



European Patent Office lets EU decisions to come to nothing

EPO practice of allowing patents on plants is becoming increasingly brazen

14 January 2026 / Recent decisions by the European Patent Office (EPO) show that existing bans on the patenting of seeds are insufficient to stop the monopolisation of natural genetic resources. Despite the ban on patenting plants obtained from “essentially biological processes” (also known as Rule 28(2) of the European Patent Convention), naturally occurring plant genes continue to be patented as inventions. As a result, plants bred on the basis of these genes also fall within the scope of the patents.

Examples of patents granted in 2025 claiming naturally occurring genes include spinach (EP3975697), tomatoes (EP3911147) and lettuce (EP3797582). For example, a patent granted to Bayer claims natural gene variants which supposedly make lettuce resistant to certain aphids. The patent was granted in December 2025.

Under existing patent law, the scope of patents claiming genes also extend to all plants that are bred using the patented genes (Article 9 of EU Patent Directive 98/44). This means that even plants obtained from simple crossbreeding can be covered by patents, despite the EU having made it clear in 2017 that these are not patentable. The EPO does not directly patent the plants but does allow claims on naturally occurring gene variants that extend to the plants.



According to EU law, patents can only be granted on genes that are isolated from their natural environment. The original intention of the legislator was to only permit patents on genetic engineering methods. However, a recent EPO decision regarding an opposition filed against a patent on maize granted to KWS (EP3560330), shows that the EPO considers genes to be patentable even in cases of conventional breeding.

These patents are a major problem, especially for small and medium-sized traditional breeding companies, as they are often unable to pay expensive license fees or hire patent attorneys. As a result, breeding projects have had to be abandoned. A recent EU Commission report acknowledged that these problems do exist.

In the discussion on the future EU regulation of plants obtained from new genetic engineering (NGT), the EU Parliament proposed at minimum banning patents on conventional plant breeding and naturally occurring gene variants. However, these demands are no longer included in the current draft text negotiated in December 2025. Therefore, *No Patents on Seeds!* urges the EU Parliament to reject this proposal and to enforce the current prohibitions in patent law through effective regulation.

Contact

- Christoph Then, spokesperson *No Patents on Seeds!*, info@no-patents-on-seeds.org, +49 151 54638040
- Johanna Eckhardt, project coordination, *No Patents on Seeds!*, johanna.eckhardt@no-patents-on-seeds.org, + 43 680 2126 343

Further information

The maize patent of KWS

<https://www.no-patents-on-seeds.org/en/maize>

Report on patents granted in 2025:

<https://www.no-patents-on-seeds.org/en/7-Patents-Report>

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