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Monsanto patent fight ensnares Missouri farm town

By ALAN SCHER ZAGIER
The Associated Press

PILOT GROVE, Mo. | Soybean farmer David Brumback calls himself a loyal customer of Monsanto Co. His product of choice: genetically engineered seeds resistant to pesticides and weed killers.

So when the biotech giant named Brumback and more than 100 other local farmers in a subpoena seeking five years of sales records, his first reaction was befuddlement. Then anger.

"With Monsanto, you're guilty until you're proven innocent," he said.

Across rural America, Monsanto is known for aggressive legal efforts to protect its patent. Farmers who save and replant the patented seeds in subsequent growing seasons quickly hear from the company's lawyers — and almost always lose, or settle out of court before trial.

Now Monsanto is raising the stakes against this so-called seed piracy with an unprecedented lawsuit against a farm co-op it accuses of aiding the illegal practice by cleaning seeds for use in future crops. That practice violates the contract between Monsanto and farmers which prohibits farmers from stockpiling seeds or selling second-generation seeds.

The St. Louis-based company says it's merely protecting an investment that exceeds \$2 million a day in overall research and development costs.

Lawyers for the Pilot Grove Cooperative Elevator Inc. in the central Missouri town, population 750, offer a more nefarious explanation: Monsanto wants to make an example of the co-op through tactics that reek of bullying and intimidation.

"Monsanto is doing its best to make this case so expensive to defend that the co-op will have no choice but to relent," attorney Steven Schwartz wrote in a court motion filed earlier this year. The company sought purchase records and depositions from 114 Pilot Grove customers.

"Its true motive is to gather information for future lawsuits against the co-op, its customers and other farm businesses around Pilot Grove."

Schwartz declined to discuss the ongoing case. So did several of the more than 20 co-op customers who have settled patent infringement complaints out of court. Those settlements include gag orders.

"It's a bad deal," said Pilot Grove farmer James Wessing. "According to Monsanto, nobody is supposed to know anything about it."

The company's enforcement strategy includes private investigators, video surveillance and a toll-free hot line provided for farmers and business owners to anonymously report violations to what farmers call the "seed police."

A Monsanto spokeswoman noted that farmers who use patented seeds such as its Roundup Ready soybean — so named because it resists the Monsanto herbicide Roundup — sign written agreements pledging not to save and replant seeds.

Of the roughly 250,000 farmers who buy such products annually, the company has sued about 120 customers over the past decade, spokeswoman Janice Person said.

She compared the seed contracts to DVD rental agreements that require customers to not copy movies for commercial use.

"It's an equitable playing field for all farmers to follow the same rules," she said.

Sometimes though, the company's zealous enforcement efforts ensnare innocent bystanders.

Gary Rinehart, a northern Missouri convenience store owner, said he was accosted in 2002 by a Monsanto private investigator who warned him not to fight the company. Only Rinehart doesn't own a farmer or sell seeds.

"It was a case of mistaken identity," he said.

Monsanto sued Rinehart in federal court before dropping its case. According to a statement on the company's Web site, a Monsanto investigator "saw unmarked, brown bagged seed delivered to a couple of fields" nearby. The actual offender was Rinehart's nephew, whom the company says planted saved seeds on Rinehart's land.

"There's nobody else in the world that can get away with what they've done," Rinehart said. "When you buy a loaf of bread, it's yours. You're done. It should be the same way with seeds."

Rinehart's sentiment underscores years of simmering resentment among farmers who say Monsanto's grip on the seed market has produced unreasonable demands regarding the use of its seeds.

Saving seeds for reuse in later planting seasons is how it was done since the earliest days of agriculture. But the U.S. Supreme Court in 1980 deemed seeds as products that could be patented, opening the door for Monsanto and other companies.

A 2007 study by the Center for Food Safety showed that Monsanto had collected between \$107 million and \$186 million in patent infringement settlements before and after trial. The largest judgment, against a North Carolina farmer, topped \$3.05 million.

A Tennessee farmer was sentenced to eight months in prison after he was caught lying about a truckload of cotton seed he hid for a friend. And a Canadian canola grower was sued even after the company acknowledged that the patented seeds merely drifted onto his land or fell off trucks headed to grain elevators.

"It's unacceptable that Monsanto is going after farmers," said Bill Freese, a science policy analyst for the Washington-based watchdog. "And it's even worse when they broaden it to an entire cooperative."

Schwartz, the co-op's attorney, said in a court filing that the Pilot Grove business is being targeted for "inducing farmers to infringe (the patent) by cleaning their soybeans."

Monsanto's pursuit of patent claims against individual farmers has been upheld by the U.S. Supreme Court, which in January let stand without comment two lower court rulings that found a Mississippi farmer responsible for \$375,000 in damages for reusing Roundup Ready soybean seeds.

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