

Bio - Technology patents – Protection available under International Agreements

S. K Tannan

Allabar School of Management, Raffles University,
Necmmana (Rajasthan) India

I INTRODUCTION

Bio-technology plays an important role in the fields of medicine, food, fertilizer, energy and protection of environment. Bio-technology concerns living organisms, such as plants, animals and micro-organisms, as well as non-living biological material, such as seed, cells, enzymes, plasmids and the like. Bio-technology is one of the most research intensive industries in the world. In the U.S alone, the bio-tech industry reportedly spent \$9 billion in research and development in 1997. This industry is also very sensitive to copying and piracy, since many inventions involve the description and function of genetic material where barriers to illegal exploitation are low. Bio-technological inventions fall into three categories. They are the processes for the creation or modification of living organisms and biological materials; the results of such processes; and the use of such results. The level of protection afforded to bio-technology inventions varies widely in throughout the world. For instance, not all countries offer protection comparable to U.S utility patents. On the other hand, many countries that issue utility patents for bio-technology inventions do so only for single – celled organisms. Complex living organisms such as plants, seeds or animals are not always patentable under their national laws.

Fortunately in several countries, the trend is towards more protection for plants and seed and other bio-technology inventions. For example, in 1998 china enacted a comprehensive series of regulations that provide significant protection to plant and seed varieties. The convention on Biological diversity (CBD) defines bio-technology as "any technological application that uses Bio-logical systems, living organisms or derivatives thereof , to make or modify products or processes for specific use."

II APPLICATION OF BIO-TECHNOLOGY TO FOOD AND AGRICULTURE

Bio-technology in food and agriculture is one of the most promising new technologies of modern age. For example, somehow genetic engineering is essential to addressing food security and malnutrition in developing countries. In United States, the growing use of agricultural Bio-technology is resulting in reduced use of pesticides and increased adoption of environmental friendly farming practices such as "no-till" farming which reduces soil erosion and fertilizer run off. New crops derived from Bio-technology are being used in developing countries such as Argentina, South Africa, china, Philippines and India.

The United Nations Food and Agriculture organization (FAO) has supported bio-technology as a technology that would be beneficial to developing countries if more investment is directed towards it. According to him, new genetic technology for the so-called "orphan crops" such as cowpea, millet and sorghum are critical for food Supply and livelihoods of the world's poor people.

However, there are a number of barriers preventing the poor from accessing fully the benefits of modern technology including inadequate regulatory procedures, poorly functioning markets and seed delivery systems, weak domestic plant breeding capacity, inadequate research capabilities and complex intellectual property issues.

Western technological, pharmaceutical, and human health care industries have increased their interest in natural products as sources of new bio-chemical compounds for drugs, chemical and agro-products development. Although the interest in traditional knowledge and medicines from developing countries has increased in the past few decades, few if any, benefits have accrued to the source countries and traditional communities- their contribution to plant breeding, genetic enhancement, Bio-diversity conservation and global drug development are not recognized, compensated or even protected.

III BIO- TECHNOLOGY PATENTS

Beginning in the mid-1900's, nations began to offer plant variety protection (PVP) also known as Plant Breeder's Right (PBR) to breeders. Under PBR, a breeder could obtain protection for a new variety provided it is novel, uniform and stable. The protection gave the breeder the exclusive right to market the variety, although farmers were able to reuse their seed and breeders had the right to use the protected material in producing new varieties. However in 1991, Treaty provisions permitted nations to prohibit farmers from reusing harvested seeds and gave breeders certain rights over material bred from protected materials and stronger rights over products grown with protected seed.

The International Convention for the protection of New Varieties of plants was introduced in 1978, and the developing countries have been urged to adopt it as a sui generis plant variety protection system. *The system of protection is governed by an International agreement and organization: UPOV (International Union for the Protection of New Varieties of plants)*. However, a few developing countries have become members of UPOV. The 1978

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