



UNIVERSITY OF
MARYLAND
SCHOOL OF LAW

**PATENT LAW
UPDATE**

***Rhône-Poulenc
Agro, S.A.
v.
DeKalb
Genetics Corp.***

Nos. 00-1218,
-1350
Federal Circuit
Nov. 19, 2001

*“[The factors
for determining
the excessive-
ness of a
punitive
damages
award include]
the degree or
reprehensibility
of the
defendant’s
misconduct
[and] the
disparity
between the
harm (or
potential harm)
suffered by the
plaintiff and the
punitive
damages
award.*”

On November 19, 2001, the Federal Circuit affirmed the district court’s judgment on the jury verdict that DeKalb was liable for fraudulent inducement, for which the jury awarded \$15 million in unjust enrichment, \$1 in nominal damages, and \$50 million in punitive damages. The jury also found that DeKalb misappropriated trade secrets and infringed U.S. Patent No. 5,510,471, which was held not invalid for obviousness or unenforceable for inequitable conduct. The patented technology related to genetically engineered corn tolerant to glyphosate herbicides, such as Roundup Ready® corn, which permits a farmer to treat a field with herbicide to kill weeds, while allowing the resistant corn to survive. With respect to punitive damages, the Federal Circuit noted:

Punitive damages are intended to both punish the defendant for wrongful conduct, and deter future wrongdoing. “[D]espite the broad discretion that States possess with respect to the imposition of criminal penalties and punitive damages, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution imposes substantive limits on that discretion.” . . . We first examine the factor denoted “perhaps the most important indicium of the reasonableness of a punitive damages award” – the degree of reprehensibility of the defendant’s conduct. [W]e initially check to ensure that the punitive damage issue was properly submitted to the jury. The jury instructions clearly spelled out the criteria that the jury should consider in reaching its decision. . . . Thus, we discern no error in the manner in which the punitive damages issue was submitted to the jury. . . . Even our review of the cold record reveals several rather implausible explanations and assertions by DeKalb witnesses. In light of this, we find that DeKalb’s conduct was sufficiently reprehensible to support the award of punitive damages.

Next, we address . . . whether the ratio between the harm, or potential harm, suffered by the plaintiff and the punitive damage award is reasonable. The jury awarded RPA \$15 million in unjust enrichment and \$50 million in punitive damages, resulting in a ratio of 3 and 1/3 to 1. Although we take to heart repeated cautions not to mark the constitutional boundary by a simple mathematical formula, we note that this ratio is well within the ratios approved in other cases.

[W]e must first address DeKalb’s contention that the proper point of comparison is between the nominal damages of \$1 and the punitive award, and not between the unjust enrichment award and the punitive award. Of course, such a comparison changes the applicable ratio to 50 million to 1, one of vastly different proportion. [U]pon examination of the factual basis for the award of unjust enrichment, it appears that had DeKalb’s fraud proceeded undetected, the potential lost opportunity and harm to RPA would have continued to increase. Thus, we find that the . . . punitive damage award in this case is [not] unconstitutionally excessive.

Finally, we compar[e] the punitive damage award with other available sanctions for comparable misconduct. . . . Given the lack of any statute or rule limiting or barring the imposition of punitive damages in North Carolina at the time of DeKalb’s fraudulent conduct, our review of comparable statutes does not indicate any potential constitutional problem.