



## **Court rules for Monsanto in seed case vs. DuPont**

**By Sara Wyant**

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**St. Louis, MO. Jan. 18.** In the latest battle between seed giants DuPont and Monsanto, a St. Louis District Court judge ruled that DuPont Company and Pioneer Hi-Bred International violated their seed trait licensing contract with Monsanto. DuPont's separate antitrust and patent fraud claims are not impacted by the ruling.

At issue are Monsanto's Roundup Ready® soybean and corn traits, known by their respective technical names 40-3-2 and NK603, which Monsanto developed upon discovering the CP4 gene, a gene that makes plants resistant to glyphosate, and the company's ability to control how licensees can use those traits.

According to court documents, "In 2002, Monsanto entered into non-exclusive license agreements with DuPont and Pioneer Hi-Bred International, Inc. giving Pioneer the right to manufacture and sell soybean and corn seed with the 40-3-2 and NK603 traits in exchange for the payment of royalties. For purposes of developing the necessary seed lines, the agreements also obligated Monsanto to deliver to Pioneer certain biological materials and proprietary technical information.

"Then, in 2006, Pioneer unveiled its own glyphosate-tolerant trait technology, known as Optimum® GAT® ("OGAT"). Pioneer subsequently began to combine, or "stack," the 40-3-2 and NK603 traits with OGAT in some genetically-modified soybean and corn seed products it produces.

"In response, Monsanto brought the present action for breach of contract, patent infringement, inducement to infringe, and unjust enrichment, alleging that Pioneer violated Monsanto's contractual and patent rights by producing RR/OGAT stacked seed products. Pioneer counterclaims for a declaratory judgment that the license agreements permit it to stack OGAT with the 40-3-2 and NK603 traits.

“Pioneer also asserts a number of antitrust counterclaims, alleging that Monsanto has abused its patent monopolies, has inserted anticompetitive restrictions into its license agreements with seed producers, and is attempting to employ an anticompetitive “switching strategy” by using new licensing agreements to shift independent seed companies from the current RR trait seed lines to Roundup Ready 2 Yield®, in order to prevent generic entry into the market and extend Monsanto’ patent protection through 2020.

In the court’s 24-page ruling, U.S. District Judge E. Richard Webber said the threshold question is whether the license agreements are ambiguous as to whether or not Monsanto granted Pioneer the right to introduce glyphosate-tolerant transgenic traits in combination with the 40-3-2 and NK603 traits it licensed from Monsanto. Pioneer had argued that the agreements expressly authorize this stacking.

In granting Monsanto partial judgment, Judge Webber said that the soybean and corn license agreements, when read in their entirety, are unambiguous and do not grant Pioneer the right to stack its OGAT glyphosate-tolerant trait technologies with the licensed Roundup Ready® soybean and corn traits.

However, Webber said his ruling was “narrow,” and didn't consider whether Monsanto has the right under antitrust laws to restrict how competitors breed and sell plants with Monsanto traits.

"This litigation is just beginning; we will now vigorously pursue our antitrust, license and patent fraud claims," DuPont Senior Vice President and General Counsel Thomas L. Sager said in a press release issued Saturday.

A company spokesperson said this ruling “does not affect Pioneer's commercial plans.”

DuPont announced in December that the commercial launch of its Optimum GAT soybean varieties would be delayed two or three years because of changes in regulatory policy in key import markets, and on corn, because of concerns related to yield.

Monsanto spokesman Lee Quarles said DuPont's claims of antitrust violations in the contract are a "continued smoke screen and effort to obscure the significance of the court's ruling on their license violation."