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Corteva-Inari Deal Leaves Unanswered Questions on Seed Deposits

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A farmer holds some of Corteva Agriscience's canola seed in a cup on his farm in Davidson, Saskatchewan, Canada. Photographer: Geoff Robins/AFP via Getty Images

The settlement that halted Corteva Inc.'s seed-technology jury trial against Inari Agriculture Inc. puts the parties' dispute to rest while leaving open the broader questions surrounding whether companies can use contracts to restrict access to biological materials that patent law requires them to disclose.

Corteva had sought \$676.9 million from a Delaware jury for Inari's alleged improper use of its protected seed technology to accelerate development of competing soybean and corn products, including through work with seeds in Belgium. It also sought more than \$446.6 million for alleged patent infringement and \$216.4 million for contract-related claims.

Instead, Inari agreed to destroy the Corteva biological materials it obtained from a seed repository and anything developed from it, assign related intellectual property to Corteva, and "negotiate certain licensing arrangements."

But the settlement maintains the legal uncertainty that made the case one closely watched by both IP rights holders seeking to protect investments in new seed technologies and those seeking to innovate based on publicly deposited biological materials.

Jocelyn Bosse, an IP lecturer at Queen's University Belfast in the UK, pointed to the US Justice Department's statement of interest in the case arguing that such restrictions could undermine the patent system's disclosure-for-protection bargain.

"If material transfer agreements are used to restrict access to the seeds," she said, "then important information is being withheld and this bargain is being undermined."

Although the DOJ didn't discuss the overlap of patents and plant variety protection certificates — a form of IP issued by the US Agriculture Department — there are "widespread concerns that patent protection can undermine the important exemptions under PVP law, such as the breeder's exemption," said Bosse, who's on hiatus from teaching while conducting a Future Leaders Fellowship research project on plant IP law.

"The settlement means that we have missed an opportunity for the courts to try to resolve this issue, which was neglected by the US Supreme Court when they allowed patents on plant varieties in 2001," Bosse said.

Patent owners may take a different lesson from the dispute.

The settlement could "make depositories more attractive," said Jacob Sherkow, a University of Illinois law professor. "You can deposit and get your patents without worrying that everyone will just design around."

'Extremely Risky'

Corteva alleged that Inari, a Cambridge, Mass.-based startup led by former leaders of Syngenta AG and Bayer AG's Bayer CropScience unit, infringed its patents and PVP certificates — in what a Corteva lawyer described during opening statements as "an orchestrated plot to both export outside the United States, and then exploit for purely commercial gain, some of the most valuable property in the history of agriculture."

Corteva invests \$1.4 billion annually in research and development, its attorney told jurors, framing it as about \$4 million a day. The company and Inari this week jointly praised the global patent and plant variety protection systems, saying they "protect agricultural innovation" and help foster further seed-related investment, competition, and collaboration.

A growing concentration of the industry's dominant players over the last century has pushed governments in the US and EU to strengthen IP rights on living organisms such as seeds, creating "substantial barriers" for other seed companies, said Philip H. Howard, a Michigan State University professor whose research focuses on the food system.

Bayer and Corteva, he said, account for 71.6% of US corn sales and control about 87% of corn-related patents and PVP protections.

Corteva's deal with Inari "signals to startups that it is extremely risky to try to challenge the big four seed firms, and that governments are more likely to help reduce competition than to protect it," Howard said.

The settlement also perpetuates uncertainty for plant breeders, Bosse said.

Breeding is an international activity that depends on companies and researchers exchanging seeds and other biological materials, she said. The deal thus leaves breeders and agricultural companies without clear guidance from courts on whether using material from, or sharing varieties with, other countries — especially the US — is allowed.

"This could have a chilling effect on global plant innovation," Bosse said.

Trap and Roadmap

In disputes involving patented plant-related technologies — unlike those over high-tech products or drugs — "it's hard to tell when you're infringing if you don't have access to the underlying source material," said Sherkow, whose forthcoming law journal article discusses similar issues.

The Corteva-Inari case, he said, shows that access to a depository can be "a trap as much as a roadmap."

The DOJ's statement of interest argued Corteva shouldn't be allowed to treat as infringement Inari's use of deposited seeds to understand the scope of Corteva's patents.

But now the court won't address whether Corteva could use contractual material-transfer provisions to limit how others use seeds it deposited with the American Type Culture Collection to satisfy the requirements for getting patents issued.

"Unfortunately, the case settled before we'll get any kind of ruling on this question," said Jorge Contreras, a University of Utah law professor. He also noted that Omeed Assefi and Dina Kallay, the DOJ attorneys who "led the charge" against Corteva's patent assertion, no longer work at the agency.

Some members of Congress are taking the issues seriously at least, Bosse said. In July, three Democratic senators proposed legislation mirroring a bill pending in the House that Bosse said would "ban these patents entirely" and "prohibit any contracts that restrict further breeding."

"This would be a massive change for the US breeding sector," said Bosse, who wrote a related blog post. "But in the absence of guidance from the courts, we can see why Congress would propose some radical solutions."

The case is Corteva Agriscience LLC v. Inari Agric. Inc., D. Del., No. 1:23-cv-01059 .

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