USDA-AMS
ATTN: Jaina Nian
Room 2055-S, STOP 0201
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Washington, DC 20250-0201

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RE: The extent of consolidation in the seed industry and the role of IPR

Thank you for the opportunity to provide comments regarding the state of competition in the seed industry and the effectiveness of the current intellectual property rights (IPR) system. The undersigned organizations are concerned about market consolidation in the seed industry and the concentrated ownership of this fundamental input and essential natural resource. We call for swift action to remedy anticompetitive mergers and acquisitions in the seed industry. We also call for major reforms to the IPR system as it applies to seed, including the patenting of naturally occurring genetic traits, the use of egregious licensing contracts, and restrictions on seed saving.

The seed industry is one of the most consolidated sectors in agriculture: Four companies, all with roots in the agrochemical industry, now control over 60 percent of the global commercial market. This level of concentrated market power increases prices, limits choice in the marketplace, squeezes out competitors, and makes our seed supply – and thus food supply – less secure. As funding for public plant breeding decreases, and more independent seed companies are acquired or vanish, seed is increasingly in the hands of corporations that put profit before people and the planet.

The expansion of IPR awarded to crop developers has facilitated the concentration of financial and genetic resources. The enormous profits from licensing patented products led to many industry acquisitions and mergers. Patents are expensive, so it's no surprise that the top two industry leaders that have profited tremendously from IPR on seed are also the top two owners of utility patents on plant varieties.

Utility patents are the holy grail of patent rights, conferring an exclusive 20-year right to make, use, and sell a new product. Owners of utility patents have far-reaching control over access and use of their products, including seeds and even genetic traits. Patents therefore remove

valuable plant genetics from the pool of seed that breeders and growers rely on for improving crops, feeding their communities, and exercising independence in the seed system. Nowadays, contracts for the sale of patented seed are rife with provisions that extend the patent owner's control beyond the bounds contemplated by patent law and allow the company to condition the license for the sale of their seed on any provision under the sun that is favorable to its bottom line. These contracts lock farmers into unfair legal arrangements that remove their ability to be public about complaints, join a class action lawsuit, or take complaints to court.

Seeds do not fit the utility patent model because they produce food—a universally recognized human right, they replicate when planted in the ground, and have evolved over thousands of years. Seeds are a living link to history and our collective future. For centuries, seed saving allowed the genetic and cultural heritage of seeds to be passed on to the next generation, to travel great distances from centers of origin, and to adapt to different environments. In this way, the seeds that sustain us are only available because of the persistence of both plants and people, and their co-evolution. As such, we must challenge restrictive forms of IPR on seed and promote fair laws and policies.

We appreciate that the USDA is examining access to organic seed in the context of competition concerns and IPR. Organic seed represents the first link in the organic supply chain, serving as the foundation of organic integrity from seed to plate. The benefits that organic agriculture provides to ecosystem health and rural economies are well documented. However, to be successful, organic growers need access to seed adapted to organic farms, practices, and markets, and market consolidation and seed privatization have contributed to slow growth in the organic seed supply.

We also appreciate that the USDA is examining impacts to historically underserved growers and the communities they feed. Some of these communities are navigating the current IPR system with the goal of protecting culturally important seed from corporate appropriation while identifying appropriate strategies for ensuring these varieties can continue to co-evolve with their communities in perpetuity. The IPR system is difficult to navigate unless you are a multinational company with a legal team leading this work.

In summary, utility patents are the wrong tool for protecting advancements in seed – the foundation of our food supply. Unlike other agricultural inputs, seed is a living, natural resource that requires careful management to sustain modern food systems and those of future generations. Action must be taken to address the concentrated ownership of seed afforded by patents and other restrictive forms of IPR. Action must also be taken to revamp antitrust laws and enforcement to break up "Big Seed" and ensure a competitive marketplace for independent seed companies and growers to thrive.

Some actions that stand out for addressing these concerns are as follows:

- The impacts of the current IPR system should be fully examined and reformed, and only protections that promote fairness, healthy competition, and serve the public good should

be used for developments in seed. Regardless of the IPR tool or strategy, US policy must protect one's right to save seed, breed new varieties, and research protected plants and genetic traits.

- Patent law should be reformed to exclude living organisms, including seeds, plant varieties, and genetic traits. The Plant Variety Protection Act should serve as the strongest form of IPR protection associated with seed and the seed-saving and research exemptions in the law must be honored.

- Antitrust laws and policies should be updated and enforced to avoid monopoly power, break up anticompetitive mergers, and examine unjust industry conduct, such as unfair contracts tied to seed purchases.

- Publicly funded research should not be sold to the highest bidder and privatized. The 1980 Bayh-Dole Act should be reformed to exclude IPR on public research that is essential to food security, including seed.

We urge you to protect US farmers and the markets they supply by acting quickly to address seed industry consolidation and restrictive IPR.

Sincerely,

Elizabeth Henderson
Agricultural Justice Project

Nathan Kleinman
Experimental Farm Network

Antonio Tovar
National Family Farm Association

Abby Youngblood
National Organic Coalition

Brise Tencer
Organic Farming Research Foundation

Kiki Hubbard
Organic Seed Alliance

Billy Hacket and Nichelle Harriott
National Sustainable Agriculture Coalition

Margaret Krome-Lukens
Rural Advancement Foundation International - USA