

International Licensing platform: Fertile path for plant breeders

With the recent realization of the International Licensing Platform (ILP), the seed industry has established a way in which worldwide access to vegetable plant traits is possible for any vegetable breeder.

IP rights for plants include Plant Variety Rights (PVR) and patents. PVR's are rights granted to the breeder of a new plant variety and provides exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of the new variety for a number of years. Essential part of the PVR is the so-called breeders' exemption. The breeders' exemption allows the use of the protected variety for the development of new varieties.

Patents are intended for inventions of a technical nature and provide the patentee with the exclusive right to 'make, use and sell' the patented technology. To avoid overlap with PVR's, classical breeding methods were exempted from patenting. Most patent laws do not provide for a breeders' exemption.

With the exponential development of biotechnology, breeding became increasingly technical and hence within the realm of patents. Hitherto, many patents have been granted for plants. The patents on plants are controversial and subject of much debate. Recently, the highest instance of the European Patent Office delivered the

'Broccoli' and 'Tomato' decisions, deciding that patents on plants are possible, regardless of how these were obtained.

IP rights in the field of plant breeding are a fertile ground for discussion. One group of breeders advocates that the efforts and costs of modern day plant innovation is very high and adequate IP protection is a must in order to recoup investments. Another group is of the opinion that the access to biological material for genetic traits and genetic diversity becomes more limited by IP rights and hence future innovation is stifled.

Ahead of the recent EPO decisions, some countries, including the Netherlands and Germany, both having large and active groups of plant breeders, provided for breeders exemptions in their national patent laws. These exemptions, allow the use of patented genetic material in the further development of new varieties. But these laws work only on a national level, whereas today's vegetable plant breeding is a global industry.

Intensive discussions between the parties involved and independent investigators led to the conclusion that the parties were not capable of convincing each other.

The seed industry took responsibility and a pragmatic industry-driven solution that meets the needs of both sides was conceived. The IP-right holders found a potential workable solution to solve the dilemma of providing access to relevant biological material while at the same time rewarding the innovative activity underlying the IP-rights. Not only among themselves but throughout the sector. The solution had to encompass a fair remuneration for the innovator, continued access to genetic material and allowing further innovation.

The industry-driven initiative is a platform, the International Licensing Platform, that bears resemblance to the Patent Pools in the electronics and telecommunications sector. The International Licensing Platform was established at the end of 2014. It provides vegetable seed breeders with a platform that allows access to patented genetic traits.

Any vegetable seed breeder can become a member of the ILP at a modest fee. The member does not have to own any patents. Any member that owns patents on genetic traits that, in principle, could block other members from further development or commercial exploitation of new races

and varieties is obliged to provide a license to other members of the platform.

A member of the ILP who is interested in obtaining a license form another member can negotiate with the patent owner. If, within three months, no agreement is reached, the ILP provides an arbitration method. This arbitration method is a practical and simple procedure known as baseball arbitration. Both parties provide their final proposal to an arbiter of the ILP which communicates the respective proposals to both parties. The parties have one more chance to come to an agreement. If this is not successful, the proposals are submitted to an Expert Committee that selects, in a binding decision, the proposal that they consider the most reasonable of the two proposals. The Expert Committee is not allowed to average the two proposals or come up with a new proposal. This arbitration method forces parties to come up with reasonable proposals from the start.

Five things a biotech professional needs to know about ILP:

- 1 The ILP provides vegetable seed breeders with an open, simple and transparent system that guarantees the accessibility of genetic traits.
- 2 The ILP was established at the end of 2014.
- 3 Any vegetable seed breeder can become a member of the ILP at a modest fee. Currently, the large vegetable seed breeders in the market are already members.
- 4 The ILP provides an arbitration method for cases in which members do not reach a licensing agreement.
- 5 The ILP has developed a standard licensing agreement, including a most favored clause.



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A standard licensing agreement, already in place within the ILP, will be completed with the details of the specific agreement, including the royalty percentages. All other members of the ILP now have the right to obtain a license under the same conditions and royalty percentages. If a third member negotiates a lower royalty percentage, this will automatically result in adaptation of the existing licensing agreements (a licensing principle known as the most favored clause).

The ILP provides vegetable seed breeders with an open, simple and transparent system that guarantees the accessibility of genetic traits that are essential for innovation in plant breeding. The ILP does not provide the legal certainty of national law, but the members have agreed that their platform has a worldwide effect. Within the plant breeding industry, the ILP is seen as a positive step in the right direction. The model of the ILP appears, in principle, also applicable to other plant breeding sectors..

The current members of the ILP are the larger vegetable seed breeders in the market: Bejo Zaden BV (NL), East West International (NL), Enza zaden BV (NL), Groupe Limagrain (FR), Holland-select BV(NL), Limgroup BV (NL), Nunhems BV (NL), Pop Vriend Seeds BV (NL), Rijkzwaan Zaadteelt en zaadhandel BV (NL), Syngenta International AG (CH), and Takii Seed (JP). It is expected that more will follow soon.

For more information: www.ilp-vegetable.org