a way that companies such as Monsanto are getting far-reaching monopolies which allow them to control everything in agriculture from seed and harvesting to food production. In Europe several hundred patents have already been granted on plant varieties and seeds, with and without genetic engineering. A few companies such as Monsanto, Bayer, Syngenta and Dupont now control the global seed market to such an extent that they can decide which seeds

will be available at what price and under which conditions in the future. This is a threat to farmers, food producers and consumers all over the world.

Impacts on normal seeds

The patent on these genetically engineered seeds also might be relevant for farmers who want to cultivate normal plants. As Monsanto announced in September 2004, it will combine the RR trait with other soybean varieties derived from normal breeding and with a higher yield or better quality as regards oil composition. A new line of varieties called VISTIVE, derived from normal breeding, with specially enhanced food-grade oils, was announced as being placed on the US market in 2005, after the RR-trait has been incorporated. Thus farmers which want to grow these plants because of their higher oil quality would be forced to grow GMOs, no matter if they are interested in the use of herbicide-resistant strains or not.

In addition, patents on soybeans derived from normal breeding and having a higher yield are already applied globally, and thus on European markets too.

WO 2004/006659, for example, covers plants with a certain quality of protein and oil and the methods of normal breedings involved for these plants. It is applied globally in more than over 100 countries.

Prosecuting farmers in North America

In the US farmers already sow Monsanto's Roundup Ready soybeans (US Patents No. 4 538 060; 4 840 835; 5 352 605).

These farmers have to sign a contract with Monsanto granting the company the right to inspect the farms at any time during the following three years and obliging the farmers to exclusively use Monsanto's own glyphosate herbicide "Roundup" to treat their soybeans. Furthermore, contracted farmers lose the right to keep part of their harvest for next year's sowing.

The fight between a Canadian farmer, Percy Schmeiser, who was taken to court by Monsanto because of rape seed

(<http://www.percyschmeiser.com/>), is well-known. But there are already 100 law court cases against nearly 200 farmers and small agrobusiness companies in the US. According to recent records at the Center for Food Safety (<http://www.centerforfoodsafety.org/>), Monsanto has a team of 75 people in the US to trace down each and every farmer which has signed the contract with Monsanto suspected of saving some seeds without paying.¹

Being "hoodlum like" in Argentina

Monsanto is claiming royalties not only in countries in North America but also in Latin and South America, Asia and Africa. The list of countries where Monsanto expects farmers to pay special licences fees and maybe even sign individual contracts with Monsanto includes not only the US and Canada, but Argentina, Brazil, South Africa, Paraguay and India.

In Argentina so far the government and farmers are not willing to pay the special royalties claimed by Monsanto, which they want to introduce on all soybeans which get exported. Monsanto's problem: they simply do not have a patent on Roundup Ready seeds in Argentina.²

Monsanto even lost several court cases in Argentina trying to get the RR seeds patent in Argentina.

After loosing finally in court 2001, the giant US changed its strategy and launched a massive attack on the Argentinean government and farmers to get an even

¹ The Center For Food Safety (2005): Monsanto vs. US Farmers. [http://www.centerforfoodsafety.org/pubs/CFSMO MonsantoVsFarmerReport1.13.05.pdf\(CFS.pdf\)](http://www.centerforfoodsafety.org/pubs/CFSMO MonsantoVsFarmerReport1.13.05.pdf(CFS.pdf))

² Argentina Slams Monsanto For "Attitude" On GMO Royalties, Dow Jones, by Taos Turner, 17 Mar 2005, http://money.iwon.com/jsp/nw/nwdt_rt.jsp?cat=USMARKET&src=704&feed=dji§ion=news&news_id=dji-00090720050317&date=20050317&alias=/alias/money/cm/nw

bigger share than the one already obtained from their business in this south American country which is just beginning to see some recovery after years of economic crashes.

During 2004 the government of Argentina gathered Monsanto and farmers associations in order to negotiate a fair deal. However, Monsanto's position is essentially contradictory with the law in Argentina which allows the farmer to save seeds from their own harvest.

In 2005 a letter from Monsanto was sent to Argentinean exporters stating that the company even will stop ships loaded with Argentinean soy beans in Europe and other ports in order to charge a US \$ 15 per tonne. This attitude by Monsanto has been called "hoodlum like" by the Agriculture Secretary of Argentina, Dr. Miguel Campos, and has triggered a conflict which had already heated up.

Greenpeace is cooperating with Federacion Agraria Argentina, a farmers organisation which represents small and medium sized farmers in their fight against patents on seeds. Farmers are afraid of loosing, little by little, their freedom to decide over seeds and other farm inputs. For Argentinean farmers today it is even almost impossible to get Non GE soya seeds, due to the changes in market structures in the last years.

Patents on seeds in Europe

In Europe so far Monsanto is not trying to get any royalties because the company is trying very hard to gain more acceptance for its GMO seeds in general. But laws are already there to allow patents on seeds, and several Monsanto patents are already valid as the decision on the Roundup Ready patent EP 546 090 shows.

Also Bt plants such as MON810, which are grown in Spain, are likely to fall under Monsanto's European Bt-patents. Monsanto even applied for a specific patent on MON810 varieties in the US (US 6713259 B2). In Europe also other companies such as Bayer and Syngenta are claiming monopoly patents on Bt-seeds. Thus the ground is prepared for

charging and tracking down European farmers to the same extent as farmers in other parts of the world – Monsanto and others are just waiting for its genetically engineered and patented seeds to be grown on a large scale.

Monsanto has already started a number of legal actions against farmers in the USA and Canada for breaching the patent. Furthermore, Monsanto is also starting to charge for its patents in Argentina and Brazil. GM plants grown in Europe such as Bt-corn (as MON810) are also subjected to monopoly control. Together with the planting of those seeds, the companies are now preparing the takeover of the agricultural market in Europe.

Greenpeace demands:

- No patents on Life
- Worldwide ban for patents on seeds