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Column: Why the ag industry should care about intellectual property

Understanding intellectual property rights and their interplay is beneficial for maximizing your competitiveness and crucial for knowing what you can do in everyday business operations.



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Knowing how to properly protect your crop is essential if the rewards for its research and development are to be realized. A new plant variety can be covered



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by more than one intellectual property right.

For example, one plant variety may have a trademark to protect the plant variety name, a utility patent to protect the particular gene or method of producing the plant variety, and a plant patent, or PVP certificate, for the variety itself.

By understanding the types of intellectual property, the plant owner can determine the restrictions on various forms of use and royalty obligations.



Protection types

A U.S. utility patent allows the patent holder to exclude others from making, using, selling, importing or distributing the patented product or process in the U.S. for 20 years. Those who purchase a variety covered by a utility patent may only use the variety in plant production. They cannot replant, give away, save to resell, or use the variety in a breeding program. Utility patents are often used to protect varieties having specific traits, plant parts and methods of producing or using plant varieties. Utility patents provide the holder with the greatest number of rights.

A U.S. plant patent protects a new, distinct, asexually reproduced plant variety (excluding tuber propagated plants). A plant patent covers a single plant and its clones and grants the right to exclude others from asexually reproducing, selling or using the plant. This may be most useful where only coverage of a particular variety is desired.

A new, distinct, uniform and stable sexually reproduced or tuber propagated plant variety can be protected with a PVP certificate. A PVP certificate provides 20 years of varietal protection for most plants (a tree or vine receives 25 years). The certificates are subject to two important exemptions:

- A “farmers’ exemption” allowing farmers to save seed for reproductive purposes and to resell them to other farmers whose primary occupation is growing crops for consumption or feed.
- A “breeders’ exemption” allowing others to use protected varieties for non-commercialization-associated breeding.

Other forms of intellectual property of interest include trademarks and trade secrets. A trademark or service mark includes any word, name, symbol, device, or any combination thereof, used or intended to be used to identify and distinguish the goods/services of one seller or provider from those of others, and to indicate the source of the goods/services. A trademark may be a powerful means of providing strong brand identity and fostering customer loyalty.

Trade secrets

A trade secret is a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known or reasonably ascertainable by others by which a business can obtain an economic advantage over competitors or customers. Trade secrets are by definition not disclosed. They are protected from competitors by instituting special handling procedures, including technological and legal security measures (e.g., non-disclosure agreements (NDAs), work-for-hire and non-compete clauses).

With a properly designated trade secret, a business can protect its “know how” and prevent the misappropriation of this “know how” by others. If a business or grower signs an NDA, it is very important to know what it encompasses because disclosure or misappropriation of such information could constitute a violation of the agreement and subject you to a legal action.

Contracts, licenses

Contracts and licenses can govern intellectual property rights. For example, it is not uncommon for the buyer of a certain good to even be unaware that they have entered into a contract or license, as such terms can be included on the bag or pot label. The buyer and the purchaser may be agreeing to those terms by simply opening the bag of seed or by purchasing the propagating material.

Contracts related to plants and propagating material may also include specific clauses related to termination, pricing, duration, reporting and auditing requirements, access to property and terms of use (for example, non-propagation). Buyers and users of these materials should be careful to understand the rights and obligations under the contracts.

The bottom line

Increasingly, the agriculture industry is subject to intellectual property issues. Understanding intellectual property rights and their interplay is beneficial for maximizing your competitiveness and crucial for knowing what you can do in everyday business operations.

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