

Dr. Kalyan B. Goswami
Executive Director



Ref. NSAI/2016/105

Date: 07.09.2016

Ms. Heidi Gallant
Executive Director
The Asia & Pacific Seed Association
Bangkok, Thailand

Dear Ms. Heidi,

Subject: NSAI stand on GM trait Licensing Guidelines, Government of India

Greetings from NSAI !!

NSAI being a member of APSA, would like to apprise APSA Members about our stand on Draft GM Trait Licensing Guidelines issued by Ministry of Agriculture & Farmers Welfare, Government of India.

We would like to reiterate that as per the Indian IPR laws which are TRIPS compliant, the seeds and plants cannot be patented. Monsanto obtained patents in India for cotton transformation and event identification based on their patents of the US under PCT. However, it can be noted that the claims granted to them by the Indian patent office does not cover any IP rights to Monsanto on seeds and plant varieties as specifically prohibited under Section 3(j) of the Indian Patents Act, 1970. The IPR for seeds and plant varieties are covered by a sui generis enactment known as Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001 in India. Therefore, the subject of Bt cotton seeds is entirely covered only under this enactment.

As per the provisions under Section 30 of PPV&FR Act, all the breeders in public, private seed companies or research institutes have a right to use any protected variety including a transgenic variety carrying a transgenic trait for developing new varieties which are registerable for IP protection under Section 18 of the Act and can enjoy IP protection under Sections 24 and 28 which includes rights to exclusive commercialization. The developer of a trait like Monsanto is also provided rights under Section 26 to claim benefit share which has to be determined only by the PPV&FR Authority. All the breeders who used such a trait are liable to pay a trait value as determined by the Authority under the benefit sharing arrangement. The Authority is also empowered to facilitate recovery of the benefit share amount in case the breeders fail to pay to the trait developer.

Monsanto has created a false propaganda in the media as well as among the various Indian regulatory authorities that the patents they have, give them IP rights on seeds and plant

varieties for the past 15 years. By using such false propaganda Monsanto induced the Indian seed companies to enter into a contract which they call a “technology license agreement”. In fact, the patented technologies are not used by the licensee seed companies. Only a few grams of seeds of a transgenic variety are provided as donor variety for the Bt cotton trait.

When few Indian State Governments regulated the trait value substantial amount of litigation got created at the Hon’ble State High Courts. Subsequently, the Government of India promulgated Cotton Seeds Price (Control) Order, 2015. In the process of representing in the litigation that ensued after the promulgation of Cotton Seeds Price (Control) Order, 2015 and the reference made to Competition Commission of India by Dept. of Agriculture, Cooperation & Farmers’ Welfare, the NSAI who was a party in such litigations was able to understand the above legal position of the IPR and the misrepresentations Monsanto has made to the Government, Indian seed industry and the general public through the media, from the lawyers.

The provisions of the PPV&FR Act are balanced taking care of the interest of the trait developers, breeders, seed companies and the farmers. The trait developer can make claims and justify such claims so that the Authority can fix appropriate trait value.

However, Monsanto appears to believe that they can write their own laws and fix the trait value as they feel appropriate without getting regulated by any statutory authority. India is practicing market economics and sectors which involve billions of dollars of investments in Insurance, Banking, Ports, Airports, Power generation and distribution, Petroleum development etc. are all regulated by statutory regulators. PPV&FR Authority is one such regulator which is created by the Government of India for encouraging the development of new varieties and plants and to protect the rights of the farmers and the breeders.

NSAI after thorough debate among all the seed companies of India in the presence of the seed regulators, farmers and the scientists from the public sector have submitted the comments to the guidelines kept for the public debate by the Department of Agriculture & Cooperation (DoAC), a copy of which is enclosed for your ready reference. NSAI recommended to the DOAC to issue guidelines under the PPV&FR Act so that the PPV&FR Authority determines the trait value which the breeders have to mandatorily pay for using such trait for developing new varieties. As access to trait is provided as a right under PPV&FR Act, no licensing of a trait is required under the law. This is part of the IP legislation of India and therefore there may not be any need to use the provisions of the EC Act, 1955. Recommendations of NSAI are based on the law and also considering the interest of all the stakeholders including Monsanto. However, Monsanto continues to create false campaign that their patent rights are not respected without providing a constructive comment to the

proposal kept for public debate by the Government. This clarity will help all trait developers to launch them with confidence and understanding. These will broad base trait availability to breeders as well.

As we are the member of APSA, would like to keep you informed about the stand taken by the association. We hope that you will support the association's stand which is in line with the Indian IP law and the national interest.

Thanking you,

Yours sincerely



Kalyan B. Goswami

Enclosures:

1. Draft Guidelines on GM Trait Licensing, issued by Ministry of Agriculture & Farmers Welfare
2. Comments submitted from National Seed Association of India on Draft Licensing Guidelines for GM traits dated, 22.08.16 & 23.08.16.
3. Note on IPR on GM traits, Plant varieties and Seeds.