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## **Monsanto's Species-Wide Patent on Trial** **May 6-7, European Patent Office Hears Patent Challenge in Munich** **- Eight and One-Half Years Later!**

*Remember 1994? Nine years ago: Yasser Arafat, Yitzhak Rabin, and Shimon Peres won the Nobel Peace Prize, Nelson Mandela was elected President of South Africa, US President Bill Clinton sent ground troops to the Persian Gulf to counter a move by Iraq's Saddam Hussein, and Brazil won the World Cup. The United Nations' Biodiversity Convention entered into force in 1994 and the Uruguay Round of GATT was drawing to a close. In the "life sciences" cosmos, Monsanto and Dupont were chemical companies with minor interests in seeds and Syngenta did not yet exist. ETC Group was known as RAFI. Also in 1994, a small biotech subsidiary of W.R. Grace, Agracetus, won a breathtakingly broad patent on all genetically modified soybean varieties, European Patent No. 301,749.*

On May 6-7, 2003, almost nine years after ETC Group (formerly known as RAFI) officially challenged Agracetus/W.R. Grace's patent monopoly on all genetically modified soybeans, the European Patent Office will hold an oral hearing to decide the fate of one of agbiotech's most notorious patents. It was the emergence of species-wide patents on soybeans and cotton in the early 1990s that first galvanized governments, scientists and CSOs to seriously question the morality and ethics of intellectual property in the early 1990s.<sup>1</sup>

**Specious Species Patent:** On March 2, 1994 a US-based biotech company, Agracetus (then-subsiary of W.R. Grace & Co.), won a European patent on *all* genetically engineered soybean varieties and seeds (regardless of the genes used) and all methods of transformation (one of the patent's claims actually extends beyond soya to other plant species!).<sup>2</sup> Even biotech industry insiders were stunned by W.R. Grace's sweeping patent monopoly on one of the world's major food crops. ETC Group, with the support of 18 civil society organizations worldwide, filed formal opposition to the patent in December 1994.

ETC Group's 1994 "Notice of Opposition Against European Patent No. 301,749" is available here: [http://www.etcgroup.org/documents/occ\\_vol1\\_5.pdf](http://www.etcgroup.org/documents/occ_vol1_5.pdf)

"ETC Group believes that EPO must throw out Monsanto's patent because it is technically flawed and morally unacceptable," said Jim Thomas, the UK-based Programme Officer of ETC Group. "We don't want the patent pruned - we want it revoked," said Thomas. "After waiting nine years to get an oral hearing, we are firm in our conviction that intellectual property jeopardizes world food security, undermines conservation and use of biodiversity, and increases the economic insecurity of farming communities. Instead of promoting innovation, intellectual property is stifling research, limiting competition and thwarting new discoveries," said Thomas.

At the European Patent Office in Munich, ETC Group will be represented by Mr. Daniel Alexander, a London-based barrister specializing in intellectual property law. Mr. Alexander served as a commissioner on the United Kingdom's Commission on Intellectual Property Rights. In Munich, ETC Group will join Greenpeace and other civil society organizations that are actively involved in opposing the patent. Stephan Geene, an activist who cooperates with Greenpeace, was also among the original patent challengers in 1994. The EPO has taken the unusual step of scheduling two days for the hearing and has indicated that it will move to a bigger room to accommodate the interested parties.

**Musical *monopoly* chairs:** ETC Group and Stephan Geene were not the only parties to challenge the soybean patent back in 1994. We were joined by agrochemical and seed industry giants who feared the patent would arrest soybean research worldwide, including: Sandoz, Ciba Geigy, Monsanto, Dekalb, Pioneer Hi-Bred. Where are they now? Sandoz and Ciba Geigy merged to become Novartis in 1996, Monsanto took over Dekalb in 1998, and DuPont acquired Pioneer Hi-Bred in 1999. RAFI changed its name to ETC Group in 2001.

**Monsanto's About-Face:** In 1994 Monsanto submitted an exhaustive, 292-page opposition statement that shredded the technical merits of Agracetus's soybean patent. Monsanto's lawyers wrote that the soybean patent should be "revoked in its entirety," is "not... novel", "lacks an inventive step," and "sufficient disclosure [of scientific method] is woefully lacking." But when Monsanto acquired Agracetus in April 1996, it withdrew its challenge, reversed its position and announced that it would defend its newly-acquired patent!<sup>3</sup>

**Soybean Superpower:** Back in 1994, genetically modified soybeans were not yet commercially available. In 1996, Monsanto acquired the Agracetus company and its soybean patent – just one of many biotech companies and patents Monsanto would devour in its binge buying to gain supremacy in ag biotech.

