

Haut Conseil des Biotechnologies

Seminar on the Interface between Patents and PVR
CPOV
Brussels, 24th June 2015

HAUT CONSEIL DES BIOTECHNOLOGIES (HCB)

- An independent public institution set up by a 2008 law
- Mission: advise the French Government on biotechnology issues
- A unique institution :
 - advising on all aspects of biotech developments
 - 2 committees (scientific committee; economic, social and ethical committee).

HCB AND IP MATTERS

- A sore point in the debates
- Working group (lawyers, economists, representatives of the seed sector, of farmers, NGOs, etc.)
- HCB made recommendations to the French Government in June 2013 (“Plant Biotechnologies and Industrial Property”, June 12th 2013, www.hautconseildesbiotechnologies.fr).

HCB RECOMMENDATION: BALANCE BETWEEN PBR AND PATENTS (1)

1. A widely accepted observation

- Patents, PBR: each type of innovation must find its means of protection
- Patent system increasingly overlaps with PBR (plants obtained by essentially biological (EB) methods / EPO ruling, March 25th 2015)

HCB RECOMMENDATION: BALANCE BETWEEN PBR AND PATENTS (2)

2. A broadly shared conviction

- Risk of blocking, at least complicate innovation in the seed sector (Amicus Curiae to the EPO, 2013)
- No full breeder's exemption (limited breeder's exemption in EU law)
- Increasing number of plant patents, lack of information on patented biological material, lack of clarity on their legal scope.

HCB RECOMMENDATION: BALANCE BETWEEN PBR AND PATENTS (3)

3. Recommendations

- Early access to information on issued patents (PINTO + sanctions).
- Going further for a good balance between patent and PBR systems:
 - Option 1: a full breeder's exemption in patent law? (limits of this proposal)
 - Option 2: exclude plants derived from EB methods + « native genes and traits » (**preferred option**)
 - Option 3: patent plants derived from EB methods + native genes and traits but keep them accessible for a reasonable fee (ILP) (rejected by most members)
- Overall, exclude products (plants, native genes and traits) from patentability when generated by an EB process
- Adapt PBR ?

HCB RECOMMENDATIONS : IMPLEMENTATION

- No implementation to date (except 1 HCB recommendation concerning fortuitous or accidental presence of patented genetic information in farmers' production, see art. L 613-2-2 French IP Code).
- No official government position yet.
- Several initiatives :
 - French Senate: « Resolution on marketing and patentability of seeds and plants », January 17th 2014;
 - French government: opened discussions with all stakeholders based on HCB recommendations;
 - Biodiversity law: French MPs and government currently working on amendments aiming at a good balance between PBR and patents.

REMAINING QUESTIONS

- Impact of excluding plants generated by EB methods from French patent law only.
- Also necessary to exclude « native genes and traits »? If yes, what definition ?

CONCLUSION

- French Ministry of agriculture currently considering all these issues with a wide range of stakeholders
- France's attachment to keep, in parallel to patents, a strong PBR

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