Protection of Intellectual Property: The Supreme Court Rules on the Controversy Between the Environmental Protection Agency and Monsanto, Inc.

Abstract

As the economies of many nations shift from agricultural, to industrial and most recently, to information-based societies, the prevailing legal landscape must adapt to serve those that brave new technological frontiers. Conventional laws intended to protect physical property increasingly need to apply also to intellectual property. As a result, recent years have witnessed the creation of laws concerning intellectual-property rights.

A legal action by the Monsanto Company secured protection of trade secrets through *Ruckelshaus vs. Monsanto* in 1984. The core issue, ultimately decided by the U.S. Supreme Court, was that trade secrets constitute economically valuable information; these trade secrets are entitled protection equal to that given to physical property. In addition, the Supreme Court ruled that forced forfeiture of intellectual property by the government requires compensation.

Introduction

For many years, the Monsanto Company (Monsanto) has been a major part of the American chemical industry. However, its footprint extends beyond the discipline of applied chemistry to law. Monsanto played a pivotal role in shaping intellectual-property laws, in particular, application of the Takings Clause to protection of intellectual property.

Background Terms

The **Takings Clause** is in the Fifth Amendment of the U.S. Constitution: "nor shall private property be taken for public use, without just compensation.[1]" This clause mandates that the government must pay for property that it seizes from individuals. During discussions leading to adoption of the Constitution in 1789, James Madison proposed the Takings Clause to protect citizens from an aggressive government that abuses its power of eminent domain, i.e. "the power of a government to compel owners of real or personal property to transfer it, or some interest in it, to the government.[2]" The traditional application of the Takings Clause typically concerned taking privately-owned land claimed by the government to build such public necessities as schools, highways, police stations, or parks.

The term "**intellectual property**" first appeared in 1845 when Justice Charles Woodbury described intellectual property as the product of "labors of the mind.[3]" Ideas, artistic expressions, and literary works are thus considered intellectual property. Intellectual-property laws apply to the manner in which ideas or information are expressed; these laws confer upon writers, inventors, and artists specific rights governing the distribution of the products of their intellectual pursuits. The purpose of these laws is to preserve an incentive to develop, and in some cases, make available for public use, new ideas by preventing competitors from profiting from ideas to which they did not contribute. For example, a **patent** ensures an inventor that he will reap the benefits of his invention efforts and have exclusive rights to his invention for a specific period of time, typically 20 years.

A **trade secret** constitutes another form of intellectual property. A famous example of a trade secret is Coca-Cola's beverage recipe; it has economic value because it is difficult to discover by observation. As the name "trade secret" suggests, a company must make reasonable

efforts to maintain secrecy to qualify for legal protection. The gamble with a trade secret is that if it is independently discovered by a competitor through legal means—not through theft or spying, for example—then the original holder of the trade secret cannot prevent a competitor from subsequently distributing products based on the original holder's valuable knowledge. While a company may seek damages if an employee divulges that company's secret, there is no protection from independent discovery nor from reverse-engineering. To reverse-engineer a device is to study a pre-existing product, often by taking it apart, analyze the contents, and then create a new device with the same functions as those of the original. For patents, the patent holder is guaranteed exclusive distribution rights for a fixed number of years; thereafter, the invention becomes public. On the other hand, a trade secret can last indefinitely or less than a day, depending on when the secret is discovered by a competitor.

Bringing Intellectual Property to the Forefront

The concept "intellectual property" was not in common use until 1970, with establishment of the World Intellectual Property Organization, an agency of the United Nations, committed to promoting awareness and protection of intellectual property. The Takings Clause requires the government to pay due compensation whenever it seizes personal property. However, the notion of "property" becomes blurred when that property is intellectual property. Unlike physical property, intellectual property is not conserved, because multiple parties may possess the same amount of information. The government could claim that it is sharing the information, not necessarily taking it away from a particular party. However, through sharing, the economic advantage of a trade secret disappears because its value depends on exclusive

ownership. The essential issue is this: should trade secrets, a form of intellectual property, be granted the same legal protection as that given to physical property?

In 1984, through its suit against the Environmental Protection Agency (EPA), Monsanto played a crucial role in the trend to protect intellectual property owners. Monsanto was (and is) a multinational chemical and agricultural biotechnology corporation based in St. Louis, Missouri. Monsanto was founded in 1901 by John Francis Queeny; its first major product was the artificial sweetener, saccharin, which it later produced for the Coca-Cola Company along with caffeine and vanillin. By the 1940s, Monsanto had become a leading manufacturer of plastics and synthetic fibers. In addition, Monsanto developed the sweetener aspartame, bovine growth hormones, and Agent Orange. By the end of the 20th century, its focus had shifted to biological applications; it is now the major producer of genetically engineered seeds and herbicides, including the world's best-selling herbicide, Round-up.[4]

In 1947, the federal government enacted the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that started as a labeling and licensing statute for pesticides. By 1972, mounting public concern over the use of pesticides and their effect on the environment prompted Congress to turn FIFRA into a full-fledged regulatory statute. Under the 1972 version of FIFRA, all pesticides required registration. The EPA had the authority to review, cancel or suspend registration. For any pesticide product, the registration process required manufacturers to provide health, safety, and environmental data to the EPA for review. However, manufacturers could designate any portion of the submitted material as a trade secret.[5] After passage of the 1972 amendments, the EPA could use information supplied by one manufacturer when considering the safety of a product from another manufacturer, provided that the information used was not designated as a trade secret. However, problems arose because Congress had

neglected to include an effective date and failed to clarify what information might be used when reviewing registrations from other manufacturers. Furthermore, it was not clear what information fell under the definition of a trade secret. Following several lawsuits, trade secrets now include "any data, including health, safety, and environmental data" (ruling, section 1).[5?] Congress amended FIFRA again in 1978 to clarify dates and provide provisions that outlined what data, supplied by one company, may be considered when reviewing registrations from another company.

In 1984, Monsanto sued the EPA's administrator, Ruckelshaus, for endangering Monsanto's trade secrets regarding its line of herbicides. The EPA may have referenced information submitted by Monsanto between the 1972 and 1978 FIFRA amendments; whether the EPA actually compromised Monsanto's trade secrets is unknown, but the economic ramifications were great enough for Monsanto to take action. Monsanto demanded due compensation, and *Ruckelshaus vs. Monsanto* came before the Supreme Court. The Supreme Court determined that information submitted between the enactment of the 1972 and 1978 FIFRA amendments could have been unduly distributed. Because the submitted health, safety, and environmental data were collected by a government agency toward public use, public disclosure of these data fell under the jurisdiction of the Takings Clause. Therefore, Monsanto was entitled to due compensation and granted the option of seeking such in the Claims Court[5].

Conclusion

The Supreme Court decision in *Ruckelshaus vs. Monsanto* marks a milestone because it applied the Takings Clause to nontangible property, in particular, intellectual property. The protection of creations of the mind is especially important for chemical (and other) companies

because it "encourages the expenditure of additional resources, which leads to further innovation."[6] Legal protection of intellectual property thus ensures that results from research efforts are protected and that discoverers may reap the benefits of their labor.

References:

[1] Full Text of the Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

[2] Brown, Carol. "Takings the Takings Claim: A Policy and Economic Analysis of the Survival of Takings Claims After Property Transfers." Connecticut Law Review 36.7 (2003): 7-75

[3] Woodury & Minot, CCD Mass. 7 F. Cas. 197, 1845.

[4] Monsanto.com

[5] Ruckelshaus vs. Monsanto Co., 467 U.S. 986, 1016-1020 (1984)

[6] www.wipo.int