



News Release
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Europe's (and the World's) Big Soy Berger:
Patently Wrong!

After delays, denial, and double standards, Monsanto maintains unjust monopoly on major food crop. Time to talk to the cooks about a new recipe?

In a jaw-dropping affirmation of Monsanto's monopoly control over commodity crops, one of the world's most notorious patents for genetically engineered crops was yesterday upheld by the European Patent Office (EPO) in Munich – this despite a nine year battle by civil society (and industry) to have it revoked. European Patent No. 301,749, granted in March 1994, is an exceptionally broad "species patent" which grants gene giant Monsanto exclusive monopoly over all forms of genetically engineered soybean varieties and seeds – irrespective of the genes used or the transformation technique employed. The patent, attacked as immoral and technically invalid by food security advocates worldwide, was vigorously opposed by Monsanto itself until they purchased the original patent holder (Agracetus) in 1996, and switched sides to make the soybean species patent a major ingredient in its global recipe for crop monopoly.

Backburner: The case simmered on the EPO's backburner for an astonishing nine years before reaching the patent tribunal in Munich yesterday. The EPO took only ten hours (including coffee and cake breaks) to hear oral arguments and uphold Monsanto's monopoly. Monsanto did surrender one unsustainable claim in the patent (claim no. 25), which sought control beyond soybeans to other plants as well.

ETC Group, who maintained its opposition to the patent since first uncovering it nearly a decade ago, were present in Munich yesterday with expert legal counsel, UK barrister Daniel Alexander and patent attorney Tim Roberts. Other opponents included Greenpeace, activist Stefan Gene, Syngenta and Pioneer Hi-Bred (a subsidiary of DuPont).

ETC Group and other opponents expressed bitter disappointment at the outcome.

Same old recipe: "Monsanto has made overtures in the media to reinvent themselves as a gentler, humbler company," said Hope Shand, ETC Group Research Director, "But their behavior in court showed that where it matters, Monsanto is still aggressively pursuing monopolistic control by any means available. Even more alarming is how readily the patent system rewards such behavior, ignoring basic morality, and failing to encourage socially beneficial innovation. When ETC Group first challenged this patent we were primarily concerned about the threat to food security from the Gene Giants – today, nine years later, we find ourselves equally shocked and concerned about the threat to democracy from such an unresponsive patent system. It portends much larger patent problems to come with nanotechnology and other emerging technologies."

"This is a thoroughly bad decision," said patent attorney Tim Roberts. "You would look far to find another patent in which such a small advance has justified such an enormous claim. It seems to have been reached by mechanically applying inappropriate precedent, while ignoring the fundamental principle of the patent system - the balance of rights between the innovator and society. If the Opposition Board's decision is correct in law, then the law needs to be changed," said Roberts.

SARS bars and Gene engineering: Monsanto began the proceedings in Munich with successful legal moves to deny some expert witnesses the right to speak; including Dr. Suman Sahai of the Gene Campaign who had been brought by Greenpeace from India to testify about the impact of the patent on food security. Most amazingly, soybean experts from China, the genetic homeland of soya, had already been barred from the EPO court because of SARS fears. Monsanto then proposed to the tribunal that ETC Group and long-time German campaigner Stefan Gene be disqualified from the hearing, claiming that Gene, despite being present in the courtroom, was a 'fictitious person'. Although Monsanto's request was denied, it set the tone for its strategy throughout the day. Debate on ethical questions was largely marginalised by Monsanto and an unresponsive Tribunal.

Secret Recipe: Perhaps most astonishing was Monsanto's legal maneuvering to sidestep its own evidence. In 1994 Monsanto gave unambiguous evidence in an opposition statement requesting that the patent be revoked. One of Monsanto's top scientists testified in 1994 that the genetic engineering process described in the patent was insufficient to allow someone skilled in the science to replicate the procedure - a necessary criterion for patentability. Nevertheless Monsanto's lawyers successfully argued that the company should be allowed monopoly over any genetically engineered soybean seed and variety obtained through any and all modification processes.

Let them eat cake? "It's a bit like publishing a badly written cake recipe and then claiming ownership of any cakes baked by anybody using any recipe any time in the future," explained Jim Thomas, of ETC Group's Oxford office. "In fact, since acquiring Agracetus, Monsanto has already leveraged this patent as part of their strategy to grab as much of the cake as they can - seeking to control one of the world's most important food crops. Monsanto now controls 100% of the world's genetically engineered soybeans covering 36.5 million hectares in 2002 - that's over half of the world's total soybean area. It's hard to imagine a more blatant and dangerous monopoly."

Soy Berger King: According to Dr. Christoph Then, patent expert for Greenpeace, "This case is a clear signal that the European Patent Directive should be revoked. Europe needs new patent legislation that expressly prohibits patents on life." Dr. Then and Stefan Gene represented Greenpeace at the EPO tribunal yesterday.

Matter Monopolies: ETC Group also regards the maintenance of this patent as a dangerous precedent for other broad claims on new emerging technologies, in particular nanotechnology - the atomic manipulation of matter to create new molecular forms. "This broad patent on Soybeans was allowed precisely because aggressive corporations and lax governments were pushing the boundaries in the early days of biotech, allowing exclusive monopoly patents on all biological products and processes," explained Shand. "Today, corporations are grabbing nano-patents on molecular products and processes, even the chemical elements that make up all of

nature. With nanotech patents, 'Matter Moguls' threaten to control the fundamental building blocks of nature. "

Recipe change: "We fear that the EPO decision on Monsanto's soybean patent gives comfort to those who want to establish ever wider legal claims – including matter monopolies," emphasized Jim Thomas. "Monsanto may have won an entire species but others are seeking to monopolise entire elements of nature. Atomic-level manufacturing provides new opportunities for sweeping monopoly control over both living and non-living matter." With technologies converging at the nanoscale, ETC Group warns that efforts to oppose intellectual monopolies must not be limited to campaigns against the patenting of life. This issue will be discussed at an upcoming seminar for policy makers, civil society and the media in the European Parliament in Brussels on June 11th. "If the recipe is this bad we'll take it back to the cooks," Thomas concludes.

Seminar in European Parliament: Together with the European Greens, The Ecologist, Greenpeace, The Dag Hammarskjöld Foundation, Genewatch UK, Clean Production Action and a cross-party group of MEP's, ETC Group will hold a seminar on nanotechnology in the European Parliament in Brussels on June 11, 2003. Led by international experts, the seminar will look at both the issues related to nanotech and intellectual property as well as societal and safety questions with a view to consider appropriate steps for government regulation. Speakers include physicist Dr. Vandana Shiva and toxicologist Dr. Vyvyan Howard. The seminar will be followed on June 12 by a discussion among civil society organisations in Europe on strategies to address the issues involved in nanotechnology. For further information please see ETC Group's website: www.etcgroup.org or contact jim@etcgroup.org.

Note to editors: Although the EPO tribunal decisively ruled in favour of Monsanto, the panel will not release its written judgment for several more weeks.

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The Action Group on Erosion, Technology and Concentration, formerly RAFI, is an international civil society organization headquartered in Canada. The ETC group is dedicated to the advancement of cultural and ecological diversity and human rights. www.etcgroup.org. The ETC group is also a member of the Community Biodiversity Development and Conservation Programme (CBDC). The CBDC is a collaborative experimental initiative involving civil society organizations and public research institutions in 14 countries. The CBDC is dedicated to the exploration of community-directed programmes to strengthen the conservation and enhancement of agricultural biodiversity. The CBDC website is www.cbdcprogram.org.