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From: Tahir Hasnain
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Monsanto to own soyabean!

by Devinder Sharma

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The verdict is out. Monsanto will now own soyabean seeds.

After a legal battle that lasted nine years, the European Patent Office (EPO) on May 6 upheld the European Patent No. 301,749, granted in March 1994, which provides the seed multinational Monsanto exclusive monopoly over all forms of genetically engineered soybean varieties and seeds -- irrespective of the genes used or the transformation technique employed.

In simple words, Monsanto will now have complete control over soyabean research and development. Since much of the research now is through the applications of biotechnology and genetic engineering techniques, Monsanto alone will have the exclusive right to evolve genetically engineered soyabeans. The company that has a monopoly over the crop seed will eventually end up controlling the entire soyabean production chain. Unless an appeal is filed against the patent, the company's monopoly, to begin with, will remain unchallenged in Europe.

With the EPO granting an absurd patent, which defies all laws of common sense, the process to seek control and monopoly over other major crops is not far away. While Monsanto has enough reasons to rejoice over an undemocratic and unethical ruling, which buries in the process a lot of technical details and complexities, the 'broad-spectrum' patent may trigger the beginning of the collapse of the patenting regime. Thanks to EPO, it may now be relatively easy for the masses to understand the grave implications.

Not only for civil society, the soyabean patent is sure to infuriate agricultural scientists as well as the policy makers in the developing countries. Multinationals like Syngenta and Pioneer Hi-Bred are also agitated over the patent. At the same time, it raises serious questions over the validity of the *sui generis* legislations that a number of developing countries are formulating to protect the rights of the researchers and farmers. This writer has time and again warned that the *sui generis* laws being framed under the trade-related intellectual property rights (TRIPs) regime is merely a strategy to allow developing countries a breathing time while the seed multinationals tighten their private control over public property.

Scientists agree that the impact of such broad patents will become a grave impediment to the ability of developing country researchers to access new crop improvement technologies to breed new crops for their regions. This will restrict access to suitable seeds for different agro-climatic regions thereby impacting food security as well as creating environmental hazards. At the same time, it throws up a plethora of questions relating not only to future of science and technology, but also initiate an inquiry into the very relevance of such a faulty patenting regime.

The broad-spectrum patent on soyabean was actually granted to Agracetus, a wholly owned subsidiary of W.R.Grace (of the neem patent fame). Challenging this 'absurd' patent, Monsanto had then provided 'unambiguous evidence' saying that the genetic engineering process described in the patent was insufficient to allow scientists to replicate the procedure -- a necessary criterion for patenting. Meanwhile, Monsanto bought out Agracetus and thereby the patent claim. It then began aggressively defending the patent saying it was necessary for crop improvement.

The complete turnaround by Monsanto is clearly a pointer to the fact that patents have nothing to do with research and innovation. Patents are only linked to commerce -- a reality that scientists and policy makers have deliberately ignored in an effort to promote and protect the economic interests of the multinational corporations. The tragedy with modern science is the diminishing public sector funding as a result of which scientists have moved on to defend the commercial interest of the private companies, which protects their livelihoods. 'Good science' has therefore been replaced by 'sound science', a new terminology that the industry feels comfortable with.

In 1992, Agracetus had drawn another 'broad-spectrum' patent on cotton that provided it monopoly control over 'all kinds of transgenic cotton', regardless of from where the germplasm came or the technique adopted to improve the existing cotton varieties. Granted in complete contravention of the Indian Patents Act 1970, which did not allow patenting of seeds, this particular patent was in fact granted five months before a similar patent in the United States was taken out.

Understanding the crippling effect such sweeping patents can have on the public-sector research as well as the farming community, the then Prime Minister, Mr P.V. Narasimha Rao, had directed the Indian Council of Agricultural Research (ICAR) to challenge the patent claims. The ICAR finally succeeded in getting the patent revoked on the plea that such a 'broad-spectrum' patent is 'prejudicial to public interest'. The Agracetus patent in the United States was also subsequently struck.

Seen in the light of the TRIPs Agreement, patent claims only highlight the dangers for developing countries in allowing unrestricted private intellectual property rights. The monopoly control over soyabean is only the beginning. While they infringe upon the food security of the majority world, the time is not far away when companies would seek private control over the entire range of wheat, rice, coarse grains and spices. These sweeping patents will bar scientists from conducting any research unless royalty is paid for that particular segment which is need for research.

For instance, the National Research Center on Soyabean at Indore (under the ICAR) will subsequently be turned irrelevant when asked to stop any transgenic research on the crop once the broad patent is harmonized globally. Already, many of the ICAR institutes have the research programme rendered infructuous due to licensing agreements that block commercialization of transgenic research products. Meaningful agricultural research, for all practical purposes, will slowly move to the private companies with the public sector research infrastructure left high and dry.

Broad-spectrum patents also make a mockery of the multinational's claim over making the genome sequences freely available to scientists. Monsanto, for instance, has already mapped the rice genome, and has repeatedly assured the world that it has no intention of seeking control over the mapped genes and sequences. Syngenta, which too has mapped the rice genome, has already gone back on its words. In any case, what is the purpose of making the genomes available for public use when the companies are seeking exclusive control over the transgenic plants? Isn't it merely a public relations exercise that an eagerly pliable media plays up in an effort to seek more advertisement revenue?

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See Also: Patently Wrong! Monsanto species patent on soy beans upheld in Munich,
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