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As Patent Ends, a Seed's Use Will Survive

By [ANDREW POLLACK](#)

Facing antitrust scrutiny over its practices in the biotechnology seed business, [Monsanto](#) has said it will not stand in the way of farmers eventually using lower cost alternatives to its genetically modified soybeans.

In letters to seed companies and farm groups this week, Monsanto said that it would allow farmers to continue to grow its hugely popular Roundup Ready 1 soybeans even after the patent protecting the technology expires in 2014.

The letter countered a widespread impression in the agriculture business that Monsanto planned to force farmers and seed companies to migrate to a successor product called Roundup Ready 2 Yield, which will remain under patent and is more expensive.

The issue has potentially broad implications for the agriculture industry because Roundup Ready soybeans will be the first widely grown biotechnology crop to lose patent protection since gene splicing became a mainstay of crop science in the 1990s.

Because farmers and seed companies would no longer have to pay royalties to Monsanto on the gene after 2014, Roundup Ready soybeans would become agricultural biotechnology's equivalent of a generic drug.

Monsanto's statement comes as the Justice Department is investigating possible antitrust concerns in the seed business, looking in particular at Monsanto, which dominates the business of supplying crop traits developed through genetic engineering. Critics, including some competitors, say that Monsanto has great leverage over the seed business and growers through restrictive contracts that must be signed to use Monsanto's genes or to grow the genetically modified crops.

Monsanto calls such criticisms baseless. But it certainly is getting harder for seed companies to avoid using the Roundup Ready bacterial gene, which makes the plants impervious to the widely used herbicide glyphosate, which Monsanto sells as Roundup.

That allows farmers to spray their fields to kill weeds without harming the crops. More than 90 percent of the soybeans grown in the United States contain it. So do about two-thirds of the

nation's corn and cotton crops, though those are protected by different patents that expire later than the soybean patent.

Gerald A. Steiner, executive vice president for corporate affairs at Monsanto, said Thursday that Monsanto was not changing its policy on how it would handle the soybean patent expiration, but was merely clarifying its intentions.

"What's different," he said, "is we have made a very comprehensive communication of what we are going to do."

But the widespread impression in the seed business was that Monsanto was backing away from a previous policy.

"The only thing we were told was that as of 2014 you would not be able to sell any more Roundup Ready 1," said Jack Debolt, manager of Advanced Genetics, a coalition of small Ohio seed companies that license the Roundup Ready gene from Monsanto to put in their seeds.

Monsanto's biggest competitor, [DuPont](#)'s Pioneer Hi-Bred seed company, has also accused Monsanto of antitrust violations including, as it says in a lawsuit, an effort to "remove Roundup Ready from the market prior to the time when competitors will be able to produce a generic product."

Mr. Steiner of Monsanto said one reason for the company's letters this week was to counter statements made by Pioneer, which Monsanto has sued alleging patent infringement.

Roundup Ready seed can cost as much as \$75 an acre compared with \$30 to \$35 for soybean seeds that are not genetically modified, according to James Beuerlein, a soybean specialist at [Ohio State University](#). The difference in price is thought to reflect mainly royalties paid to Monsanto.

While Monsanto sells Roundup Ready seeds itself, it also licenses the technology to other seed companies. Some seed industry executives and academic soybean specialists say that Monsanto was not planning to renew licenses for that Roundup Ready 1 trait that expired before 2014, so that seed companies would have no choice but to move to Roundup Ready 2.

But in its letters this week, Monsanto said it would now extend all contracts for Roundup Ready 1 until the patent's expiration date. It also said it would not enforce language in some contracts that would have required seed companies to destroy or return Roundup Ready seed when the patent expired.

And Monsanto said seed companies could continue to sell seeds containing the Roundup Ready 1 trait without jeopardizing their access to the successor technology.

Monsanto also said that after the patent expired it would allow farmers to save Roundup Ready 1 seeds from one year's crop to plant the next. Monsanto said it would not enforce other patents that might protect those seeds.

Many soybean farmers used to save seeds, but with Roundup Ready seeds they have been contractually obliged to buy new seeds each year. Monsanto has taken legal action against hundreds, if not thousands, of farmers it has accused of saving seed.

"This is a pretty big concession for Monsanto," said Shawn Conley, a soybean specialist at the [University of Wisconsin](#), who said saving seed could save farmers a lot of money.

Still, it is uncertain how long Roundup Ready 1 would survive in generic form. Some nations require licenses for the import of genetically engineered crops to be periodically renewed. Monsanto said it would maintain those licenses through 2017. But if they expired after that, American farmers would not be permitted to export the Roundup Ready 1 generic soybeans to certain countries, which would discourage them from growing those crops.

Monsanto said it was confident that most farmers and seed companies would move to Roundup Ready 2, which uses the same bacterial gene but places it in a different location in the soybean DNA. Monsanto said that Roundup Ready 2 crops would have higher yields, and that other desirable traits would be added to those crops over time.

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