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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twenty-third Session
Geneva, October 11 to 14, 1988

REVISION OF THE CONVENTION

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POSITION OF ASSINSEL ON THE
PROTECTION OF BIOTECHNOLOGICAL INVENTIONS

Document prepared by the Office of the Union

The annex to this document contains the position of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) on the protection of biotechnological inventions. This text was unanimously adopted by its General Assembly at its Congress held in Brighton (United Kingdom) on June 9 and 10, 1988.

[Annex follows]

0510

POSITION OF ASSINSEL REGARDING THE
PROTECTION OF BIOTECHNOLOGICAL INVENTIONS*

ASSINSEL has formally adopted the following statement as representing the core of the current broad spectrum of views of its members on the issue of the protection of Biotechnological Inventions. In so doing, ASSINSEL clearly recognizes that, given all relevant prevailing and future factors, i.e. a broadening knowledge of the application of the new technology, this statement may necessarily be subjected to evolutionary modification and greater precision in definition.

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1. That, given strenghtening and other improvements which are currently being considered in the UPOV Convention, the UPOV Convention and corresponding national PBR laws should provide the most satisfactory and appropriate system of protecting plant varieties.

2. That the patent system appears generally ill-suited for protecting plant varieties and that therefore plant varieties should be protected only by PBR. However, the UPOV Convention and national PBR laws must be strengthened so that for instance "near-duplicate," "plagiarized" varieties do not qualify for protection and that abuses under the so-called "farmers' privilege" are stopped; if the UPOV Convention and national PBR laws are not so strengthened, other forms of protection for plant varieties will be needed.

3. That genetic components, e.g. genes, can most appropriately be protected by product patents, if the existing criteria for patentability are fulfilled. Patents for genetic components or characteristics of crops should be granted on the following basis:

   a) only genetic components which directly serve to cause expression of a useful characteristic in crops should be eligible for protection.

   b) characteristics of crops should not be patented unless their direct genetic causative agents are identified and themselves qualify to be patented.

   c) alternative genetic approaches to achieve the same characteristic or trait in crops shall not infringe a prior patent.

   However, such protection should be limited to those components and should not be extended to the relevant host entity (plant, variety).

4. That patented plant genetic components, traits or characteristics and commercialized varieties including their constituent patented genetic components, traits or characteristics should be unrestrictedly accessible and/or useable for developing new plant varieties.

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* Adopted by the General Assembly on June 10, 1988, at Brighton.

Where a variety incorporating a patented genetic component or which expresses a patented trait or characteristic has been developed, appropriate rights for commercialization free of infringement and a proper remuneration to the patent holder must be ensured.

5. That novel plant breeding procedures or other plant manipulative methodologies (whether or not they are essentially biological) in which the procedures or methodologies are decisive for achieving an inventive result should be eligible for patent protection.

   Only direct products of a process should be included within the scope of a process patent, excluding varieties *per se* but not excluding seeds or propagules produced by the patented process.

   If a patent for processes of genetic manipulation is so broad in its scope that it precludes competition in the market (for instance, processes or genetic components which serve to regulate or control synthesis/metabolism of plant material), a system of availability allowing equitable compensation to the patent holder should be ensured.

6. That all forms of propagating material derived from a plant variety and genetically identical to it should be protectable through the title of protection applicable to that plant variety.

7. That protection by whatever system should not necessarily be exhausted when subject matter covered by a title of protection is used by others in a commercial context.

8. That it is desirable to provide within the legislative framework the means through which the development of a distinct variety which is proven to be essentially derived from another variety or which makes use of a patented genetic component gives rise to the payment of a proper remuneration to the holder of the respective rights. In this context "essentially derived" will have to be defined on a crop by crop basis.

[End of document]