Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOWMAN *v.* MONSANTO CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 11–796. Argued February 19, 2013—Decided May 13, 2013

Respondent Monsanto invented and patented Roundup Ready soybean seeds, which contain a genetic alteration that allows them to survive exposure to the herbicide glyphosate. It sells the seeds subject to a licensing agreement that permits farmers to plant the purchased seed in one, and only one, growing season. Growers may consume or sell the resulting crops, but may not save any of the harvested soybeans for replanting. Petitioner Bowman purchased Roundup Ready soybean seed for his first crop of each growing season from a company associated with Monsanto and followed the terms of the licensing agreement. But to reduce costs for his riskier late-season planting, Bowman purchased soybeans intended for consumption from a grain elevator; planted them; treated the plants with glyphosate, killing all plants without the Roundup Ready trait; harvested the resulting soybeans that contained that trait; and saved some of these harvested seeds to use in his late-season planting the next season. After discovering this practice, Monsanto sued Bowman for patent infringement. Bowman raised the defense of patent exhaustion, which gives the purchaser of a patented article, or any subsequent owner, the right to use or resell that article. The District Court rejected Bowman's defense and the Federal Circuit affirmed.

Held: Patent exhaustion does not permit a farmer to reproduce patented seeds through planting and harvesting without the patent holder's permission. Pp. 4–10.

(a) Under the patent exhaustion doctrine, "the initial authorized sale of a patented article terminates all patent rights to that item," *Quanta Computer, Inc.* v. *LG Electronics, Inc.*, 553 U. S. 617, 625, and confers on the purchaser, or any subsequent owner, "the right to use [or] sell" the thing as he sees fit, *United States* v. *Univis Lens Co.*,

Syllabus

316 U. S. 241, 249–250. However, the doctrine restricts the patentee's rights only as to the "particular article" sold, *id.*, at 251; it leaves untouched the patentee's ability to prevent a buyer from making new copies of the patented item. By planting and harvesting Monsanto's patented seeds, Bowman made additional copies of Monsanto's patented invention, and his conduct thus falls outside the protections of patent exhaustion. Were this otherwise, Monsanto's patent would provide scant benefit. After Monsanto sold its first seed, other seed companies could produce the patented seed to compete with Monsanto, and farmers would need to buy seed only once. Pp. 4–7.

(b) Bowman argues that exhaustion should apply here because he is using seeds in the normal way farmers do, and thus allowing Monsanto to interfere with that use would create an impermissible exception to the exhaustion doctrine for patented seeds. But it is really Bowman who is asking for an exception to the well-settled rule that exhaustion does not extend to the right to make new copies of the patented item. If Bowman was granted that exception, patents on seeds would retain little value. Further, applying the normal rule will allow farmers to make effective use of patented seeds. Bowman, who purchased seeds intended for consumption, stands in a peculiarly poor position to argue that he cannot make effective use of his soybeans. Bowman conceded that he knew of no other farmer who planted soybeans bought from a grain elevator. In the more ordinary case, when a farmer purchases Roundup Ready seed from Monsanto or an affiliate, he will be able to plant it in accordance with Monsanto's license to make one crop. Pp. 7–10.

657 F. 3d 1341, affirmed.

KAGAN, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 11–796

VERNON HUGH BOWMAN, PETITIONER *v.*
MONSANTO COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[May 13, 2013]

JUSTICE KAGAN delivered the opinion of the Court.

Under the doctrine of patent exhaustion, the authorized sale of a patented article gives the purchaser, or any subsequent owner, a right to use or resell that article. Such a sale, however, does not allow the purchaser to make new copies of the patented invention. The question in this case is whether a farmer who buys patented seeds may reproduce them through planting and harvesting without the patent holder's permission. We hold that he may not.

