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## Bowman v. Monsanto Company

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*Bowman v. Monsanto Company*, \_\_\_ U.S. \_\_\_, 133 S. Ct. 1761, 185 L. Ed. 2d 931 (2013).

**Jill Hughes**

## **I. ABSTRACT**

This case addressed the issue of whether Vernon Bowman’s reproduction of genetically modified, patented seed stimulates the patent restriction a second time. Plaintiff Monsanto Company sued Bowman for patent infringement. Bowman argued the planting of a patented seed fulfills the right to use and resell under the Patent Exhaustion Doctrine and Monsanto wrongfully interfered with farmers’ practices, incorrectly demanding an exception to patent exhaustion. The U.S. Supreme Court held unanimously that to reproduce patented seeds without permission falls beyond the rights of patent exhaustion and it was Bowman who requested an exception from patent law, which exists to protect inventors and encourage innovation. The Court determined centuries-old agricultural practices are not exempt from The Patent Act, which requires payment for the right to grow patented genetically innovative seed.

## **II. INTRODUCTION**

In *Bowman v. Monsanto Company*, the Court clarified the parameters of patent exhaustion and determined that a farmer may not plant and harvest patented seeds without permission of the patent holder.<sup>1</sup> The Court held the doctrine of patent exhaustion applies only to the product sold, not to its reproductions.<sup>2</sup> “A patent holder ... [can] prohibit a farmer who legally purchases and plants a protected seed from saving harvested seed for replanting.”<sup>3</sup> Reproduction of a patented seed is saving the seed from a grown crop and planting it to produce

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<sup>1</sup> *Bowman v. Monsanto Co.*, 133 S. Ct. 1761 (2013).

<sup>2</sup> *Id.* at 1767.

<sup>3</sup> *Id.*

new plants and seeds.<sup>4</sup> The Court upheld the right of an inventor to patent a genetically modified seed, despite their natural self-replicating qualities.<sup>5</sup>

### III. FACTUAL AND PROCEDURAL BACKGROUND

The Patent Act protects a patentee by assuring him the “right to exclude others from making, using, offering for sale or selling the invention.”<sup>6</sup> The statute protects the inventor from infringement by stating, “[W]hoever without authority makes, uses, offers to sell, or sells patented invention ... infringes the patent.”<sup>7</sup>

Monsanto Company’s Roundup Ready soybeans are a patented, genetically modified seed stock that allows a farmer to spray crops with the glyphosate herbicide, Roundup, to kill competing plants and avoid damage to the patented soybean plants.<sup>8</sup> The soybeans are genetically modified to withstand the herbicide application.<sup>9</sup> Additionally, when Monsanto sells and distributes their seed stock, the buyers must sign a licensing agreement, allowing consumption and sale of the crop, but prohibiting replanting.<sup>10</sup> Defendant, Vernon Bowman, purchased Roundup Ready seed each year and knew of the licensing agreement and patents. For late season, “riskier” crops, he purchased soybean seed from a grain elevator, which was distributed for consumption.<sup>11</sup> Bowman planted the seed and killed the non-Roundup Ready soybeans and weeds with the glyphosate herbicide, purposefully propagating the Roundup Ready seeds.<sup>12</sup> Bowman saved the patented seed each late season and replanted it through eight

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<sup>4</sup> *Id.* at 1766.

<sup>5</sup> *Id.* (See *J.E.M. Ag Supply, Inc v. Pioneer Hi-Bred Int’l, Inc.*, 534 U.S. 124 (2001)).

<sup>6</sup> 35 U.S.C. § 154(a)(1) (2013).

<sup>7</sup> *Id.*

<sup>8</sup> *Bowman*, 133 S. Ct. at 1764.

<sup>9</sup> *Id.* at 1764.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1765.

<sup>12</sup> *Id.*

harvests, despite his knowledge of the patent restrictions and without making payment.<sup>13</sup> Monsanto Company sued Bowman for patent infringement.<sup>14</sup> The District Court rejected Bowman's defense of patent exhaustion. The Federal Circuit Court affirmed. Bowman timely appealed.<sup>15</sup>

#### IV. ANALYSIS

The Court determined whether the purposeful reproduction of patented seed technology through control of the purchaser is protected by patent exhaustion or whether a licensed purchaser's reproduction constitutes patent infringement.

