

Court upholds California grape commission patents

By Michael
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Black autumn royal table grapes photographed at Simonian Farms southeast of Fresno in August 2012.

CRAIG KOHLRUSS — The Fresno Bee [Buy Photo](#)

WASHINGTON — A tangled legal fight over grape patents ended Friday in a victory for the California Table Grape Commission.

Capping years of courtroom battling, the U.S. Court of Appeals for the Federal Circuit ruled the Fresno-based industry group has licensed valid patents for the Scarlet Royal and Autumn King grape varieties.

The unanimous, [13-page decision](#) by the three-judge panel turned on technical questions, including what date the grapes came into public use. The appellate court rejected arguments from challengers that the grapes were already being generally circulated well before the patents were applied for.

“The evidence at trial was sufficient to support the district court’s finding that the patented plant varieties were not in public use prior to the critical date,” Judge William C. Bryson wrote.

Money is at stake, and maybe more.

The federal Agricultural Research Service developed the grapevine varieties starting in the 1990s, though the table grape commission funded much of the work. The Agriculture Department licensed the patents to the commission, which in turn sub-licensed the patents to nurseries as the authorized distributors.

USDA harvests 60% of the revenues and the California Table Grape Commission gets 40% under the licensing agreement.

Gerawan Farming, whose co-owner Dan Gerawan is a long-time critic of the table grape commission, joined with Delano Farms Co. and Four Star Fruit, Inc. in filing a 2007 lawsuit challenging the patents.

A familiar cast of legal players has been fighting it out ever since.

Clovis-based attorney Brian Leighton, who has been challenging farm industry organizations for decades, joined with Los Angeles-based attorney Lawrence M. Hadley in fighting the patents. The table grape commission,, in turn, enlisted serious talent like Seth Waxman, former solicitor general in the Clinton administration, and Thomas G. Saunders, a former clerk to Supreme Court Justice Ruth Bader Ginsburg.

“Years of effort went into inventing these important table grape varieties, which have greatly benefited the industry,” Saunders said in an email Friday. “We look forward to putting this legal dispute behind us so the California Table Grape Commission can focus on its mission of helping California growers.”

The legal challenge centered, in part, on some unusual history.

In early 2002, according to court records, a USDA employee quietly provided a San Joaquin Valley grower cuttings from the still-unreleased Scarlet Royal and Autumn King varieties. The grower shared some with a relative, and they planted a few plots. At one point, a box was mislabeled “Thompson Seedless” to avoid detection.

“Both (family members) knew that they were not authorized to have the plants, and that they needed to conceal their possession of the plants,” Bryson wrote.

Gerawan and his allies had properly paid the table grape commission’s licensing fee for use of the patented grapes. They subsequently argued the unauthorized plantings by other growers meant the grape varieties were in public use well before the patent applications were filed Sept. 28, 2004.

Following a three-day bench trial in Fresno, U.S. District Judge Sam E. Haddon [agreed last September](#) with the table grape commission that the Scarlet Royal and Autumn King grape patents were still valid. The appellate court decision Friday echoed Haddon’s conclusion that the unauthorized plantings did not amount to public use.

“The plantings of the unreleased varieties were extremely limited,” Bryson noted, adding that “the unreleased varieties were not labeled in any way.”

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