Randy Brown and Cate Reynolds in Law360: Bayer-Monsanto Won't Seed Or Weed The Patent Thicket

By Randall Brown | October 19, 2016

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Bayer AG, a German chemical company, and Monsanto Co., an American agrochemical corporation recently announced they have signed a definitive merger agreement under which Bayer plans to acquire Monsanto to create "a Global Leader in Agriculture."[1]

Even though the Bayer-Monsanto merger would be the largest acquisition of 2016 so far,[2] this combination of companies is not wholly novel or nonobvious,[3] given the intense merger and acquisition activity in this market area for the last 20 years.[4] The merger will transform Bayer into the world's biggest supplier of seeds and pesticides,[5] selling approximately 29 percent of the world's seeds and 24 percent of its pesticides.[6] While the consolidation of agribusiness has a significant effect on the global food supply — raising concerns from farmers around the globe — it is unlikely that the Bayer-Monsanto merger will have an anti-competitive impact from an intellectual property perspective.

The companies' joint press release promises shareholders "value creation," research and development savings, and synergies from integrated solutions. This language might suggest an influx of new patents, other IP protection,[7] or an increase in IP enforcement after the merger. Of course, a natural consequence of the Bayer-Monsanto merger would be the consolidation of their IP rights. What's more, if the Dow-DuPont and Syngenta-ChemChina mergers are approved, the majority of the global IP rights in transgenic seeds, and likely the majority of the agrochemical (e.g., fertilizers, pesticides, microbial products) IP rights, will be in the hands of three agribusiness conglomerates.[8] Critics of the consolidation of agribusiness are concerned that mergers, such as the Bayer-Monsanto merger, and the resulting unification of the companies' IP rights, will stall innovation in this key area affecting the global food supply.[9]

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