

## **Genetically Modified Organism under the New Iraqi Patent Law (Compared to United States Patent Law)**

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**Abstract:** One of the controversial issues nowadays in the world is the effectiveness of the genetically modified Foods (seeds). Many articles come out daily showing the negative impact of such seeds on the human health, while we can see the recognized and authorized health agencies licensing these kinds of seeds. This paper is addressed specially to tackle the impact of adopting such kind of seeds on Iraqi Farmers, and how was the situation before the American Inversion? I would also like to articulate this case to find out some possibilities to fix what has been provided in the new Iraqi Patent law. It is also important to mention, that we need to increase the people awareness of this types of food.

**Key Words:** Genetically modified seeds, Health, Law adopting, Awareness, Environment, Energy, Farmers.

### **INTRODUCTION**

The term GM foods (seeds) or GMOs (genetically-modified organisms) is a term used to refer to crop plants which has been created for human or animal consumption by using special biology techniques. “These plants have been modified in the laboratory to enhance desired traits such as increased resistance to herbicides or improved nutritional content. The enhancement of desired traits has traditionally been undertaken through breeding, but conventional plant breeding methods can be very time consuming and are often not very accurate” (Whitman, 2000).

Genetically modified seeds been refused by many private health institutes, doctors, even some governments arguing the negative consequences, for example, ‘Occupy Monsanto Protest’ was created in many different cities all around many different countries such as United States, Australia, Canada, Brazil, and many more countries to push their countries prohibiting and illegalizing such kinds of foods.

Some Scientists believe that “medical professionals and climate experts warn us that a food and agriculture system built around poisons like Monsanto's Roundup and Dow's 2,4-D, a system that promotes soy and corn monocultures instead of crop diversity, is unhealthy for humans and the environment” it shows that aware and minded people are so suspicious about Monsanto and other GMO producers. Scientists and even politicians are striving to push their countries to labeling GMO laws (Katherine Paul 2014).

## **1. THE IMPACT OF THE NEW IRAQI PATENT LAW ON THE IRAQI FARMERS**

### **I. The Period pre-2003**

After the invasion of Iraq in 2003, Paul Bremer as the Administrator of the Coalition Provisional Authority of Iraq passed around 100 orders. These (Orders) laws were related to different fields of life, one order passed as an amendment to the Iraqi original patent law. The new order named 'Order 81 of Paul Bremer ("Patent and Industrial Designs," 1970 ). This new law has been in controversy in Iraq since the time it was passed, that because framers had not used to have such rules that restrict them from reusing seeds before. It's important to mention that the previous Iraqi patent law had not prohibited framers from reusing seeds again or to let the seeds be transferred among the farmers after harvest. Moreover the constitution of 1970 had prohibited the private ownership of biological resources. The order No.81 has clearly explained in a new added chapter, in which was named 'Plant Variety Protection' (PVP) that there were many reasons to amend the previous patent law, as was mentioned in the Order 81 that there is also a big issue that Iraq is facing regarding to Patent and Industrial Design Law, which is the challenge of becoming a full member of International trading system in which known as the World Trade Organization (WTO). The standards that WTO requires are challenging for Iraq as long as several provisions of the Patent Law in Iraq infringe and does not meet the international standard of the World Trade Organization.

Iraqi farmers were for a long time reusing the seeds either the conventional (traditional) seeds or the genetically modified seeds. Iraq during thousands of years was not in need of importing seeds "farmers must have realized that by saving a certain portion of the seeds from the previous year's crop they could insure themselves of a future harvest. (In Jarmo, Iraq, archeologists have found seed deposits that date from 6750 B.C.)" (Boylan, 2013) Particularly during the economic embargo and sanctions on Iraq during the 1990s, where farmers were not be able to import seeds, all the seeds and crops had been recycling among farmers. There was an Iraqi national seeds bank, where the ancient (Traditional) seeds kept.

### **II. The Period after 2003**

After the United States invasion in 2003, when the Iraqi national archaeological museum was robbed by unknown mercenaries; plenty of media outlets, national organization condemned the action, while the country's national seed bank received no attention even it was destroyed. Such a cultural heritage and scientific edifice had many different kinds of crops once grew in Mesopotamia. Some of these traditional seeds were kept in special box and sent to the international bank in Aleppo, Syria, hopefully it could be used in Iraq once again. Unfortunately, the news are coming along that the original seeds in the international bank in Aleppo were sent to Norway (Seabrook, 2007).