##### A. Patent Exhaustion Doctrine

Generally, patent protection is complete when the seller receives payment and the buyer is free to use and enjoy the product.<sup>16</sup> Once the product is sold, the patentee releases patent rights over the object.<sup>17</sup> The patent is exhausted regarding the "particular article" only.<sup>18</sup> However, patent exhaustion does not extend to copies of the patented good.<sup>19</sup> If the product is reproduced, the patent restrictions are stimulated a second time.<sup>20</sup> The idea is that the buyer of the patented good has paid for the article sold, not the right to remake it. The Court emphasized that rights to produce endless copies of patented goods would discourage the purpose of the patent.<sup>21</sup> If patented items were allowed to be freely reproduced, the value of the patent would "plummet" and Congress's intent to support innovation would be undermined.<sup>22</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Bowman*, 133 S. Ct. at 1765.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1766.

<sup>17</sup> *Bowman*, 133 S. Ct. at 1766.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1768.

The Court determined Bowman's reproduction of Monsanto's patented seed stock required permission from Monsanto and lies outside the purchaser's rights of patent exhaustion.<sup>23</sup> The Court pointed to Bowman's replanting of what he knew to be Roundup Ready seeds and intentional elimination of the non-Roundup Ready variety, as a purposeful recreation of the patented invention.<sup>24</sup> The harvest constituted patent infringement because use of the seed was the "making of a new product."<sup>25</sup> The Court determined that allowing the seeds to be reproduced without permission would render the patent useless.<sup>26</sup>

The Court upheld the right of an inventor to patent genetic modifications of a seed.<sup>27</sup> Stringent requirements limit which inventions are available for a patent and which have access to the lesser protection of certification under the Plant Variety Protection Act.<sup>28</sup> Bowman argued that seeds are meant to be planted, reproducing them is what farmers do, and that seeds should be an exception from patent protection.<sup>29</sup> But the Court held the patent exhaustion doctrine clearly stops short of extending to the reproduction of patented seeds because the policy is well-settled and violation of it would discourage innovation and dismantle the value of patents.<sup>30</sup>

## **B. Seeds Are Self-Replicating**

The Court disagreed with the defendant's argument that the soybean, not the farmer, replicated the Roundup Ready seed stock through its natural propensity to sprout.<sup>31</sup> The Court found that purchasing, planting, spraying, harvesting, and saving seed to plant next season were

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<sup>23</sup> *Bowman*, 133 S. Ct. at 1767.

<sup>24</sup> *Bowman*, 133 S. Ct. at 1767.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1768.

<sup>30</sup> *Id.*

<sup>31</sup> *Bowman*, 133 S. Ct. at 1769.

the actions of “Bowman, and not the bean.”<sup>32</sup> Although the Court recognized the natural propensity of seeds to sprout and grow, it outlined that Bowman “was not a passive observer of his soybeans’ multiplication” and eight crops of Roundup Ready soybeans did not develop spontaneously, but rather, through the “novel” way Bowman reproduced the seeds without paying for them.<sup>33</sup> The Court emphasized that its holding was intended to narrowly address similar circumstances, where the reproductions were purposeful, but not “every one involving a self-replicating product.”<sup>34</sup>

## V. CONCLUSION

In this case, patent law and centuries-old agricultural practices faced off, requiring a determination of whether patented genetic innovation in seed stock is protected from general reproduction. The Supreme Court upheld that seeds may be patented. Patents are exhausted once the purchase is complete and the goods delivered. But the reproduction of patented seed stock lies beyond patent exhaustion. To purposefully reproduce a genetically altered, patented seed intended for consumption stimulates the patent restriction a second time and requires payment. Although seeds are a resource that naturally reproduces, to purposefully manipulate them to make new seeds, without paying for the right, constitutes infringement. To hold otherwise would devalue the purpose of the patent and discourage innovation, undermining Congress’s intent in creating The Patent Act. Despite centuries of agricultural practice of growing seeds to plant, if farmers utilize patented genetic innovation to produce crops, they are not exempted from paying for it.

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*