

**WIPO-UPOV SYMPOSIUM ON THE CO-EXISTENCE OF PATENTS
AND PLANT BREEDERS' RIGHTS IN THE PROMOTION OF
BIOTECHNOLOGICAL DEVELOPMENTS**

(October 25, 2002)

Session III: Intellectual property strategy and licensing experience with the co-existence of patents and plant variety protection systems

Moderator:

Mr. Bernard Le Buanec
Secretary General
International Seed Federation (ISF), Switzerland

Mr. François Desprez
President, French Society of Plant Breeders (SICASOV), France

Mr. Luiz Antonio Barreto de Castro
Brazilian Agricultural Research Corporation (EMBRAPA), Brazil

DISCUSSIONS

Mr. Bernard Le Buanec opened the discussions.

Mr. Bernard Le Buanec: A question for Mr. de Castro. You indicated that in the Brazilian Patent Law there is a breeder's exemption?

Mr. Luiz Antonio Barreto de Castro: No, I did not say that. The Patent Law follows very much what is in the TRIPS Agreement, a living organism can be patented, but we decided only to patent microorganisms. Animals and plants are not patented as we thought it would be very difficult to do that, but microorganisms can be patented if, of course, they satisfy the patenting requirements.

Mr. Huib Ghijsen, Global Manager Germplasm Protection, Bayer BioScience N.V., Astene: In the lecture of Mr. Desprez there is one remark that I would like to have clarified. He states that the farmer's privilege is the privilege of the UPOV system and not of the patent system, but in the EC Directive there is a provision for farmer's privilege as well.

Mr. François Desprez: I think that my presentation is somewhat biased because of the fact that I am deliberately in favor of the plant variety protection certificate rather than the patent. The question of seeds has been treated in different countries in Europe in the framework of the plant variety certificate and it is in that area that we have looked for solutions, which fortunately came our way through the Convention and the 1991 Act. But your comment is perfectly valid.

Ms. Nuria Urquía Fernández, Networking Officer (Plant Genetic Resources), Seed and Plant Genetic Resources Service, Plant Production and Protection Division, Agricultural Department, FAO, Rome: In the presentation of Mr. Desprez, it was mentioned that the position of the International Seed Federation is defined in a document which is called "ISF View on Intellectual Property." Could you very briefly

describe what the ISF view is concerning protection of varieties outside the patent system?

Mr. François Desprez: ISF's position, for the time being, is the one which has been released under this consolidated paper "ISF View on Intellectual Property." You have to know that this document was put forward for adoption on the occasion of our last Congress and that it was not adopted with unanimity, but there were some concerns from our colleagues from the United States mostly, but it is a position paper and a position can change and evolve so we will be working on this document in the Intellectual Property Group of ISF and together with others in the Board, to reach consensus on this issue and, according to what I know from the discussion occurring in the United States, I think some slight improvement has already been made. But we think that it is a good standpoint for the time being, but maybe Mr. Le Buanec will comment as the Secretary General does not always agree with the President.

Mr. Bernard Le Buanec: In fact your question was what is the position of ISF and it is a quite long document, so it is not so easy to summarize it. But very briefly, the paper indicates that we, in ISF, consider that the development of intellectual property tools is depending on the socio-economic, technical and cultural level of various countries and that you have different systems in different countries, and that those systems are all legitimate. Regarding the topic of today, which is the co-existence or the compatibility between patents and plant breeders' rights, we in that paper, indicate that when a plant variety is protected by a plant breeders' right, but contains patented traits, that variety should be freely available for further plant breeding. If the progeny contains the patented trait, then, of course, it depends on the patent of the owner of the patented trait and, if it is essentially derived, then of course, it depends on the right of the owner of the initial variety. So that is, very briefly, the position of ISF. As Mr. Desprez says, it was almost unanimously adopted, except by one country, and that was obviously known because it was during the General Assembly. We are continuing discussion to find whether it is possible to find a consensus on that issue.

Prof. Joseph Straus: May I just add because of the question on farmers' privilege. Whether or not that variety would contain a patented gene or not, farmers would be allowed to use saved seeds, under the European situation, legally acquired. Not everybody is pleased by that outcome, but it should be clarified because this is a confusion around the world and it is covered more or less by Article 30 of the TRIPS Agreement.

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