Last year, Monsanto accounted for **all** of the GM soya seed planted worldwide -- occupying 36.5 million hectares in 2002 – that's over half of the 72 million hectares devoted to all soybeans worldwide. In other words, Monsanto's exclusive monopoly claims extend to more than one-half of the soya crop – one of the world's most important food feed and oilseed crops.<sup>4</sup> Worldwide, the commercial soybean market was valued at over \$22 billion in 2001.<sup>5</sup>

"The statistics speak for themselves," said Hope Shand, Research Director of ETC Group. "Monsanto is the world's only GM soybean superpower, a single company has been awarded monopoly control over one of the world's most important food crops." "The existence of EP No. 301,749 has been and remains a strong deterrent to any competition trying to challenge Monsanto's dominance in GM soybean research and markets," said Shand.

"We realize that Monsanto's species-wide soybean patent is just one of the factors behind Monsanto's present-day monopoly on GM soybeans, but this is a dangerous precedent that cannot be allowed to stand," explained Shand.

While soya is a relatively minor crop in Europe, it is a major commodity in other regions, including China, India, Argentina, Brazil and North America. If Monsanto's patent is allowed to stand, it could set a dangerous precedent. Even the United States government struck-down the species-wide cotton patent, and refused to allow broad claims on all GM soybeans.<sup>6</sup> Now, nine years later, it's time for the EPO to act!

ETC Group will join Greenpeace Germany at a press conference in Munich on Monday, 5 May, 11:00 hrs, the day before the EPO hearing on Monsanto's patent. Hope Shand and Jim Thomas of ETC Group will attend the EPO hearing and will be available to respond to media inquiries.

**For more information:**

Hope Shand, ETC Group (USA) [hope@etcgroup.org](mailto:hope@etcgroup.org) -- 919 960-5223  
Jim Thomas, ETC Group (UK) [jim@etcgroup.org](mailto:jim@etcgroup.org) -- 44 (0)7752 106806 (cell)  
Silvia Ribeiro, ETC Group (Mexico) [silvia@etcgroup.org](mailto:silvia@etcgroup.org) -- 52 55 55 632 664  
Hope Shand and Jim Thomas can be reached in Munich, May 5-7, tel: 44 (0)7752 106806 (cell)

**For additional information about the press conference in Munich, please contact:**

Uli Brendel, Greenpeace Germany [Ulrike.Brendel@greenpeace.de](mailto:Ulrike.Brendel@greenpeace.de)  
Phone: + 49-171-87 80 844 (cell)

**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](http://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](http://www.cbdcprogram.org).**

<sup>1</sup> For example, ETC Group (then RAFI) participated in the Crucible Group, a non-consensus process involving governments, industry, scientists, CSOs and indigenous peoples from North and South, to examine policy issues related to biodiversity and intellectual property.

<sup>2</sup> The claims of the patent are 1-25. Claims 1-16 are to methods of making 'genetically transformed' soybean plants using a particle accelerator (gene gun). Claims 17-20 are to 'genetically transformed' soybean seeds, however produced. Claim 21 is to seed claimed in claim 17 obtainable by a method claimed in any of claims 1-16. Claim 24 is to a method of making 'a genetically transformed line of plants' (any plants, not just soybean plants) by the processes defined in claims 1-17, followed by growing the transformed plant to produce seed, self-pollinating the seed, growing it and assaying its progeny. Claim 25 is to applying this process to soybeans.

<sup>3</sup> ETC Group (then as RAFI) reported on the reversal in the July/August 1996 Communique, available on the Internet: <http://www.etcgroup.org/article.asp?newsid=199>

<sup>4</sup> Based on statistics available on Monsanto's website ([www.monsanto.com](http://www.monsanto.com)) and statistics on global GM area provided by ISAAA ([www.isaaa.com](http://www.isaaa.com)).

<sup>5</sup> According to FAO Statistical Databases, 2001. [www.fao.org](http://www.fao.org)

<sup>6</sup> The US equivalent of the Monsanto EPO patent, is US patent no. 5,015,580. It is much narrower than the European patent. Claims are only to processes of transforming soybeans and soybean lines. There are no independent product claims, and no claims to transforming plants other than soybeans. US patent no. 5,159,135, the Agracetus' species-wide claim on all GM cotton, was revoked by the US Patent & Trademark Office after being re-examined in 1994.