

Seed Piracy

Updates and Summaries

Eastern Canada Update

October 2009

Recent Litigation in Ontario

On July 10, 2009 The Federal Court of Canada issued its ruling on costs owed to Monsanto Canada by four Ontario growers who admitted they deliberately infringed Monsanto's patent on Roundup Ready® technology.

The growers were ordered to pay to Monsanto their profits derived from growing Roundup Ready® soybeans without a license and pre-and-post judgment interest. The growers were also instructed to pay Monsanto a substantial amount for legal costs incurred by Monsanto as a result of the growers choosing to take their cases to court.

Actual monetary amounts owed by each grower vary, depending on the acres involved and the expenses found by the Court to be deductible and proven. Details of the amounts owed to Monsanto by each grower are outlined below:

- **Lawrence Janssens** has been ordered by the Court to pay Monsanto approximately **\$102/acre** or a total of \$10,178.
- **Alan Kerkhof** has been ordered by the Court to pay Monsanto approximately **\$102/acre** or a total of \$10,178.
- **Ronald Janssens** has been ordered by the Court to pay Monsanto approximately **\$185/acre** or a total of \$9,228.
- **Charles Rivett** has been ordered by the Court to pay Monsanto approximately **\$66/acre** or a total of \$62,748.

All the growers were subject to a Federal Court judgment dated January 11, 2008 which included a finding they knowingly infringed Monsanto's patent rights by growing, harvesting and selling Roundup Ready crops. Hearings took place January 12-15, 2009 at the Federal Court of Canada in Toronto to determine the amounts owed to Monsanto as a result of the growers' deliberate infringement.

During the January 2009 hearings, the growers had attempted to argue that the only amount they should be required to pay was an amount equal to the licensee fee they saved by not purchasing Roundup Ready soybeans.

An additional argument attempted by the defendants was that they made no profit from the use of Roundup Ready soybeans, and should therefore owe profits of zero.

Justice Zinn soundly rejected these arguments.

We believe there are many positives in this judgment for Monsanto and for our paying customers who sign Technology Stewardship Agreements with us and abide by the terms and conditions outlined in the TSA contract:

- All these growers have been removed from Monsanto's authorized user list and will not have access to any Monsanto technologies sold by Monsanto or its licensees in the future.
- All the growers have been instructed to pay Monsanto profits. **The judge strongly rejected the notion that infringers should only pay the original license fee.**
- In addition to the awarding of profits, all the growers have also been instructed to pay pre and post-judgment interest on the profits award.
- Apart from their own legal costs and out of pocket expenses, the Federal Court also ordered the growers to pay a substantial portion of Monsanto's legal costs.

In all cases, the growers are appealing Justice Zinn's decisions and Monsanto has filed cross-appeal.

In similar previous cases, the Federal Court of Canada has awarded compensation to Monsanto as a result of the unlicensed use of Roundup Ready soybeans.

In the case of Paul Beneteau of Amherstburg, Ontario, the Federal Court of Canada awarded Monsanto **\$160/acre** (\$8,800) in a November, 2007 judgment. In the case of Eddie Wouters and Northspruce Farms Ltd. of Forest, Ontario, Monsanto was awarded **\$274/acre** (\$107,000) in a June, 2007 judgment.

Seed Piracy—It's Not Worth the Risk!

Monsanto makes every effort to settle out of court with those who have infringed our patents. However, if a grower decides to take matters to the court, they will no longer be permitted to purchase and utilize Monsanto technologies in the future. The court may also award Monsanto:

- Damages substantially higher than the price of legitimately purchasing the technology
- Litigation Costs / Investigation Costs
- Delivery up/forfeiture of crops
- Public awareness, as growers appear on Monsanto's Unauthorized Grower List

Unauthorized Growers Can Lose Technology Access

When a grower infringes on a patent, they are risking losing permission to purchase and utilize Monsanto technologies, such as:

- Roundup Ready® corn and Roundup Ready® soybeans
- Genuity™ Roundup Ready 2 Yield™ soybeans
- YieldGard® Corn Borer
- YieldGard® Rootworm
- YieldGard VT Triple™

In addition, the potential yield advantages gained through growing crops with these technologies will be lost:

- Roundup Ready corn = 4.1 bu/¹
- YieldGard® Corn Borer = 4.2 bu/acre²
- YieldGard® Rootworm = 4.2 bu/acre³
- YieldGard VT Triple™ = 12.5 bu/acre⁴

For example, a grower who is planting 80 acres of YieldGard VT Triple corn and 20 acres of Roundup Ready corn could potentially lose (12.5 bu/acre x 80 acres) + (4.1 bu/acre x 20 acres) = 1082 bushels of additional yield over conventional corn. At \$4.00 per bushel, this equals \$4,000 in lost income potential.

Québec Settlement News

2008 marks our first discovery of patent infringements in Quebec. Following several audits conducted in Quebec since the introduction of Roundup Ready technology, three cases were discovered in Northern Quebec involving canola seed. In all three cases, a settlement of \$200/acre was agreed upon without the involvement of the courts.

How Audits Give Back to Agriculture

Seed piracy costs everyone, so Monsanto wants to ensure everyone benefits from technology protection audits. Monsanto has made a commitment that we would not profit from farmers making bad decisions. Instead, these funds are donated back to rural communities and charity programs through our company's existing corporate giving program. Since 95% of audits find a grower to be free of any violations, Monsanto also offers these growers the option to have \$200 dollars donated on their behalf to an Agricultural Related organization.

These reward dollars amounted to a total of \$1800 in 2008, and Monsanto donated this money to the Centre for Rural Leadership on behalf of audited growers.

Technology Protection Audits

Technology Protection Audits play an important role in ensuring growers have a level playing field. Audits are conducted on a random basis to deter theft of the technology and to ensure all growers are treated fairly. All audits are pre-arranged through scheduled appointments with growers. Monsanto also follows up with individual growers when allegations arise that they may be using the technology without a license.

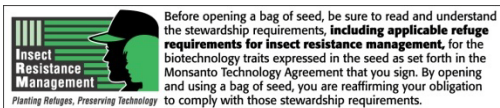
Monsanto receives and investigates hundreds of calls and letters each year about potential seed piracy cases nationwide. Anyone with concerns or questions about seed piracy can anonymously call 1-800-667-4944.

¹ Source: 1 application of Roundup, 155 Monsanto Canada field trials, 1998-2005

² Source: 2157 Monsanto Canada field trials, 1999-2008

³ 2.8 bu on rotated ground – 155 Monsanto Canada field trials, 2007-08, and 9.9 on corn on corn – 75 Monsanto field trials, 2003-08, weighted average 80% rotated/20% corn on corn

⁴ Yield advantages of Roundup Ready corn, YieldGard Corn Borer, YieldGard Rootworm added together.



ALWAYS READ AND FOLLOW PESTICIDE LABEL DIRECTIONS. Roundup Ready® crops contain genes that confer tolerance to glyphosate, the active ingredient in Roundup® agricultural herbicides. Roundup® agricultural herbicides will kill crops that are not tolerant to glyphosate. Genuity™, Roundup®, Roundup Ready®, Roundup Ready 2 Yield™, YieldGard®, YieldGard® Corn Borer, YieldGard® Rootworm, and YieldGard VT Triple™ are trademarks of Monsanto Technology LLC, Monsanto Canada, Inc. licensee. ©2009 Monsanto Canada Inc.