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Genetic Manipulation on Plants: Intellectual Property Issues.

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1. ABSTRACT

Biotechnology and specifically, the plan genome manipulation is a matter that needs to be reconsidered by the juridical traditional frame, in order to adequate the norm to the new scientific advances. Intellectual Property recognizes patent rights on products which include biological material, as well as new vegetable varieties obtained, it could mean a limitation for the access to such class of product or plant variety.

This work deals with some aspects of Biotechnology regarding to plant genomic, as well as the intellectual property´s legal issues in this matter.

Key words: Biotechnology, Genetic Engineer, Plants genome, Organisms genetically modified, Intellectual Property, Patents.

INTELLECTUAL PROPERTY SYSTEMS: PLANTS GENOME ISSUES.

Genetic Engineer has permitted the introduction of new characteristics on living organisms; nonetheless it is a subject of discussion the possibility of patenting the modification results.

In the United States, laws allow patenting all kind of modified living organisms, such as microorganisms, plants or animals (human genome is excluded). On the other hand, the European Union, the Directive 98/44/CE, on biotechnological inventions, settles whether vegetables varieties or animal kind are patentable or not. The directive distinguishes it by the ways by these animals or plants are obtained. Biological procedures are mostly the traditional way; meanwhile transgenic animals and plants are the result of Genetic Engineer non biological procedures.

For the case of plants, the Directive settles that new varieties of plant are not capable to be patented, but protected by a Plant Variety Protection Certificate. In this sense, the patent granting about a new variety of plant is not permitted, but when the inventive activity of an industrial invention is not limited to a certain vegetable variety it is.

A Patent is a legal title that offers legal protection to inventions which are new, non obvious, useful and capable to be reproduced. Granting of a patent gives to its owner the right to inhibit to other people´s commercial use of the object of the patent; with some exceptions like the use for scientific research purposes.

The 1930 American Patent Act deals only with plants spread out by asexual way, Further it was legal established the possibility of granting utility models patents to other kinds of plants; for example, to those which have been genetically modified.

In Europe, as we have said, it is considered that a patent is not the appropriate way to protect new varieties of plants, developed by cultivation's traditional methods. For these reason at 60's, there were established special laws on many countries to regulate breeders rights; also called Plant Diversity Rights (PDR); as well as International Convention for the Protection of New Varieties of plants (UPOV), is the main institution at international level. UPOV Convention

was checked on 1991, and today is not an obstacle for a double protection, by PDR or patent. This checking waits to be ratified by its Members; that's why it's not available yet.

REFERENCES

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