

**LICENSING GUIDELINES AND FORMATS FOR GM TECHNOLOGY AGREEMENTS**  
**(Issued for comments by M/o Agriculture & Farmers Welfare)**  
[No.F.6-2/2015-SD-V/ Dt.24.5.2016]

**Comments by CUTS International**

The following argument undertaken by the D/o Agriculture and Farmers' Welfare (DAFW) while formulating the GM Cotton Licensing Guidelines is the crux on which the case for such formulation is dependent:

“...even though biotechnology inventions are patentable, once the GM Traits developed through biotechnology are transferred into a variety (“transgenic variety”), the transgenic variety *per se* cannot be patented; the seeds carrying such trait also cannot be patented and hence, the plant varieties including transgenic varieties carrying the GM Traits can be protected only under the Protection of Plant varieties and Farmer's Rights Act, 2001.”

This argument creates an inherent tension between the two legislations – Patents Act, 1970 and the Protection of Plant varieties and Farmer's Rights Act, 2001 – demanding legal clarity on the issue. In other words, on the ground of the above said argument, the DAFW assumes the role of regulating patent licensing agreement, which is the subject under the Patents Act, 1970. In addition, as the two laws are under the jurisdiction of two different ministries (viz. DAFW and DIPP) matter could become worse.

The National Intellectual Property Rights Policy, 2016 (adopted by the Cabinet on 12<sup>th</sup> May 2016) reflection for such type of cases can be read into the following excerpt from the Policy document:

“Intellectual property in India is regulated by several laws, rules and regulations under the jurisdiction of different Ministries/Departments. A number of authorities and offices administer the laws. The legal provisions need to be implemented harmoniously so as to avoid conflict, overlap or inconsistencies among them. It is necessary that the authorities concerned administer the laws in coordination with each other in the interest of efficient administration and user satisfaction. Legal, technological, economic and socio-cultural issues arise in different fields of IP which intersect with each other and need to be addressed and resolved by consensus in the best public interest.” (*emphasis added*)

Furthermore, the Objective 3 of the National IPR Policy, 2016 is “to have strong and effective IPR laws, which balance the interests of rights owners with larger public interest”. Under this objective, the Policy *inter alia* envisages “identifying important areas of study and research for future policy development, such as: Interplay amongst IP laws, and between IP laws and other laws to remove ambiguities and inconsistencies (3.8.1); IP interface with competition law and policy (3.8.2); Guidelines for authorities whose jurisdictions impact administration or enforcement of IPRs such as patents and Biodiversity (3.8.3); etc.”

In the light of the above said the CUTS International makes the following submissions:

1. Recognising the inherent position that India undertook while negotiating the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and subsequently having separate legislation for the protection of new plant varieties incorporating strong Farmers’ Rights component (and hence rejecting UPOV as one of the alternatives); the argument undertaken by the DAFW in the impugned document seems *prima facie* valid and in line with the legislators’ intent. However, in light of the National IPR Policy, 2016, the said inherent conflict may be “resolved by consensus in the best interest of public”. **For this purpose series of National Consultations in different parts of Country involving all stakeholders, including civil society organisations and media, should be steered by the DAFW, followed and/or preceded by legal studies by independent institutions.**
2. Recognising that the GM Licensing Guidelines and Format would be a pro-competitive measure, **studies on the IP interface with competition law and policy in the GM Cotton Seed sector** should be conducted by an independent institution and policy recommendations from such studies may be made vis-à-vis balance of the rights and obligations, which may include licensing on Fair, Reasonable and Non-discriminatory terms.
3. Recognising the existence of nuances vis-à-vis biotechnology patents, including that in the patents-biodiversity interface, adequate **Guidelines for Patents in Biotechnology** may be developed through consultative process so that there is a balance in interest of right owners and larger public interest. The existing “Guidelines for Examination of Biotechnology Applications for Patent”, published by the Indian Patents Office in 2013 as a non-binding instrument for patent examination, may be taken into account while developing more comprehensive guidelines.

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