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IP Protection of the Inventions in Plant Biotechnology – A Critical Study.

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ABSTRACT :

The products of the mind, imaginative works, and intellects are collectively known as Intellectual Property. They are the form of ideas, that on converting to tangible forms, can be safeguarded. Inventions, Computer software, music, videotapes, and plant varieties and publications are a few examples of Intellectual properties.

There is a great requirement for spare time and financial investments in developing such products. Thereby the creator and innovator by acquiring the Intellectual Property Rights usually seek a return on their efforts. They generally permit the inventor to keep within the restrictions the use of their intellectual property, as such no one is allowed to use, manufacture, or can grow, sell or offer to sell the invention without the inventor's authorization.¹ There are various forms of these IP protections, which are already in existence and they include trade secrets, trademarks, plant breeder's rights, copyright, and patents.²

The only intention of Intellectual Property Rights is to promote and encourage research and development by providing inducements for investment in the creative process and to stimulate the process and encourage access to inventions produced elsewhere.³ And the link between IP protection and plant biotechnology is quite interesting with respect to the new inventions that were taking place in the field of Biotechnology. So here arises the question of what is Plant Biotechnology and why it needs the protection of IP in its inventions which we will discuss further in our studies.

Plant Biotechnology :

Plant Biotechnology generally refers to the development of the genetic resources of biodiversity. In broad terms biotechnology includes the technology that uses living organisms or any part of organisms to make alterations, adjustments, or modifications to products, to improve plants or animals, or to develop microorganisms for specific uses.⁴ The human race

¹ <https://www.isaaa.org/resources/publications/pocketk/9/default.asp>

² *Ibid*

³ *Ibid*

⁴ <https://www.cbd.int/kb/record/article/6872?RecordType=article>

has used the configurations of many forms of biotechnology since the beginning of human development. However, it has been the recent development of new biological techniques (e.g., Recombinant DNA, cell fusion, and monoclonal antibody technology) which has raised fundamental social and moral questions and created problems in intellectual property rights.

Intellectual property protection for plant biotechnology is presently in a position of variability. Although it was pre-owned that living creatures were to a great extent kept out of the purview of protection, nowadays attitudes are altering and progressive biotechnology is being presented with some form of preservation. These alterations have mostly transpired in the USA and other countries which are already industrialized, but as other countries desire to be a contestant in the new biotechnological markets, they are probably to commute their national laws in order to protect and encourage investment in biotechnology.

As for now, there was no clear international consensus in existence with respect to how biotechnology should be served. Notwithstanding the fact that the bodies such as the World Intellectual Property Organization (WIPO, the permanent body of the United Nations fundamentally at the helm of international cooperation in intellectual property), and also an organization with the name of OECD (Organization for Economic Cooperation and Development) have supervised intimate studies and construct various reports. The only purpose of these reports is to make governments more acquainted with future problems and to recommend some preferable solutions. From the perspective of the highly controversial nature of providing intellectual property protection for biotechnology, it is likely that in the short term developments will be at a national and regional level.

Intellectual Property Rights & Biotechnology :

Prior to the mid-1960s, there were only a few countries in the world such as Germany, and the USA which gave intellectual property protection to the plant varieties. Due to the compulsion from their industries of plant breeding. There are 10 western European countries in the world that get involved in diplomatic operations at the beginning of the 1960s which in due course reached its peak in the origination of an International Union for the Protection of New Varieties of Plants (UPOV) and the signing of a Convention (the UPOV Convention 1961). Few other countries have signed this convention and set off as parties to the UPOV

Convention since that time. Chiefly to facilitate the entry of the USA, a number of amendments took place to the Convention of UPOV in 1978.

This Convention essentially stands in need of every country which is a member of that convention must adopt national legislation, so that they can give at least 24 genera or species protection, in consonance with the purveying of the convention, within eight years of signing. A plant variety of any genre is defensible ("a protectable variety") under this system of UPOV, only if it is definite, uniform, distance, and steady and persuades a novelty requirement. The characteristics of novelty and distinctiveness are regarded as broadly identical to novelty under the patent law, but further leniently put in the application with comparison to the patent rule. There is a principal necessity that the plant variety can be kept in existence in every part of the duration of protection. If a country wants then they can apply the system to all genera or species, but in general, there is no such obligation or responsibility to do so and thus the system has been expanded only cautiously. Furthermore, the UPOV Convention permits the national legislation to make discrimination against foreigners (including nationals of a UPOV Convention country) as compared to the citizens under the principle of reciprocity. Thus there is still some inequality in preservation and protection amongst the UPOV members.

IPRs and Developing Countries :

For some time the plant breeders were discontented with the safeguards presumed by the UPOV mechanism. In due course, this ensued in a diplomatic conference in March 1991, at which the UPOV Convention was significantly amended. This recently developed text in 1991 will impart far greater and appreciable preservation than is afforded currently, most principally by needing that all member countries make an entreaty to this convention to all genera and species, by expanding and enlarging the absolute rights to incorporate harvested material (e.g., fruit, wheat grown for milling into flour) and, most contentiously, by permitting the implementation against farm-saved seed (where a farmer produces further seed of the protected variety from the previous year's crop). Nevertheless, until the ratification of new conventions by the national governments the system of the 1978 text will be continued. There will be a substantial amount of national opposition to nourishing the rights of plant variety and thus these alterations sometimes may take years before their implementation and may even be replaced by the substantial accessibility of patent protection in the meantime.

Patents, plant breeder's rights, and trademarks are granted by the national governments, and the safeguard is valid only in those countries in which they are in existence. Thus, to acquire shelter in various countries, rights must be put in an application for and granted in each. On the other side of the coin, the copyrights and trade secrets are not country-specific.⁵ Nowadays, there are many key technologies that are used for the expansion and enlargement of agri-biotech products that seem to be unprotected in several developing countries. Moreover, everyone is at liberty to utilize technologies in plant varieties that are grown, manufactured, and consumed in various countries where the technology is not subject matter to local IP protection.

CONCLUSION :

The subject matter related to the Intellectual property protection of inventions in plant biotechnology is going through noteworthy commutations and few countries have amended their laws and patent practice as a consequence of confrontations from industry and members of the public. The subject matter related to plants can be safeguarded using plant variety protections, utility patents, or, in the USA, by a plant patent. Plant variety protection does not provide the same scope of protection, thus it was easier to procure than a utility patent. Protecting a plant using a utility patent is permitted only in countries that allow the patenting of higher life forms and require a higher degree of experimental support than is required for plant variety protection, although the scope of protection is being steadily reduced. The research institutions which are funded publicly should escalate their capacity to preside over intellectual properties that they obtain and those that they generate. The understanding of IPRs will help developing country scientists discover if knowledge about a specific mechanization technology is already a part of the public domain and therefore freely available. Furthermore, IPs brought out by the public sector can be considered assets that can be exchanged for private sector-owned IPs or used as bargaining chips in technology transfer negotiations. A partnership between the private and public sectors in technology development through sharing of know-how and IP can hasten technology transfer and acquisition on both sides.⁶ The ownership of IPRs in agri-biotech is now an issue in the development of products

⁵ Supra 1

⁶ Supra 1

and the transfer of technology to developing countries. Scientists now need to consider IPRs as an important factor in their research, especially where the aim is product development.⁷



⁷ Supra 1