Soon after the invasion of 2003 many fields and farms were destroyed and demolished either during the war or after. Famers were not able to find seeds to implant unless by importing it. The Coalition Provisional Authority worked hardly to pass such law; moreover it had

enforced the Iraq government to enter into contracts with American seeds companies. The Iraqi government has entered into contracts with the world's largest seed companies, such as Monsanto, Farmers who do not fulfill the requirement in the new law would not be able to get seeds and even more their farms gears and land might be seized. According to Food and Agriculture Organization (FAO) the Country was able to provide the farmers with only around 4 percent of the seeds demanded by its own resources, these seeds were preserved by farmers and distributed to others. Need to be mentioned that even such seeds were not at the max quality demanded. Tekeste Tekie, FAO Project Manager for Iraq added that "Iraq has currently no system in place that provides certified high-quality seeds of improved varieties. As a result, crop productivity remains very low because farmers are using their own, mostly low-quality, seeds. If no immediate action is taken, serious seed shortages can be expected in the near future, threatening the country's food security" (Iraq, 2005).

### **III. The New Law Consequences, and Paul Bremer Administration Justification**

For what have been mentioned above and will be mentioned below, the Iraqi farmers were shocked with the new law. It had seemed to them as knockout, and they had to deal with it. The U.S administration in Iraq (CPA) has justified the law under the pretext of development, describing that this law would be an easy bridge for Iraq to be a member of the World Trade Market. "economic restructuring" in the name of a US-mandated 'free market' model, advertised in the name of Iraqi prosperity, was the only news we saw hit bylines in America's papers while Iraq's farming economy silently collapsed under the occupation's rule" (Smith, 2008). So, there are no ways for Iraqi farmers unless purchasing the (G.M) to start farming again. "In 2002, the Food and Agriculture Association (FAO) estimated 97 percent of Iraqi farmers utilized saved seeds to grow their crops." (Smith, 2008) As, I have stated above, that Iraqi framers have not been familiar with the rules of prohibiting reusing the seeds, or enforcing the farmers to but only the Genetically modified seeds. The farmers have been considered as the creators of many of the various seeds of wheat for a long time. Many farmers and authors who have wrote and talked about this issue believe that the American administration (CPA) wanted to take position of agriculture in Iraq. as a definite, the time is moving forward and year after year people 'farmers' will get use to buying, planting, and harvesting the new seeds 'GMO' ones. In other words the order 81 of Paul Bremer would prevail and Monsanto Corporation would be the main legitimate source of providing seeds to Iraqi farmer for many years.

## **2. THE ASPECT OF LAW ANALYSIS**

### **IV. The Iraq Law Aspect**

We have seen above that the previous Iraqi constitution of 1970 and also the Law No. 65 of 1970 on Patent and Industrial Designs had not prohibited farmers from reusing seeds. And that was because the Iraqi farmers used to save seeds and change it among them for years. "For years, the Iraqis had held samples of such precious natural seed varieties in a national seed bank, located, ironically, in Abu Ghraib... Following the US occupation and various

bombing campaigns, the historic and invaluable seed bank in Abu Ghraib vanished, a possible further casualty of the Iraq war” (Smith, 2008). On the other hand, the new constitution of 2005 has never mentioned or talked granting protection to Genetically Modified Seeds invention, in the same time the new patent law (Order 81) has granted protection to such invention. Also, it’s Important to mention that the orders by Paul Bremer currently are binding law in Iraq.

## V. THE PATENT LAW IN UNITED STATES

In the U.S patent law 35 U.S.C. Genetically Modified Seeds goes under exhaustion or first sale doctrine in which mentioned under 35 U.S.C. Section 217 (a) that says “Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent.”(Lane, 2006)

In *Monsanto Company, v. Homan Mcfarling*, 488 F.3d 973, May 24, 2007 the United States District Court for the Eastern District of Missouri, entered an award of damages for patent infringement, rejected farmer's arguments for vacating judgment of liability, and refused patent owner's request to modify permanent injunction against farmer, In *Monsanto V. Vernon Hugh Bowman*, .2:07-cv-283-Rly-Wgh, Sept. 30, 2009, when the Owner of patents for genetically modified soybean seed has filed action against farmer alleging infringement for his soybeans. The United States District Court of Indiana held that:

- a. “first sale” patent right exhaustion doctrine did not apply to sale of soybeans, that contained patented trait, by grain elevator/dealer to farmer as commodity who then used them for planting;
- b. Infringement of patent was not exceptional case;
- c. Award of costs of compliance monitoring and other risk related costs, in addition to estimated reasonable royalty that had been calculated at its upper bounds, for unlicensed use of patented technology, was not warranted; and
- d. Permanent injunction could be imposed against farmer to prevent him from making, using, selling, or offering to sell any of owner's patented crop technologies.

