

# WIPO-UPOV SYMPOSIUM ON THE CO -EXISTENCE OF PATENTS AND PLANT BREEDERS' RIGHTS IN THE PROMOTION OF BIOTECHNOLOGICAL DEVELOPMENTS

## PANEL DISCUSSION

Conclusions by the Chair

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1. Access to plant germplasm, be it patented or protected by plant breeders' rights (PBR), is of key importance for further innovation in plants:

- Within the PBR system, this is ensured by the breeder's exemption for entire plant genomes;
- As far as patents for biotechnological inventions (protecting elements or properties in plant material) are concerned and as far as patents for plant varieties *per se* are available, access can be assured by a well defined research exemption or experimental use defense;
- At present this seems to be ensured by the European system (and comparable systems in the world), but to a lesser extent in the system provided in the United States of America.

2. The legal framework for the protection of plant innovations must offer efficient (enforceable) and adequate (fair) protection which ensures optimal incentives for investment and good working conditions for further innovation:

- In this respect deficiencies within or caused by the implementation and administration of plant breeders' rights and patents systems should be identified and eliminated;
- In the interest of an efficient technology transfer system - especially for developing countries - effective and adequate protection systems should be offered worldwide, being harmonized as far as possible.

3. A broad majority of the participants of the WIPO -UPOV Symposium in Geneva, held on October 25, 2002, prefers a better harmonization and balancing of the interfaces of the systems by ensuring within the patent system a well defined and broad enough research exemption/experimental use defense, whereas any extension of existing compulsory licensing provisions is not acceptable:

- Compulsory cross -licensing systems may also be helpful, but need further consideration and clarification;
- Private "clearinghouse systems" for organized access to plant innovations should be encouraged.