

MARKETS

Will new patent law improve biotech benefits?

BY MARTIN ROSS

FarmWeek

New patent laws should encourage smaller crop innovators and help promote industry partnerships instead of legal infighting.

That's according to Biotechnology Industry Organization attorney Hans Sauer, who sees farmers potentially benefiting from the White House-endorsed, congressionally approved America Invents Act. The new law includes "some of the biggest changes (in the

patent system) since 1836," he said.

Amid use of increasingly complex plant genetics technology, "stacking" of multiple traits within individual GMO products, and fierce competition and litigation among ag biotech companies, the law makes it more difficult to bring suit, especially in cases in which disputes may be designed toward "holding people up and shaking them down," Sauer said.

The high-tech computer sector is far more notorious

than the biotech industry for lawsuits by so-called "patent trolls" looking to squelch competing development especially by smaller companies. However, Sauer sees the new law protecting smaller ag tech providers who otherwise might have to abandon innovations or face costly attorney/court fees.

"In the ag industry, there are a whole host of small companies that depend on feeding new technologies, new traits to big companies that then have the capacity to actu-

ally bring them to market," he told FarmWeek. "I think we're going to get patents through faster and examined with better quality, and that can only benefit the smaller companies."

New provisions provide for more public participation in the patent review process, enabling outside interests to provide crucial information or concerns before an application is approved.

Sauer suggests increased funding for the U.S. Patent Office was one of the American Invent Act's "biggest accomplishments," given the current budget environment. The agency has a backlog of 750,000-plus patent applica-

tions "sitting unexamined on the Patent Office shelf," he said.

"A biotech application today takes between three and 3 1/2 years from the time it's applied for to get out of the Patent Office," Sauer noted. "That's just unsustainable. It's just too many inventions waiting for protection, that are locked up, and that don't see investment."

"With proper Patent Office funding, which is now much more assured, these things get cranked out faster. This is going to accelerate innovation in the biotech space, including the ag biotech space. We're optimistically looking forward to some big changes."

FTAs accomplished

Will trade momentum continue?

Farmers continue to celebrate the successful culmination of years of campaigning for free trade agreements (FTAs) with South Korea, Colombia, and Panama.

But Illinois Farm Bureau Senior Commodities Director Tamara Nelsen saw week's White House FTA signings not as the end of a battle but as the potential beginning of a new era in U.S. trade engagement — and economic recovery.

Passage of the agreements has free traders hopeful for a key U.S. role in the Trans-Pacific Partnership — a prospective pact with the Asian nations — as well as other possible bilateral or regional agreements.

But Ed Gerwin, senior fellow for trade and global economic policy with the "centrist" think tank Third Way, is concerned "everyone will take a deep breath after these deals and let momentum dissipate."

Nelsen is secretary-treasurer of the International Policy Council on Food, Agriculture, and Trade (IPC), which recently toured the European Union (EU) in an examination of global economic challenges, ag policies, and trade concerns. All three are intertwined, and IPC leaders see questionable trade policies slowing the global economic turnaround.

"We have all these inefficiencies in the trade system that only make debt crises and economic downturns worse," Nelsen said. "There certainly are some things moving; there's certainly lots of great trade happening with China and India. But unless you get rid of these endemic inefficiencies in the world trading system, we'll have a slower recovery."

"If we'd had a WTO agreement, if we'd had these free trade agreements signed two years ago, we'd have less of an economic problem

now," she maintained.

Ideally, she said, the WTO is the vehicle for reducing inefficiencies in world trade. But prospects for progress in the latest Doha Round of WTO negotiations remain bleak, and Nelsen argues the existing WTO process "keeps breaking down."

For example, she notes emergence of "process-based trade barriers" (PBTBs) over the past decade, especially in the globally influential EU. Those include buyer demands for non-GMO commodities and "low carbon footprint" products, despite a lack of "science- or data-based assessment" indicating they are superior to conventionally produced goods, she said.

Though they are "atrociously affecting" developing countries, Nelsen warned PBTBs and the misperceptions they spread "inevitably" impact U.S. exporters. However, EU policymakers are starting to recognize "green protectionism" as a trade barrier and urging member countries to set basic food standards and remove trade-distorting PBTBs, she said.

Germany is considering a ban on antibiotic use in feed, but Nelsen said Denmark's ban on antibiotic use in animals has spurred "tremendous, documented problems" with disease resistance in animals and humans. The German government thus recently sent a panel to seek additional input in the U.S.

The Trans-Pacific Partnership, in particular, offers "huge opportunities for streamlining trade flows," Nelsen said. Ultimately, she hopes trade momentum may help revive WTO talks, arguing the WTO's "rules-based" system "lifts all ships" instead of resolving issues on a bilateral, country-by-country basis. — **Martin Ross**

Industry groups working on post-patent transition

Monsanto's patent on Roundup Ready genetics expires in fall 2014, moving the herbicide resistance trait into the public domain.

That means seed companies or individuals will be able to market and growers buy varieties with the trait without paying the currently imposed royalties or "technology fees."

But patent expiration raises questions regarding opportunities for farmers to legally save and replant Roundup Ready seed, the impact that could have on U.S. exports, and the status of future products with both patented and "off-patent" traits.

The Biotechnology Industry Organization (BIO) and the American Seed Trade Association (ASTA) thus have joined to develop a general "industry accord" for future crop patent expirations. The accord will define who may use data from expired traits in new products and outline protections for products that incorporate those "generic" traits.

ASTA's Executive Committee signed off on the draft accord earlier this month, following BIO board approval, and the groups hope to release final guidelines by April.

American Farm Bureau Federation biotech specialist Kevin Richards told FarmWeek the U.S. has set a "good intellectual property rights (IPR) regime," backed by the courts. A U.S. appeals court in September upheld Monsanto's right to prohibit farmer replanting of second-generation Roundup Ready seed, and Richards sees it as crucial that the accord "not erode IPR issues" associated with active crop patents.

"I think there's a good chance we'll have an effective accord," Richards said. "The other issue is whether there'll be a market for generic traits once patents start expiring. We don't know exactly what a generic market might look like."

"It's likely that once patents expire, you'll start seeing those traits being stacked with other proprietary (protected) traits, so you still have a proprietary product rather than a strictly generic product."

"Exactly how that will work is a bit of an open question. And it's a market question based on what growers want and seed companies can provide."

Monsanto plans to work with seed companies for use of Roundup Ready technology and maintain trait registrations in key export markets. The company intends to extend all Roundup Ready soybean trait licenses and collect royalties through final expiration, but will not require licensees to destroy or return seed following license expiration or use variety patents against U.S. farmers who save seed containing the Roundup Ready trait following their patent expiration.

However, those provisions may not apply to other companies that offer the trait in their varieties. Farmers thus should consult with seed suppliers regarding replant policies for individual products.

"As things start to go off-patent, we need to make sure folks are well-informed and educated and able to follow the law and their own contractual obligations," Richards said. — **Martin Ross**




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