I

Respondent Monsanto invented a genetic modification that enables soybean plants to survive exposure to glyphosate, the active ingredient in many herbicides (including Monsanto's own Roundup). Monsanto markets soybean seed containing this altered genetic material as Roundup Ready seed. Farmers planting that seed can use a glyphosate-based herbicide to kill weeds without damaging their crops. Two patents issued to Monsanto cover various aspects of its Roundup Ready technology, including a seed incorporating the genetic alteration. See Supp. App. SA1–21 (U. S. Patent Nos. 5,352,605 and RE39,247E); see also

657 F. 3d 1341, 1343–1344 (CA Fed. 2011).

Monsanto sells, and allows other companies to sell, Roundup Ready soybean seeds to growers who assent to a special licensing agreement. See App. 27a. That agreement permits a grower to plant the purchased seeds in one (and only one) season. He can then consume the resulting crop or sell it as a commodity, usually to a grain elevator or agricultural processor. See 657 F. 3d, at 1344–1345. But under the agreement, the farmer may not save any of the harvested soybeans for replanting, nor may he supply them to anyone else for that purpose. These restrictions reflect the ease of producing new generations of Roundup Ready seed. Because glyphosate resistance comes from the seed's genetic material, that trait is passed on from the planted seed to the harvested soybeans: Indeed, a single Roundup Ready seed can grow a plant containing dozens of genetically identical beans, each of which, if replanted, can grow another such plant—and so on and so on. See App. 100a. The agreement's terms prevent the farmer from co-opting that process to produce his own Roundup Ready seeds, forcing him instead to buy from Monsanto each season.

Petitioner Vernon Bowman is a farmer in Indiana who, it is fair to say, appreciates Roundup Ready soybean seed. He purchased Roundup Ready each year, from a company affiliated with Monsanto, for his first crop of the season. In accord with the agreement just described, he used all of that seed for planting, and sold his entire crop to a grain elevator (which typically would resell it to an agricultural processor for human or animal consumption).

Bowman, however, devised a less orthodox approach for his second crop of each season. Because he thought such late-season planting "risky," he did not want to pay the premium price that Monsanto charges for Roundup Ready seed. *Id.*, at 78a; see Brief for Petitioner 6. He therefore went to a grain elevator; purchased "commodity soybeans"

intended for human or animal consumption; and planted them in his fields.[1] Those soybeans came from prior harvests of other local farmers. And because most of those farmers also used Roundup Ready seed, Bowman could anticipate that many of the purchased soybeans would contain Monsanto's patented technology. When he applied a glyphosate-based herbicide to his fields, he confirmed that this was so; a significant proportion of the new plants survived the treatment, and produced in their turn a new crop of soybeans with the Roundup Ready trait. Bowman saved seed from that crop to use in his late-season planting the next year—and then the next, and the next, until he had harvested eight crops in that way. Each year, that is, he planted saved seed from the year before (sometimes adding more soybeans bought from the grain elevator), sprayed his fields with glyphosate to kill weeds (and any non-resistant plants), and produced a new crop of glyphosate-resistant—*i.e.,* Roundup Ready—soybeans.

After discovering this practice, Monsanto sued Bowman for infringing its patents on Roundup Ready seed. Bowman raised patent exhaustion as a defense, arguing that Monsanto could not control his use of the soybeans because they were the subject of a prior authorized sale (from local farmers to the grain elevator). The District Court rejected that argument, and awarded damages to Monsanto of $84,456. The Federal Circuit affirmed. It reasoned that patent exhaustion did not protect Bowman because he had "created a newly infringing article." 657 F. 3d, at 1348. The "right to use" a patented article follow-

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[1] Grain elevators, as indicated above, purchase grain from farmers and sell it for consumption; under federal and state law, they generally cannot package or market their grain for use as agricultural seed. See 7 U. S. C. §1571; Ind. Code §15–15–1–32 (2012). But because soybeans are themselves seeds, nothing (except, as we shall see, the law) prevented Bowman from planting, rather than consuming, the product he bought from the grain elevator.

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