

Issues Ink

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Freedom to operate (FTO) issues in specialty oil canola breeding in North America

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North America

- NAFTA notwithstanding, not homogeneous
- Canada, U.S., Mexico.
 - Different Legal Systems, Different IP Regimes
- Tools Available:
 - Patents, Plant Breeders' Rights / PVP
 - Regulatory Considerations
 - Contractual Structures



The Minefield



Claim Types

- Composition of Matter
- Process / Method
- Product by Process
- Use



Typical claims in Transgenic Plant Patent

- Sequence
- Plant Cell with inserted gene
- Method of producing plant cell
- Plants containing the plant cell
- Method of production of the above plants
- Progeny of the transgenic plants
- Uses of the transgenic plants



Typical claims in Specialty Oil Patent

- **Plant** producing seed with a specific FA(s) in a specific concentration range
 - Dependent claims with narrower ranges
- Progeny
- Method of producing a plant line by crossing the **Plant** with another



Major Patent Estates (Composition of Matter)

- **HOLL**
 - Cargill
 - Dow AgroSciences
- **Lo Sats**
 - Dupont/Pioneer
- **Transformation**
 - Monsanto
- **Hybrid Production**
 - Bayer
 - Syngenta



Other Important Features of the Patent Landscape

- Genes / Constructs
 - Promoters, enhancers, terminators, methods *etc.*
- Transformation
 - Vectors, Methods, Tools, Selection Methods, *etc.*
 - Moloney and Radke
 - rDNA, PCR, other tools
- Ownership Disputes
 - Who do you go to for a license?



What to do?

- Invent Around
- License in
- Litigate

- Design project with FTO in mind.
 - Open Source / Public Domain Tools
 - In-Licensing of proprietary tools
 - Invent around the problem



Considerations in Project Design

- Objective
 - Are you playing in somebody's sandbox?
- Tools
 - Materials, Methods
- Research Exemption
- Offshore production
- Regulatory Requirements
- Contractual Restrictions (CRDA)



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THANK YOU FOR YOUR ATTENTION