

Case C-428/08

Monsanto Technology LLC

v

Cefetra BV and Others

(Reference for a preliminary ruling
from the Rechtbank 's-Gravenhage)

(Industrial and commercial property — Legal protection of biotechnological inventions — Directive 98/44/EC — Article 9 — Patent protecting a product containing or consisting of genetic information — Material incorporating the product — Protection — Conditions)

Opinion of Advocate General Mengozzi delivered on 9 March 2010	I - 6768
Judgment of the Court (Grand Chamber), 6 July 2010	I - 6790

Summary of the Judgment

1. *Approximation of laws — Legal protection of biotechnological inventions — Directive 98/44 (European Parliament and Council Directive 98/44, Art. 9)*

2. *Approximation of laws — Legal protection of biotechnological inventions — Directive 98/44 (European Parliament and Council Directive 98/44, Art. 9)*
3. *Approximation of laws — Legal protection of biotechnological inventions — Directive 98/44 (European Parliament and Council Directive 98/44, Art. 9)*
4. *International agreements — Agreement on trade-related aspects of intellectual property rights (TRIPs) (TRIPS Agreement, Arts 27 and 30; European Parliament and Council Directive 98/44, Art. 9)*

1. Article 9 of Directive 98/44 on the legal protection of biotechnological inventions is to be interpreted as not conferring patent right protection in circumstances such as those of the case in the main proceedings, in which the patented product is contained in the soy meal, where it does not perform the function for which it is patented, but did perform that function previously in the soy plant, of which the meal is a processed product, or would possibly again be able to perform that function after it had been extracted from the soy meal and inserted into the cell of a living organism. That interpretation is supported by the wording of Article 9 of the Directive, which makes the protection it provides for subject to the condition that the patented DNA sequence perform its function in the material in which it is incorporated.
2. The answer to the second question is therefore that Article 9 of Directive 98/44 on the legal protection of biotechnological inventions effects an exhaustive harmonisation of the protection it confers, with the result that it precludes the national patent legislation from offering absolute protection to the patented product as such, regardless of whether it performs its function in the material containing it.

(see paras 46, 50, operative part 1)

(see para. 63, operative part 2)

3. The answer to the third question is therefore that Article 9 of Directive 98/44 on the legal protection of biotechnological inventions precludes the holder of a patent issued before that directive was adopted from relying on the absolute protection for the patented product accorded to it under the national legislation then applicable. In order to answer that question, it must be borne in mind that, according to settled case-law, new rules apply, as a matter of principle, immediately to the future effects of a situation which arose under the old rule. The Directive does not provide for any derogation from that principle.
4. Articles 27 and 30 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation (WTO), and approved by Decision 94/800 do not affect the interpretation given of Article 9 of Directive 98/44 on the legal protection of biotechnological inventions, under which the protection it confers is limited to situations in which the patented product performs its function.

(see paras 66, 67, 69, operative part 3)

(see paras 76, 77, operative part 4)