



INNOVATION COUNCIL

Innovation Council Q&A

**IP and Genetic Resources
Olivier Sauvageot, Syngenta**

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Innovation Council recently sat down with Olivier Sauvageot to get his perspectives on the WIPO IGC negotiations. Olivier is a French and European patent attorney who leads the patent department of Syngenta Seeds in Europe. He also represents Syngenta on IP-related matters in various associations including ISF, Euroseeds, and CropLife International.

Q What involvement have you had with the WIPO IGC discussions to date?

A For years, I have participated in these discussions, following developments with industry associations and also contributing personally as an expert invited by WIPO.

Q What is at stake in those discussions for your company and industry?

A As is the case for any innovative company, for Syngenta, patents are important tools. We use patents to bring our inventions to society, to improve food security, and also to make production more sustainable. We rely on IP frameworks that are effective, fair, and predictable. We can't plan and invest to innovate unless we have certainty as to the legal and policy environment. My concern is that the patent disclosure requirement under consideration at WIPO would create uncertainty

Q How can the agriculture biotech sector – and Syngenta, in particular – contribute to these talks? What types of insights do you bring?

A As a breeding company, Syngenta is bringing new seed varieties to society. We are used to working with genetic resources, or GR. I think we have a role to play in explaining what "materially or directly based on GR" means, from an innovator perspective. We can also explain the possible impact of failing to define these concepts appropriately. The impact can be very far-reaching.

Q Can you give an example of an agricultural invention that is based on "genetic resources"?

A Very simply, every single plant variety we commercialize is somehow based on plant genetic resources; this is what we call "germplasm". In my own company, we work with natural resources to develop and bring new innovative traits to the market, for example disease resistance in plant varieties, or plants that are drought-tolerant.

Q As someone working for an innovative breeding company, what should IGC negotiators have in mind?

A At a high level, patents are not the right vehicle for what the participants are trying to achieve, that is, more transparency about use of natural resources, or genetic resources, in products. The patent system is just not designed for this purpose, and this mismatch has been clear at different points in the two decades of negotiations. Adding patent disclosure requirements to the patent system is unlikely to lead to the desired level of transparency. Rather, the PDR will probably create legal uncertainty affecting patent holders as well as their industry peers, R&D partners, tech transfer partners, customers, and others. Moreover, there is an entire regulatory regime operating under the Convention on Biological Diversity (CBD) and the Nagoya Protocol that is focused on genetic resources. These are the correct fora to address concerns about the use of genetic resources. In addition, the Nagoya Protocol provides for specific provisions on ABS compliance. We saw that when governments implemented these provisions, they carefully assessed the

option of leveraging the patent system as part of ABS compliance checks – then decided against it. To give an example, this is the case under the EU ABS Regulation.

Q You mentioned that patents, a focus of the IGC talks, are important for Syngenta. What about associated traditional knowledge?

A Defining associated traditional knowledge is not straightforward. In the WIPO discussions, you can see that different groups have different ideas of how it should be defined, protected, and managed. Until there is a definition of traditional knowledge that is agreed at an international level, stakeholders will continue to have different views of what it is. These differences create uncertainty for our industry.

Q How might a new international agreement on patent disclosure requirements (PDR) affect R&D and decision-making in your sector or at your company?

A We expect that adding regulatory requirements on patents could undermine the integrity of the patent system. Declaring a country of origin for a genetic resource in a patent application can be difficult or even impossible due to the cosmopolitan nature of many organisms; they are often present globally, in many regions, and with a long history of use in many places. We may very well end up in a situation where the breeding industry manages innovations using trade secrets instead of filing patents, especially if the uncertainty regarding patent validity or patent enforcement becomes too high, or the potential penalties for a mistaken disclosure become punitive. This would be a lose-lose-lose situation because: first, the goal of increasing transparency won't be achieved; second, certain benefits of the patent system for society (like disclosure of inventions so others can build on them) will decrease; third, the monetary benefits for WIPO members, in the form of

patent fees received by offices, could fall for the agriculture sector. I can add a fourth consequence: the likelihood that fewer innovative and life-changing products for problems like food security or public health would be brought to market.

Q What trends have you observed in recent years in relation to GR use in your sector?

A There is an image we may have in our minds of someone going to the forest to remove a plant, then bringing it back to their country and using it to develop a new product, which is then patented. . Is this story accurate? The answer is no. This is obviously far from reality. Today, our scientists and researchers interact with a lot of digital sequences as part of their work. It would be unmanageable to include DSI in the WIPO talks. It would also go against the emphasis on multilateral mechanisms that was agreed at the CBD COP in 2022. Sometimes the inclusion of DSI gets raised anyway. I think this focus on DSI comes from the conclusion of policymakers that the obligations created under the CBD and other legal instruments – in relation to the physical access to and use of genetic resources – has not brought the expected monetary benefits.

Q How do the WIPO IGC talks fit into the broader picture of innovation policymaking?

A I have observed a very strong push against patents in our sector coming from NGOs and policymakers, and also from members of the public. In Europe, we have seen a series of initiatives eroding IP protection. We have seen this same pattern internationally. The PDR topic is one more initiative in the past decade or so that could affect our ability to bring new products to society using patents. There seems to be a misplaced reliance on changing the patent system to address concerns raised through political pressure, and focused on things like the cost of innovation or industry consolidation. Much

of the time there is not evidence supporting the concerns raised or pointing to the need for regulation. After many years, I feel the need to restate this: adding too many burdens on patents and the patent system may result in less use of them in our sector, with negative unintended consequences.

Q You have raised administrative burdens a number of times. Is this your primary concern with the IGC instrument?

A It's one concern. Uncertainty is another problem. When the rules are not clear, or if they don't fit with how we develop and bring innovations to market, practically speaking, there can be legal uncertainty. I am not speaking about Syngenta only, and it is not only WIPO. Taking a bit of a step back, international regulations from the CBD and other forums risk creating major administrative burdens for companies in our sector. Being a bit provocative, the resources spent by companies to ensure due diligence and compliance, on the one side, and the time and resources spent by policymakers at the international level, on the other side, could be better spent elsewhere to ensure value-creation and sharing. I am not convinced the WIPO instrument will do things like increasing transparency.

Q Sound policymaking should reflect real-world considerations. How can we make sure the IGC talks align with the reality on the ground in agriculture biotech?

A It's complicated. There is first a misconception regarding what plant breeding is and a somewhat romantic view that creating a new plant variety is about finding the right wild plant in nature

then crossing it in your backyard to come up with a new one. In practice, significant R&D efforts are required to develop a trait, seed, or variety. Also, there is a misconception about the value from using genetic resources including DSI in the overall value of a plant variety. Most of the value actually comes from R&D-intensive efforts. The value delivered does not come primarily from people finding the right plant in a forest, or from the plant itself.

Q There is a Diplomatic Conference on the horizon, scheduled for May 2024. Do you have any closing thoughts as we move towards the Dip Con?

A The current negotiating text could create legal uncertainty for innovators like Syngenta, and it's not ready for agreement. One problem is that definitions still need to be agreed. Also, countries are still proposing changes that could dramatically alter the text and undermine the patent system. A text that includes patent revocation for insufficient disclosure looks very different from a text with more reasonable administrative procedures for addressing PDR issues. We will continue to share these perspectives with negotiators, and we remain available to explain our positions at any time.