The U.S Supreme Court has heard the oral argument on February 19, 2013, and on has held on May 13, 2013 that “Patent exhaustion does not permit a farmer to reproduce patented seeds through planting and harvesting without the patent holder's permission” (Hughes, 2013). In other words, farmers are not allowed by any form to reproduce any permitted patent seeds either by planting, selling to be planted by others, or harvesting as long as the patentee has not permitted the first party to do so. And the Federal Circuit of Appeal came out with stating that “if a grower buys patent protected seeds (first generation) without any restrictions and saves later generations of seeds for replanting, the grower can be liable for patent infringement with respect to the later generation seeds” (Hughes, 2013).

The issue of a third party, in which means that a third party purchases a genetically modified seeds from the first buyer, since he/ she didn’t pay technology fees and did not buy it from the original provider would be infringing and that farmer would be liable for his/her action.

## **VI. MONSANTO ALL AROUND THE WORLD**

Recently, there are many petitions have been raised against Monsanto, and other big GMO companies. In a list of petitions on the internet we could see the recent petitions:

“102689. Louise Afanasiw from Plymouth, MA signed this petition on Sep 7, 2014.  
102688. Catricia Guerrero from bakersfield, CA signed this petition on Sep 7, 2014.  
102687. Laura Davis from Hopkinton, MA signed this petition on Sep 7, 2014.  
102686. M K Smith M D from Mankato, MN signed this petition on Sep 7, 2014.  
102685. Sarah from Newportville, PA signed this petition on Sep 7, 2014.  
102684. Laura Struckel from Lodi, OH signed this petition on Sep 7, 2014.  
102683. Jenny Singleton from Australia signed this petition on Sep 7, 2014.  
102682. trees from Netherlands signed this petition on Sep 7, 2014.  
102681. Diana Steenhuis from Netherlands signed this petition on Sep 7, 2014.  
102680. Cherry Garcia from Vacaville, CA signed this petition on Sep 7, 2014” (Katherine Paul 2014).

Regardless to the explicit and implied reasons beyond the invasion of Iraq and whether the United States has gained or not since 2003, many Iraqi scientists and experts in filed believe that what have been applied in Iraq is a part of a big game and adopting the new Iraqi patent Law in which grant protection to the Genetically Modified Organism is one of them. The Former American Secretary of State Henny Kissinger said one “Control oil and you control nations; control food and you control the people” (Heinz & Agenda, 2012).

### **3. SOLUTIONS AND CONCLUSION:**

In conclusion, a court in Iraq might go with protecting the invention. There are many reasons that the court would do so:

- A. The protection to the invention for genetically modified seeds is existed almost in most of the world countries, and Iraq would not be different than these countries.
- B. Iraqi government is seeking to be a part of the World Trade Organization, in which invention of genetically modified is protected unless it is found a threat to human health or the environment, even this issue is different among countries regarding to different tests of procedures they use. (Anderson & Nielsen, 2001) Moreover, as has been mentioned above, that the new Iraqi patent law (Order 81) has prefaced by saying “the demonstrated interest of the Iraqi Governing Council for Iraq to become a full member in the international trading system, known as the World Trade Organization, and the desirability of adopting modern intellectual property standards” (Authority, 2004)
- C. Since the Iraqi constitution of 2005 has not granted reusing genetically modified as the constitution of 1907 did, then it is not a constitutional issue.
- D. The only law applies in this situation is the (order 81) that because it is the only law in which handle such an issue, in other words, we could say it’s the only valid law deals with GMOs.

- E. The issue of a third party has solved in the United States of America, in the same time the new law (order 81) has not talked about it, so if such a case raise up to an Iraqi court, they might go with the same decision that the United States Supreme court came down with.
- F. As I have been mentioned above about the Long term contract that Iraqi government has signed to import genetically modified seeds from United States big companies, there are no online evidence show such a contract. Taking in consideration that there are some articles talking about a long term contract and assuming that no traditional seeds left to cover all the Iraqi farmers' need. "The US, however, has decided that, despite 10,000 years practice, Iraqis don't know what wheat works best in their own conditions, and would be better off with some new, imported American varieties. Under the guise, therefore, of helping get Iraq back on its feet, the US is setting out to totally reengineer the country's traditional farming systems into a US-style corporate agribusiness" (Smith, 2008) The British Writer Jeremy Smith Said .If the Iraqi Government wants to start providing the farmers with traditional (conventional) seeds then it has to override any contracts been signed with these big American seeds companies even if there are any penalties clauses.
- G. Along with the solution in number 6 above, Iraq might start importing traditional seeds from these countries which are still using the traditional seeds for planting.
- H. One important solution to this issue would be the project that 'FAO' is working on which mainly focusing on rebuilding the Iraqi International seeds bank. FAO has clarified this project by addressing the steps in which list as two main activates:
  - a. The First, by the collaboration with the ministry of agriculture all together to develop the equipment and seeds needed in field. Also, FAO helps to renovate the destroyed and damaged seeds centers and laboratories.
  - b. The Second, FAO promised to contribute support regarding to the aspect of polices and new seed law.

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