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Ref. NSAI/2017/120

Dr. Rajiv Kumar
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New Delhi



November 27, 2017

Dear Sir,

Sub: Intellectual Property Rights on Plants in India & difficulties faced by distorted interpretation by MNCs.

Greetings from NSAI!!

This is with reference to our meeting with you on 22nd November, 2017. In the meeting as we have updated you on the distorted interpretation of Indian IPR laws implying patent rights on seeds and plant varieties by certain MNCs which led to monopolies putting the farmer and Indian seed industry to difficulty. We submit here below relevant information for your kind consideration and information.

India is the member country of World Trade Organization (WTO), and therefore India is under the obligation to provide optimum IP protection for various inventions in the country. In 1994, India became signatory to the TRIPs Agreement and under the Article 27 3(b) of TRIPs Agreement India is under the obligation to provide IP protection to Plants either through the Patents Law or through developing a Sui generis system in the country. In this context, India decided to keep seeds and planting material out of the Patent Act and has enacted a sui generis IPR law viz., the Protection of Plant Varieties & Farmers' Rights Act, 2001 to grant intellectual property rights to the breeders of plant varieties including farmers. The law is clear as far as IPR on GM traits, plant varieties and Seeds is concerned, as per expert legal opinion provided by the Ld. ASG, Govt. of India to Ministry of Agriculture.

Under the Indian Patent Act, the seeds and plants cannot be patented. Monsanto obtained patents in India for certain genes, plant 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 under Indian law does not cover any IP rights to Monsanto on seeds and plant varieties which is prohibited under Section 3(j) of Patent Act, 1970. As, the IPR for seeds and plant varieties are covered by Protection of Plant Varieties and Farmers' Rights (PPVFR) Act, therefore, the subject of Bt cotton seeds would also be covered only under the PPVFR Act. In this context, it may also be noted that under the American Patent Act, plants and seeds are also covered and therefore they have claims granted on seeds and plants within the US in their American patent. However, when similar claims were made in India, they were rejected due to the specific provisions in the Indian enactment.

As per the provisions under Section 30 of PPVFR 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. This provision of breeders rights is very important to prevent monopoly and ensure availability of superior varieties for the farmers and ensure food security of the country. The developer of a trait like Bt cotton trait is also provided rights under Section 26 to claim benefit share which has to be determined only by the PPVFR Authority. All the breeders who used such a trait in their variety are liable to pay a trait value as determined by the Authority under the benefit sharing arrangement. The Authority is also

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empowered to facilitate recovery of the benefit share amount in case the breeders fail to pay to the trait developer. Therefore, the enactment is quite balanced considering the interest of the farmers, breeders and trait developers.

Monsanto has created a false propaganda in the media as well as among the various 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 has induced the seed companies to enter into one sided contracts which they call a "technology license agreement". In fact, the patented technologies were not used by the licensee seed companies. Only a few grams of seeds of a transgenic variety were provided as donor variety for the Bt cotton trait. Under this licensee agreement, Monsanto was charging a high Trait value on each 450 g of Bt Cotton seed packet from the seed companies, which are indirectly collected from the farmers.

On the representation of NSAI and farmer's organizations, Government of India has promulgated the Cotton Seeds Price (Control) Order, 2015 to regulate the prices of Bt Cotton Seeds. 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

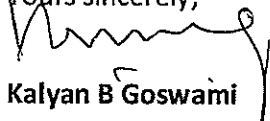
The provisions of the PPVFR Act are balanced taking care of the interest of the trait developers, breeders, seed companies and the farmers. The trait developer can make claims and justify such claims so that the Authority can fix appropriate trait value. However, Monsanto appears to be believing that they can write their own laws and fix the trait value as they feel appropriate without getting regulated by any statutory authority.

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 also submitted the above facts and NSAI position on IPR to Department of Agriculture & Cooperation (copy attached for your reference). NSAI recommended to the DACFW to issue guidelines under the PPVFR Act so that the PPVFR Authority determines the trait value which the breeders have to mandatorily pay for using such trait for developing new varieties. 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.

We request you to appreciate the stand taken by the association and support it before the Government which is in line with the Indian IP law and the national interest.

Thanking you,

Yours sincerely,



Kalyan B Goswami

Enclosure:

Note on IPR on GM traits, Plant varieties and Seeds