

UNDERSTANDING THE PLANT VARIETY PROTECTION ACT

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Disclaimer

This presentation is intended to provide general information over the PVPA and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Maryland. For advice about how these issues might apply to your individual situation, consult an attorney.

Overview

- Plant Variety Protection Act (PVPA) was passed in 1970
 - View at this time was life was not patentable
 - View altered in 1980 with Supreme Court's decision in *Diamond v. Chakrabarty* – allowed for the patenting of a bacteria created in lab
- PVPA creates a voluntary program to provide patent-like rights to developers, breeders, and owners of plant varieties.
 - Intent is to encourage the development of new plant varieties
 - PVPA allows developers to recovery research costs
 - Allows for protections up to 20 years.

PVPA Protections

- Unlawful to sell or grow a PVPA protected variety without the permission of the PVPA certificate holder.
- PVPA certificate holder can bring civil actions against persons violating/infringing on the holder's rights or bring federal or state enforcement based on the option chosen
- Important to note that U.S. Supreme Court has found that PVPA does not limit the scope of patent law
 - When looking to protect new seed variety have option to pick either PVPA or patent law

PVPA Protections

- Developer of seed variety has two options of protection under PVPA
- Option 1: Developer can sell either certified or uncertified seed of the variety
 - Option 1 does allow for certificate holders to grant third-parties the right to use the variety for either a royalty or for free.
 - Violations:
 - Damages can include attorneys fees and up to triple the damages where willful infringement is found
 - Violators here can not be prosecuted under federal or state seed laws.
 - Only option for violations is to bring civil action

PVPA Protections

- Option 2: Called the “certification only” option. Utilizes Title V of Federal Seed Act.
 - Seed can only be sold if it is certified. Selling uncertified seed violates the certificate holder’s rights, federal law, and state law.
 - Violations will be able to be prosecuted under federal and or state law.
 - Fines limited to \$2,000 under Federal Seed Act and \$100 to \$500 under Maryland’s Seed Act depending the number of violations
 - Compared to \$38,873.80 in damages that were accessed in *Bowman* case for violating Monsanto’s patent.
 - This is the option most chose

Exception to PVPA's Protections

- Two big exceptions:
 1. Farmers are allowed to save a quantity of seed for sole propose of replanting the seed on an area no bigger than was planted when the seed was originally bought. Has to be replanted by the farmer that originally bought the seeds land.
 2. Research exception allows for the seeds to be used to develop new varieties.
- Saved seed exception can be limited by contract.
- Federal patent law has no similar exceptions.
 - Why big seed companies like patent law over PVPA

Renewed Importance of PVPA?

- First generation Roundup Ready technology patents will soon be expiring at the close of the 2014 growing season
 - Means farmers will have the ability to start saving RR seeds for use in 2015 growing season.
 - But Monsanto is already developing technology in 2nd generation Roundup Ready crops – patent rights will not expire on those in 2014.

Renewed Importance of PVPA

- PVPA could be used to protect Monsanto's rights in the first generation RR technology and by other companies Monsanto has licensed the technology to.
 - Monsanto has stated previously won't do and will allow farmers to save seed
 - Companies licensing the tech could still use PVPA
- Expiring patent will allow more seed companies to develop varieties using the RR technology
 - New companies may look at protecting seeds under PVPA
 - Could require farmers to sign agreement saying won't save seed

Conclusions

- PVPA was developed in a time before life could be patented
 - Provides an option along with patent law as a way to protect and encourage the development of new seed varieties.
- As Monsanto's RR patent expires after 2014 growing season, farmers will need to pay attention to which companies claim PVPA certificates in their RR seed varieties.
 - Could impact the amount of seed they can save.

Conclusions

- Before 2014, hope to have factsheet out explaining PVPA to producers in Maryland and which seed varieties using RR technology will claim a PVPA certificate or will just allow patent to expire.
- Big thing to remember is, Monsanto already has 2nd generation RR technology ready and that means will probably see less 1st generation on the market.

THANKS

ANY QUESTIONS?

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