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## **SUPREME COURT APPROVES PATENTS FOR GENETICALLY MODIFIED SEED** *(J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.)*

The U.S. Supreme Court held this week that genetically modified seed is eligible for patenting under federal law. The decision is a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, urging the Court to uphold such seed patenting.

The Court held that in adopting the patent law, Congress intended to permit patenting of a broad range of inventions -- including living organisms. The Court held that subsequently-adopted legislation did not indicate congressional intent to remove patent protection from plants.

WLF attorneys praised the decision as one that will continue America's leadership in the development of new food products that have been genetically modified to enhance hardiness, pest-resistance, or disease-resistance. "Patents provide the financial incentive for companies to invest in product development. Both free enterprise and consumers benefit from the many new plants being developed as a result of those incentives," said WLF Chief Counsel Richard Samp after reviewing the Court's decision.

The Court's decision stems from a patent infringement suit brought by Pioneer Hi-Bred International, Inc., a developer of genetically modified seed, against J.E.M. AG Supply, a seed distributor. J.E.M. had been selling Pioneer Hi-Bred seed without a license. J.E.M. defended itself by claiming that Pioneer's patents were invalid. In particular, J.E.M. argued that Congress had intended to remove genetically modified seed from the scope of the patent laws when it enacted two statutes, the Plant Patent Act (PPA) and the Plant Variety Protection Act (PVPA), specifically aimed at giving plant developers intellectual property protection.

Agreeing with WLF's position, the Court rejected J.E.M.'s argument. The Court held that neither the PPA (adopted in 1930) nor the PVPA (adopted in 1970) states expressly that Congress intended to remove patent protection from plants. Noting the rule of statutory construction that "repeal by implication is disfavored," the Court said that the PPA and the PVPA should not be interpreted as having impliedly repealed regular patent protection for plants in the absence of evidence that the laws are in irreconcilable conflict. The Court said that there was no conflict. It noted, for example, that while the patent laws in general provide far greater protection to seed developers than do the PPA and the PVPA, the PPA and the PVPA were nonetheless still of benefit to seed developers who could not meet the rigorous requirements for obtaining a regular

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patent.

The Court also noted that Congress has never objected to the Patent and Trademark Office's long-standing practice of issuing patents for genetically modified seed. WLF had argued that if Congress had disapproved of such patents, it would long since have stepped in to put a stop to the PTO's practice. WLF noted that it has been well established for at least 20 years that living things are patentable, and had argued that there are no policy reasons to provide lesser patent protection to newly developed plants than to other newly developed organisms.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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