



APBRES

Association for Plant Breeding for the Benefit of Society

Statement on molecular techniques

UPOV Administrative and Legal Committee CAJ 26 March 2015

Thank you, Mr Chair, for giving APBRES the floor.

I would like to draw the attention of UPOV members to one of the many issues discussed under the item on molecular techniques. An important rationale to discuss molecular techniques at UPOV is the interest of some PVP rights title owners to enforce their rights with the help of DNA fingerprints. There are, however, **costly technical issues** and **questionable legal preconditions** that would have to be provided by UPOV and its member states.

Adding DNA profiles to variety descriptions is not a matter of replacing phenotypes and field tests, but DNA profiles come in addition to field tests. For technical reasons a DNA database of a set of reference varieties is needed for every crop species, and this set of reference varieties has to be agreed upon. The reference variety collections in UPOV member states would have to be completed with DNA material and DNA databases if DNA fingerprints are to be used to compare varieties. The fact that the cost per DNA analysis is constantly decreasing as the system develop, is of little help if numbers of analyses increase. The additional cost should be specified and carefully considered. It is not proven that the cost of field tests are reduced and to an extent that justifies all the additional cost that is triggered by including DNA fingerprinting in variety descriptions. It could be challenging to explain to taxpayers that these expenses are meant to technically help enforce private rights titles.

Such DNA tests can be performed on dead plant material, for example soybean flour, or other processed or harvested plant material, so that license fee collection could hugely increase. Moreover, the first to benefit are for those who sell GMOs, because the characteristic specific markers currently available are for GMOs. According to the UPOV Conventions, it is up to the member states to provide for appropriate **legal** remedies for the effective enforcement, not for the technical preconditions.

A second point are the questionable legal preconditions.

The BMT agreed that it would be useful to harmonise confidentiality rules regarding plant material and data stored in examination offices of its member states. There may be a resulting push for revising test guidelines as well as the relevant Technical Guidance Protocols and other crucial UPOV . However, a number of UPOV member countries by their laws do require publication of variety descriptions. So the information is publicly available, not only to the examination office. No overview is, however, available in which UPOV member countries which publication or confidentiality rules apply and what the reasons are for the respective rules.

DNA fingerprints are often trade secrets. Can such trade secrets become part of public DUS Test Guidelines and variety descriptions?

With regard to ownership of DUS samples and of DNA and DNA data during and after the DUS tests, there are contrasting aims and principles of intellectual property rights on the one hand, and

trade secrets on the other hand. Intellectual property such as patents or PVP rights titles are subject to a publication obligation. Trade secrets, in contrast, cannot be protected by intellectual property rights. PVP rights title owners or applicants must take a decision between both and can't enjoy the advantages of both while rejecting the disadvantages. There is no point in strengthening confidentiality of DUS samples and DNA and DNA data, if such data have to be used in courts against alleged offenders.

If molecular data are used to enforce plant breeders' rights, farmers and other breeders need access to these data to defend their case. Apart from cost and technical problems, confidentiality rules with regard to DNA based variety descriptions may impede alleged infringers from access to the necessary data to defend their case..

A survey is needed on which public disclosure rules and confidentiality rules regarding PVP rights titles apply in which UPOV member countries and what the reasons are for the respective rules.

Thank you, Chair.

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