

COMMENTS FROM THE AUSTRALIAN RESEARCH COUNCIL

Currently, the plant breeders' rights (PBR) system provides a procedure for protecting the rights of plant breeders to the exclusion of royalties on farm saved seeds. A plant breeder requiring such protection must apply for a full patent. To open protection under the innovation patent system to plant varieties raises a question as to whether that protection should be equivalent to the PBR system or to the full patent system. For patents involving plants, there appear to be a number of issues, as follows.

1. **Should the innovation patent system be open to new plant varieties that are discoveries rather than inventions?** If an aim of the innovation patent system is to provide a cheaper and simpler protection system, then the inclusion of plant varieties seems reasonable.
2. **If plant varieties are included in the innovation patent system, what level of protection should be afforded?** For example, should it include farm saved seeds? Consideration should be given to ensuring that protection for farm saved seeds requires full patent examination if that protection can be expected to have a substantial effect on the economies of farming. If this is the case, it would seem reasonable that if the innovation patent is extended to include new plant varieties, it should not extend to farm saved seeds. That is, it should afford the same level of protection as the PBR system.
3. **Should the PBR system be retained together with the innovation patent system?** This may be necessary if the PBR system provides longer term protection than the innovation patent.
4. **Is the current exclusion of plant and animal subject matter from innovation patents seen as a potential problem?** The PBR system already provides a simple procedure for protection of new plant varieties. However, increasing activity to generate genetically modified plants using molecular biology and plant transformation techniques suggests that they should not be excluded from the innovation patent system. Having taken out an innovation patent, an applicant may then determine whether to proceed to a full patent or through the PBR system. There appears to be increasing use of the patent system for genetically modified plant material.
5. **Given the existence of the standard patent system and the PBR system, is there a need for those involved with plant and animal subject matter R&D in Australia to be able to protect their research with the innovation patent?** This will depend on the extent to which the innovation patent offers simplicity and cost-effectiveness in the circumstances for which it was designed.
6. **What, if any, are the national benefits of excluding plant and animal material from innovation patents?** For plants, the answer would depend on the level of protection afforded. As discussed above, use of the innovation patent system should not extend to the protection of farm saved seeds.
7. **What impact would the innovation patent have on non IP rights holders were it to include plant and animal subject matter?** In the case of animals, the situation is different in that the choice of using the PBR system does not arise. There would appear to be no reason to exclude animals from the innovation patent system.