

Re: Patentability of plants and animals (G03/19)

Dear Members of the Enlarged Board of Appeal

The two questions raised by the President of the European Patent Office (EPO) should be answered with YES for the following reasons:

Democratically legitimized political control of the correct interpretation of European patent law should not be undermined by EPO decision-making. In this case, the power of the Administrative Council, based on the support of all 38 contracting states, cannot simply be overruled by decisions taken by a technical body at the EPO.

Consequently, the European Patent Office has to make sure that all processes used in conventional breeding and all plants and animals derived thereof are not subject to any patent claims.

Genetic engineering enables direct technical interventions in the genome. This is profoundly different from conventional breeding which starts from and works with a high level of genetic diversity, using all kinds of variations and mutations through further crossing and selection.

Genetic diversity as used in conventional breeding may be derived from native traits, existing plant varieties or from induced random mutations. If patents are granted on processes of genetic engineering, such patents clearly have to be restricted to technical and targeted processes. Access to genetic material as well as plants and animals derived from conventional breeding should not be hampered by patents.

With kind regards