



Position Plantum NL on patents - PBR

-2009 – Judith Blokland-

Plantum NL

- Dutch association for companies active in breeding, tissue culture, production and trade of seeds and young plants
- agriculture, vegetables and ornamentals
- 430 members

Origin Plant Variety Protection

- US Plant Patent Act (1930)
No explicit breeders' exemption, but the right is limited to asexual propagation
- ±1940 beginning of first PBR legislation in Europe
- First Treaty on Plant Breeders Rights:
UPOV Convention 1961

Origin Plant Variety Protection

- Deliberate choice for a specific Intellectual Property Right for plant varieties instead of protection by patents
 - Self reproductive material
 - Different ways of multiplication/ appearance
 - Influence of environment
 - Paper examination not sufficient

Diplomatic Conference 1957

- Principal and unanimous choice for “principle of independence”
(a newly developed variety is independent from its parental varieties if it is distinct)
- Rationale: important for the stimulation of breeding work

Breeders' exemption UPOV 1961

- Art. 5 sub 3

“Authorization by the breeder or his successor in title shall not be required either for the utilization of the new variety as an initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties.”

Patent legislation in Europe

- 1998: EU Directive for biotech inventions
- Opened possibility to patent biological material
- Not patentable
 - varieties
 - essentially biological processes
- BUT
patents on plants are possible as long as not restricted to one variety as such

Scope patent in Europe

- Patent on a trait (GM or non-GM) covers all varieties containing that trait
- Patented method covers all varieties resulting from that method
- Varieties falling under the scope of a patent can not be used by others for further breeding

Patents in practice in Europe

- More and more patents on plants
- To use for breeding a variety falling under the scope of a patent a licence is needed
 - time consuming process (especially in case of multiple patents)
 - reasonable conditions?
 - patent owner might not want to grant a licence
- Many breeding companies are experiencing problems

Discussion on scope of patents

- German and French Patent Laws have included an exception for the breeding with patented varieties, until the moment of commercialisation
- Dutch government has started an investigation towards the negative effects of patents on plant breeding

Positions breeding industry

- ISF:
breeding should be free until the moment of commercialisation
- Croplife International:
making a cross with a legally obtained variety (bag tag?) is allowed if you continue breeding only with those varieties not containing a patented trait

Plantum NL position (May 2009)

- Breeding with a patented variety should be free as well as commercialising the newly developed variety, even if it still contains a patented trait
- The patent holder can act against
 - the use of a patented technology
 - the reproduction of his varieties falling under the scope of the patent

Conclusions

- Plantum NL is in favour of strong IP rights for one's own varieties
- But all others should be able to use all available characteristics in making new varieties
- This will encourage competition and thus innovation

Conclusions

- For countries where patent protection for biological material is not yet in place:

Think carefully how such patent legislation should look like in advance!

Thank you for your attention!