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Shandong Province Denghai Seeds Industry Co., Ltd. v. Shandong Province Laizhou City Agricultural Science Research Institute Co., Ltd.

Citation: The Hohhot City Intermediate People's Court's Judgment No. Hujingchuzi 42/2001

Date of judgment: February 1, 2002

Procedural history

The Shandong Province Denghai Seeds Industry Co., Ltd. (Denghai) sued, in the Hohhot City Intermediate People's Court, the Shandong Province Laizhou City Agricultural Science Research Institute Co., Ltd. (ASRI) for infringing its right in the new variety of plant of "Denghai No. 9" crossbred corn seeds by virtue of production of the "Yedan No. 53" crossbred corn seeds.

Issue

Whether a research institute's act of producing crops seeds should be deemed to be scientific research that could render it free from the infringement liability?

Facts

With the approval granted by the Inner Mongolia Seeds Administration on May 25, 2001, the ASRI began to breed the "Yedan No.53" crossbred corn seeds in Ningcheng County, Chifeng City; it obtained the license for production of major crops seeds, and concluded a contract for pre-arranged production of the crops seeds with the Village Committee of the Shantou village.

The Hohhot City Intermediate People's Court invited the Corn Research Center Attached to the

Beijing Farming and Forestry Science Academy to make a technical appraisal of the “Yedan No. 53” crossbred corn seeds which were preserved in the seeds breeding fields before the lawsuit, from which it was concluded that in the sample sent for the test, 54% of the seeds were not different from “Denghai No. 9” crossbred seeds, and could be determined as “Denghai No. 9” crossbred seeds, and 46% were different from “Denghai No. 9” crossbred seeds.

The ASRI argued that 46% of the crossbred corn seeds found to be different from “Denghai No.9” seeds was not something resulting from self-pollination or pollination of foreign pollen, but from genetic mutation on the grounds that the paternal seed DH8723-2 used in the “Denghai No. 9” crossbred corn seeds was identical with the H8732 owned by the ASRI itself.

Regarding this, the appraisal experts took the views as followed. (1) Most of the seeds sent for the test for the appraisal which were different from “Denghai No. 9” seeds were identical with the self-bred seedlings of the standards “Denghai No. 9”. To show the correctness of the conclusion, a special assay was conducted on the paternal parents in the seeds breeding field, and it was found that in the paternal parents, there were seeds identical with the crossbred seeds sent for the test, which showed that some of the paternal parents were pollinated by the pollen of maternal parents. For this reason, it might be determined that because of the incomplete stamen-growth in the maternal parent, spollen shedding plants existed, and these seedlings were self-bred seedlings. (2) The genotype of some of the seeds different from the “Denghai No. 9” was different from that of the maternal parent, and they were also heterozgotes, in which no genotype from the paternal parent was identified. So it should be caused only by pollination of other pollen. On the basis of these two views, the 46% of the different seeds were not caused by genetic mutation.

Rule of law

Article 10 of the Regulations for the Protection of New Varieties of Plants *In the following events, an entity or individual person exploiting a granted variety neither needs to be authorized, nor pay royalties to the owner of the right in the variety for exploitation, but the other rights enjoyed by said owner under these Regulations shall not be infringed:*

- (1) utilizing a granted variety in breeding and other scientific research activities;*
- (2) reproducing the propagating material of a granted variety by farmers for their own use.*

Reasoning

An entity or individual person that has done the seed breeding enjoys the exclusive right in the variety of plant for which it or he has been granted the right. Any other entity or person should not, without authorization, use repetitively any propagating material of the granted variety to produce the propagating material of another variety of plant for business purposes. The ASRI produced, without authorization, the plaintiff's "Denghai No. 9" crossbred corn in the name of the "Yedan No.53" crossbred corn, and should be held legally liable for the infringement. The ASRI had been issued the production license and concluded the production contract; hence its act to grow the plant is one to produce seeds, not to make a scientific research, so it was not a statutory act requiring no authorization from, nor payment of royalties to, the holder of the right in the variety of plant.

While it was determined in the appraisal conclusion that 46% of the crossbred corn seeds produced by the ASRI were different from "Denghai No.9" seeds, it was mainly due to incomplete stamen-growth in the maternal parent which resulted in self-breeding and receipt of foreign pollen. That is, the seeds were not pure enough, nor did they result from genetic mutation. Accordingly, said variety of plant was the "Denghai No. 9" crossbred corn.

Holding

The ASRI's act of producing the plant seeds was not deemed to be scientific research, and "Yedan No.53" was identical with "Denghai No. 9"; hence, infringement was established.