8

Protecting the Value in Value Added Crops: Intellectual Property Rights

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In understanding intellectual property rights and their use in designing value added crops, it is important to know: what are intellectual property rights, why are they needed, what forms of intellectual property rights are available nationally and internationally, what is covered by them, and how do intellectual property rights and biology interact. Intellectual property rights and commercial biology are dynamic and they co-evolve.

Intellectual property rights can be defined as the legal rights that are given to individuals or institutions that develop new products or uses (the property) by the use of their intellect. The intellectual property rights that are described hereafter are those derived from intellectual property law and court precedent. For reasons of space, this chapter will describe only briefly many aspects of intellectual property rights. Those who are interested in greater detail should consult Bent et al. (1987), Caldwell and Schillinger (1989), or Baenziger et al. (1993).

I. NEED FOR INTELLECTUAL PROPERTY RIGHTS

There is one primary reason for obtaining intellectual property rights: to provide a legal basis to recover the cost of developing a value added crop (Duvick, 1993). Value added crops obviously are developed for economic benefits and these benefits are based on the value added crop being distinguished in the marketplace. There must be market segmentation in one or more of the various markets for crops (seed or propagules, harvested plant parts, or end-use market). Value added crops cannot be treated as commodities and retain their premium value, nor can there be market segmentation unless the costs of market segmentation can be repaid.

Obtaining intellectual property rights and enforcing those rights can be costly. The inventor must determine if these needs and potential economic gain are greater than the cost of obtaining and enforcing intellectual property rights. It is for this