WIPO-UPOV SYMPOSIUM ON
INTELLECTUAL PROPERTY RIGHTS
IN PLANT BIOTECHNOLOGY

Geneva, October 24, 2003

SESSION II: PLANT BIOTECHNOLOGY AND ITS DISSEMINATION

DISCUSSION

Mr. Huib GHIJSEN, Global Manager Germplasm Protection,
Oilseeds Department, Bayer BioScience N.V., Gent, Belgium

I have a general question to some speakers from WIPO and the other speakers concerning the TRIPS Agreement. What I find interesting is the discussions now going on relating to the issues that are concerning the patenting of biotech inventions and plant varieties. One of the things that strikes me in the granting of patents worldwide is that there are still strong differences in the various national patent systems concerning the description of prior art as was referred to by the WIPO speaker and the opposition procedures. I think that also the discussion in relation to the disclosure in origin - these things play a role because it sometimes or often happens that patents are granted for knowledge that already exist but have not been put on paper. I wonder whether there is any discussion about harmonizing within WIPO or the Patent Cooperation Treaty (PCT) these issues, for instance, will the prior art problem be solved and also if, after granting of a patent, it appears that this patent was not rightfully granted on account of the claims being too wide, which leads to the lock-up phenomenon that has been referred to, that proper opposition procedure can be undertaken by any party, whether it is an interested party or not, as exists in some countries, but not in other countries.

Mr. Anthony TAUBMAN, Acting Director and Head, Traditional Knowledge Division, Office of Legal and Organization Affairs and PCT System, WIPO

It is a very interesting and complex question that cuts across a lot of our work, I think. Just to put in a nutshell two key elements that may be relevant. One concerns the practical availability of prior art, so that prior art concerning genetic resources and traditional knowledge is literally on the screen of the patent examiners when relevant patent applications are being considered. Within the WIPO Intergovernmental Committee there is a great deal of work that is being done to enhance the practical availability of such material. We have a number of detailed documents that I can share with any participant who would like to go into it in some depth. Concerning the legal questions, one proposal in the context of the Draft Substantive Patent Law Treaty is indeed to harmonize the international standard of prior art in the way that was discussed and once again, that material is certainly readily available for any interested participant.

Mrs. Carmen Amelia M. GIANNI, Director of Legal Affairs, National Secretariat of Agriculture, Livestock, Fisheries and Food, Ministry of Production, Buenos Aires

It has been said that the purpose of biotechnology is to ensure that it reaches the people and the farmers and thereby making up for lack of foodstuffs and doing away with world hunger.

It has also been said that there are countries such as the United States of America and Argentina, that have managed to spread transgenic crops on a major scale over the last few years. Is it not through UPOV and the breeder's exemption in relation to protection of the breeders' rights, which the representative of Pioneer proposes to eliminate, that enables these technologies to be transferred to other countries. Wouldn't it be that it is the patent system, which creates monopolies in agriculture, which is not the most appropriate system for the further development of new technologies for plants in developing countries.

H.E. Mr. Alejandro JARA, Ambassador and Permanent Representative of Chile (Chairman)

Thank you for your question which is the focal issue of this Symposium. Probably this is a question that we will try to take up throughout this Symposium. Would any of the panelists like to address the question now?

Mr. Stephen SMITH, Germplasm Security Coordinator, Pioneer Hi-Bred International Inc., Johnston, United States of America (Speaker)

Thank you very much for your question and it is very important. We should bear in mind that it is important to create improved products and that they are put to use on farms for the benefit of farmers and people who need the food. For the private sector, for us to be able to take the risk to invest, it is important to have effective intellectual property protection so that there may be some opportunity to have returns for those investments. However I acknowledge, and I said in my talk, that there are areas of the world that the private sector cannot reach, and therefore it is important, I think, to have a strong public sector and a strong private sector, that together innovations can be created and spread around the world. You have to have these products created in the first place and for the private sector to be able to do that, it is a fact of life that effective intellectual property is necessary. I think it is important for all of us to go out and remind governments that they need to put resources in so that there is strong public support for innovation and particularly to develop products and technologies in areas of the world that the private sector cannot reach.

Mr. Peter LANGE, Chairman of the Intellectual Property Committee of European Seed Association (ESA)

I would like to comment on something what Mr. Stephen Smith has said. I can of course support two of his statements which I think were very well addressed: first of all, that intellectual property is an important pre-requesite for supporting trait and germplasm development and the second statement that we should encourage the use of new genetic diversity. However, I must say that some other statements of his speech were in contradiction to this statement. For instance, the statement that the breeder's exemption in UPOV has to be revised because it would undermine research investment and would lead to narrowing the genetic base. I think the opposite is right and of course we will have to discuss this further on in this afternoon's session, but it was interesting also for me to hear during his speech that he was just focussing on biotech trait development and not at all mentioning the breeding work. I think both parts are important for the development of germplasm and traits and we have to look for the appropriate intellectual property right for both. Technically speaking, not legally speaking which will be addressed later in the afternoon, we have to consider that first of all there is plant breeding needed and there maybe some traits incorporated in plant material, but

still you need plant breeding and you need the germplasm in its totality, adequate protection, and therefore we, from ESA, I am representing today, fully support the breeders exemption. I would like to come back to this important issue this afternoon and will give you some more information about ESA´s opposition against any revision of the breeder's exemption.

Mr. Stephen SMITH, Germplasm Security Coordinator, Pioneer Hi-Bred International Inc., Johnston, United States of America (Speaker)

If I may, I welcome the discussion. I was at pains, I think, to state that both germplasm and traits are critical. The increases in yield that I showed in US Maize were not due to biotechnology, they were due to classical plant breeding. The only traditional thing about plant breeding and agriculture is that it keeps changing and it begins to incorporate new biotechnological approaches and biotechnology, as I mentioned, is far more than just transgenes, it's an increasing ability to understand how to more effectively utilize the basic genetics.

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