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 Biotecnology 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 genetic 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 says the new law protecting smaller ag tech providers who otherwise might have to abandon innovations or face costly attorney-court fees.

In the biotech industry, there are a whole host of small companies that depend on feeding new technologies, new traits. It then have the capacity to actually bring them to market," he told FarmWeek. "I think we're going to get patents through. If we can get enhanced 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 examination is approved. Sauer suggests increased transparency. The new Office was one of the American Inventor's Act's "biggest accomplishments," given the current Office was a function of "Keep things back down." Now, for example, the notes emergence of "process-based trade barriers" (PBTs) over the past decade, especially in the globally influential EU. These are "trade measures for non-GM commodities and "low cost footprint" products, despite a lack of "science- or-data-based assessment" indicating they are superior to conventionally produced goods, she said.

Though they are "stressfully affecting" developing countries, Nelson warned PBTBs and export credits are demanding they spread "inseparable" impactful US exporters. However, EU policymakers are starting to recognize this is actually a proliferation in the form of "1P4" issues, a "new phenomenon," she believes.

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

"The Trans-Pacific Partnership, in particular, offers "huge opportunities for streamlining trade flows," Nelson 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

FTAs accomplished
Will trade momentum continue?

FarmWeek

Nelson 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," Nelson 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 inefficiency 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 Nelson believes the WTO process "keeps breaking down."

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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.

But 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 US exports, and the status of future products with both patented and "soft 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 would define who may use the gene, from farmers to seed companies to ag biotech companies.

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

American Farm Bureau Federation biotech specialist Kevin Richards told FarmWeek the US has set a "good intellectual property regime (IPR) regime," backed by the courts. A US appeals court in September upheld Monsanto's right to prohibit farmer replanting of second-generation Roundup Ready seed, and Richards views it as crucial that the accord "not erode IPR issues," a "greenhouse" for market activity.

"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 genetic 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 will 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 grows 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 US farmers who save seed containing the Roundup Ready trait following trait 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