



For immediate release

CIOPORA Conference on Patents and modern PBR in horticultural breeding

Ornamental and fruit breeders speak out for more balance in protection of their innovations

Venlo, September 20, 2012 – What is the value of true innovation? Why are there too many similar varieties on the market? How patents can maximize the innovative potential of the horticultural industry? How much open access to plant material can breeders afford? These and many other hot questions about the protection of Intellectual property for plant innovation were raised and discussed by more than 70 participants and speakers at the CIOPORA Conference on Patents and modern PBR in horticultural breeding in Venlo. The main accomplishment of the event was in creating of a favourable working environment, where all the stakeholders of the industry – breeders, IP lawyers, governmental officers and industry associations – could engage in the open dialogue about the potential improvements to the status of breeders' Intellectual Property Rights on the basis of presentations by highly qualified speakers.

“The Plant Breeders’ Rights must stimulate the breeding of the first blue geranium and not the twentieth red one.”

If even the breeding experts experience difficulties with identification of their own varieties on the crowded shelves of the garden centers, than something goes seriously wrong in the current PBR system. As demonstrated by Lars Henriksen, managing director of PLA International, a too close minimal distance set by UPOV as a precondition of the new variety registration motivate the expansion of the grey zone of innovation, where the results of breeding with only minor deviations from the existing ones can be registered as varieties. The issues which arise from this problem include the question about the market value of such novelties, as well as undermine the function of the minimal distances in general, which, in the cherished idea of the law-maker, must enable fast, efficient and cheap enforceability of Plant Variety Rights. According to Jaap Kras, Floraculture International and Andreas Peil, Julius Kühn Institute, the introduction of larger minimal distances and the reduction of the number of the essential characteristics in testing procedures might be not a cure-all solution, but it would certainly motivate a true innovation in horticulture.

20 years for breeding work for one variety – is it not enough to ask for an exclusive right?

Joris Nicolleau and his colleagues at IFO must be very patient men – on the average, it takes them up to 20 years to bring a new apple variety on the market. Under such circumstances, it seems only fair to grant breeders the right to control the mutants of

these varieties in order to receive return on their investment in research. Although the breeders' exemption, as emphasized by Bart Kiewiet, the former President of the CPVO, is the corner stone and the positive element of the PVR system under the UPOV regime, a more precise definition of the concept of Essentially Derived Variety (EDV) concept would prevent the unfair competition to breeders of the original variety.

The desire for a more balanced breeders' exemption was one of the basic ideas expressed by many participants during the conference. From the analysis of the industry associations' positions toward this issue presented by Mr. Kiewiet, it became clear that only CIOFORA supports a stricter control of the breeding results in order to support innovative breeding. As emphasized by Ulrich Sander, Selecta Klemm, the limiting of the commercial part of breeders' exemption would shift the focus of the industry from copy breeding to ground-breaking innovation.

Patents for protection of plant innovations – can the uber-strong protection still stimulate true innovation?

Patents have been and still remain the stumbling stone of IP protection for plants in the EU, and much discussion is evolving around the “to be or not to be” question in regard to granting protection on plants. While the state of the art might be different in agricultural sector, the innovation in horticulture might considerably benefit from the protection under well-balanced patent system comparable to the one in the USA. Although the director of Plantum Nils Louwaars described plant breeding as a cumulative enterprise strongly dependent on the breeders' exemption, Ulf Schaberg, Syngenta, demonstrated that an evolution in patent system might allow the expansion of the patent protection for ornamental and fruit varieties without drastic implication for the access to the plant material. The inclusion of a balanced breeders'/research exemption, introduction of industry licensing platforms for an enhanced technology transfer and the marking of the patented products on the market – might enable the use of patents for the protection of plant innovations and complement the PBR system. This idea was supported by Kai Lønne, Knud Jepsen, who expressed a strong pro-patents opinion during the panel discussion.

Referring to the success stories from other industries, Prof. Dr. Josef Straus, the Director Emeritus of the Max Planck Institute for IP, Competition and Tax Law, stated that the breeders' exemption is not obligatory for the stimulation of innovation. He also emphasized that there are no economic or legal grounds for a differentiation between innovation in horticulture and other industries, which is why the system of IP protection for both should be similar with minor horticulture-specific deviations. In the end of the event, Prof. Dr. Straus provided the auditorium with the most important outcome idea of the day: in the context of the current requirements of the industry revision of the UPOV 1991 Act should become a priority for the future. As it was well summarized by André Smaal, Agriom, the industry must speak in one voice to achieve a sufficient protection of the Plant Breeders' Rights.

In Venlo CIOPORA managed once again to successfully establish its central role in channeling of the effective dialogue between breeders and policy-makers, which it has been successfully practicing for more than 50 years.

CIOPORA is the International Association of Breeders of Vegetatively Reproduced Ornamental and Fruit Varieties. Breeders of such crops hold ca. 2/3 of all PVR titles in the world. Since more than 50 years CIOPORA represents them in all matters of Intellectual Property Protection.

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