

## POSITION STATEMENT ON INTELLECTUAL PROPERTY RIGHTS FOR THE SEED INDUSTRY

1. One of the most pressing issues of our time is the development of crops that will enable farmers to feed the increasing world population in a sustainable fashion while protecting the environment. In the past, significant investments in crop breeding and development were primarily funded by the public sector. These investments took place through national and international research systems. For various reasons funding for these systems has decreased. There is, therefore, increasing reliance throughout the world upon crop breeding research and product development that is funded by the private sector. Strong intellectual property protection will encourage the investment needed to benefit agriculture and society through new products and to maintain the continued increase in crop productivity required to feed the world.
2. The improvement of crop germplasm is an essential activity of plant breeding. In recent decades private companies have invested heavily in plant breeding to develop improved cultivars and hybrids. Additionally, the advent of biotechnology, the entry of more private companies into the agricultural arena and the subsequent development of crops that are modified with specific traits have contributed even more to agricultural productivity and genetic diversity.
3. One of the key drivers of innovation within any industry is the capital that is invested in research. Research investments are generally long-term: many require significant amounts of capital resources and entail large risks. The level of investment in the seed industry is directly related to the effectiveness of the intellectual property protection available. In order to attract the size and scope of investment necessary to develop improved products, either varietal, hybrid, or from the use of new technologies such as biotechnology, investors must have the opportunity to earn competitive returns on their original investment. Markets or countries that provide weak protection are unlikely to attract substantial investments for research and development.
4. There are three ways that intellectual property resulting from such investment and risk-taking can be protected by an inventor: trade secrets, Plant Variety Protection (PVP) and utility patents.
  - a. Trade secret protection can be coupled with either licenses or use agreements. Unlike other forms of protection, as long as trade secrets are maintained, the intellectual property never enters the public domain.
  - b. PVP, through the 1991 Convention of the International Union for the Protection of New Varieties of Plants (UPOV), provides exclusive marketing rights for varieties, their harvested material, and, optionally, for products made directly from them. These rights extend for a fixed period of not less than 20 years from the date of the grant of the right. In some circumstances PVP also provides exceptions for experimental use by third parties for the purpose of plant breeding and new variety development. An optional exception for farmers permits them to save seed for propagation on their own holdings within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.
  - c. Utility patents, which are granted for a term of 20 years from application in most countries, provide a broad and strong form of protection that in many ways is preferential to license or use agreements. As a result, utility patents generally encourage investments in all facets of plant breeding including germplasm, specific traits or genes and technologies more than any other form of intellectual property available to investors. However, plant varieties are ineligible for patent protection in countries other than the United States, Japan and Australia.

In some countries, such as Mexico, utility patents are available, but patent examination has not been implemented for plant varieties.

5. Protection of intellectual property through the U.S. system of utility patents and PVP puts the protected invention into the public domain when the period of protection for that invention expires.
6. ASTA believes that, worldwide, affordable intellectual property protection systems, including patents and PVP and other methods of protection including trade secret and contracts, should be available to allow new inventions to be protected in the most appropriate manner as determined by the inventor. ASTA encourages voluntary licensing of protected intellectual property. However, any licensing should be at the sole discretion of the intellectual property owner consistent with the form of intellectual property associated with the germplasm.
7. ASTA further believes that advancements in genetic technologies such as markers, as well as the need to remain consistent with global agricultural needs, mandate that intellectual property protection systems in the United States and in other countries must be updated and improved if intellectual property protection systems are to continue to serve the public interest by attracting the research investment in plant breeding and biotechnology needed worldwide.
8. ASTA will work with and encourage others to provide global leadership in the improvement of intellectual property systems for the benefit of agricultural productivity and resource conservation. ASTA, in collaboration with other industry associations, will:
  - a. Work to create enforceable intellectual property systems including trade secrets, contracts, PVP/Plant Breeders Rights (PBR) and patents for owners of intellectual property in all countries.
  - b. Emphasize the importance and legitimacy of legally enforceable contractual terms in the protection and use of trade secrets including plant germplasm held as a trade secret.
  - c. Maintain the effectiveness of the utility patent system.
  - d. Strengthen the UPOV/PVP system by:
    - i. Moving all countries to the UPOV 1991 system and achieving consistency in administration and enforcement in all countries.
    - ii. Providing limits on saved seed in all countries.
    - iii. Making the system of Essential Derivation (EDV) more effective.
    - iv. Create a Patent Cooperation Treaty (PCT) like system to facilitate filing of PVP applications.
  - e. Encourage all signatory countries to the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to meet their TRIPS obligations including:
    - i. Protection of germplasm of plant varieties
    - ii. Patentability of other technologies
    - iii. Effective enforcement mechanisms
  - f. Encourage global benefit sharing consistent with the International Treaty on Plant Genetic Resources for Food and Agriculture.

*Approved by ASTA Board of Directors, July 1, 2010*