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Supreme Court Issues Narrow Ruling Regarding the Doctrine of Patent Exhaustion and Genetically Modified Seeds

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On May 13, 2013, the U.S. Supreme Court issued a unanimous decision in *Bowman v. Monsanto Co.* regarding the doctrine of patent exhaustion. This case centered on whether a farmer infringed Monsanto's patent for genetically modified soybean seeds by replanting harvested seeds (i.e., seeds generated by seeds previously purchased by the farmer from Monsanto) instead of planting new seeds purchased from Monsanto.

The farmer argued that the doctrine of patent exhaustion, which generally limits a patentee's right to control what others can do with an invention after it is sold, precluded a finding of infringement. The application of this doctrine is usually straightforward, but here, it was complicated by the fact that the original seeds purchased by the farmer were self-replicating. Nevertheless, the Supreme Court ruled in Monsanto's favor and found infringement.

Many were hopeful that the Supreme Court's ruling would provide guidance to all sorts of self-replicating products, such as genetically modified organisms, live vaccines, cell cultures and other biotechnologies. But the ruling was expressly limited to the facts at issue "rather than every one involving a self-replicating product." The Court expressly declined to consider "how the doctrine of patent exhaustion would apply in such [other] circumstances."

While the Court's decision does not offer tremendous clarity regarding how the doctrine of claim differentiation applies to self-replicating technologies other than genetically modified seeds, it does provide a helpful data point going forward. If you have any questions or wish to discuss how the Court's decision may impact your company, please contact your attorney at Brinks Gilson & Lione, or one of our BioPharma attorneys.