

POTENTIALLY CURBING THE SCOPE OF GENE PATENTS

On March 9, 2010, the Advocate General of the European Court of Justice issued an Opinion in the case of *Monsanto Technology LLC v. Cefetra BV et al.*, case number C-428/08, that advocates limiting the scope of protection under European Union (EU) patent law afforded by patents on DNA. The European Court of Justice will consider the Advocate General's Opinion while deliberating their decision in the case.

The patent at issue claims a DNA sequence that encodes an enzyme that immunizes plants against the herbicide, Roundup. Monsanto, the owner of the patent, brought an infringement suit against Cefetra for importing soy meal that contained traces of the patented DNA.

While the patented DNA was detected in the imported soy meal, the opinion stated that since the patented DNA is only a residue within the soy meal, and is not performing any function, it does not qualify for protection under the relevant European statutes concerning the protection of biotechnological inventions. The Advocate General interpreted European law as protecting a DNA sequence only when it performs the function for which it was patented.

The European Court of Justice must now decide the present case. If it follows the Advocate General's Opinion broadly, the impact on the enforceability of DNA patents could be significant. We will continue to follow this and other cases affecting the patentability of genomic materials. Please watch this space for future announcements.



New York

Seven Times Square
New York, NY 10036
+1.212.209.4800
+1.212.209.4801 [fax]

Boston

One Financial Center
Boston, MA 02111
+1.617.856.8200
+1.617.856.8201 [fax]

Washington, DC

601 Thirteenth Street NW,
Suite 600
Washington, DC 20005
+1.202.347.2222
+1.202.347.4242 [fax]

Hartford

City Place I
185 Asylum Street
Hartford, CT 06103
+1.860.509.6500
+1.860.509.6501 [fax]

Providence

121 South Main Street
Providence, RI 02903
+1.401.276.2600
+1.401.276.2601 [fax]

London

8 Clifford Street
London, W1S 2LQ
United Kingdom
+44.20.7851.6000
+44.20.7851.6100 [fax]

Dublin

Alexandra House
The Sweepstakes
Ballsbridge, Dublin 4
Ireland
+353.1.664.1738
+353.1.664.1838 [fax]

www.brownrudnick.com

Brown Rudnick LLP is a Limited Liability Partnership ("LLP") regulated by the Solicitors Regulations Authority and registered in England & Wales, No. OC300611. We use the word "partner" to refer to a member of the LLP, or to an employee or consultant with equivalent standing and qualifications. A full list of members, who are either solicitors or registered foreign lawyers, is open to inspection at the registered office, 8 Clifford Street London W1S 2LQ.

Information contained in this Alert is not intended to constitute legal advice by the author or the attorneys at Brown Rudnick LLP, and they expressly disclaim any such interpretation by any party. Specific legal advice depends on the facts of each situation and may vary from situation to situation.

Distribution of this Alert to interested parties does not establish an attorney-client relationship. The views expressed herein are solely the views of the authors and do not represent the views of Brown Rudnick LLP, those parties represented by the authors, or those parties represented by Brown Rudnick LLP.

BROWN RUDNICK LLP is an international law firm with offices in the United States and Europe. Our 200 attorneys provide assistance across key areas of the law, including corporate, intellectual property, tax, government law and strategies, climate and energy, complex litigation and arbitration, finance, bankruptcy and restructuring, and real estate.

For further information on this topic, please contact your Brown Rudnick attorney or one of the following attorneys:

Thomas C. Meyers
+1.617.856.8483
tmeyers@brownrudnick.com

James Shaw
+44.20.7851.6078
jshaw@brownrudnick.com

Elizabeth M. O'Donoghue contributed to this Alert.