

no patents on seeds



No Patents on Seeds !
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Munich, 30.11.2012

European Patent Office
Enlarged Board of Appeal
RE: G2/12

Dear Sir or Madam

In an attachment we would like to forward to the Enlarged Board of Appeal at the European Patent Office an opinion drawn up by Prof Dr Dolder regarding Procedure G2/12 and would also like to make the following comments:

According to Art. 53 b of the European Patent Convention (EPC), patenting plant and animal varieties is prohibited, and the same applies to essentially biological processes. In the past, industry was easily able to sidestep such prohibitions with cleverly worded formulations. Over 2000 patents on plants (mostly claiming plant varieties) and around 1200 patents on animals have already been granted. Over 100 patents have been granted in the field of conventional breeding.

Consequently, we are greatly concerned that evidenced by the questions as presented, there is a suggested assumption in the interpretation of the prohibition that it would be decisive whether plant or animal can be produced *solely* through an essentially biological process. This cannot be the decisive question. There must be an assurance that patents on plants and animals from conventional breeding are excluded from patenting in each and every case – otherwise companies could in future very easily avoid patenting prohibitions.

According to a resolution of the European Parliament of 10 May 2012 on the patenting of essential biological processes, the so-called „whole content approach“ must be considered in this context so that *„in the field of biotechnology, not only the wording of the claims, but the technical teaching of the invention as a whole should be taken into consideration when deciding on patentability, and this principle of whole content approach has been applied by the European Patent Office and the European Court of Justice in some of their recent decisions“* The Enlarged Board of Appeal is therefore requested to close any existing loopholes.

Because the European Patent Office adopted EU Directive 98/44 for the interpretation of Art 53b of the European Patent convention in its guidelines, the answers to the questions as presented lends great importance to the legal opinion of the European Parliament. This is particularly apparent in the aforementioned resolution in which the EPO is requested *„(...) to exclude from patenting products derived from conventional breeding and all conventional breeding methods, (...) and*

breeding material used for conventional breeding“. In order to correctly assess the scope of this statement it is necessary to consider that there is a definition in the EU Directive 2001/18 (Annex 1 A) of what is understood to be a genetic engineering process (methods of transferring isolated DNA). All other processes are by implication deemed to be „conventional“. Processes such as marker-assisted selection or mutational breeding are accordingly not clearly patentable.

With this in mind we call on you to completely enforce the ban patents on plant and animal varieties as well essentially biological processes to breed plants and animals.

Please find further statements and remarks in the attached opinion drawn up by Professor Dr Fritz Dolder from Basel. Amongst other things he points out that patent protection for the product would unavoidably lead to indirect patent protection for the process. For technical and scientific reasons the product and the process are so intermeshed that a patent prohibition for one part would necessitate patent prohibition for another part.

Yours faithfully on behalf of the organisation *No Patents on Seeds!* (www.no-patents-on-seeds.org)

Dr Ruth Tippe

Dr. Christoph Then

Attachment: Comment Prof. Dr. Dr. Fritz Dolder, Basel