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**THE INTERGOVERNMENTAL
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OF THE SOUTH**





Impact of EPO Policies on Plant Patents in Developing Countries

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Influence of European law: the TRIPS Agreement

27.3(b) Members may also exclude from patentability:...

(b) plants and animals other than micro-organisms, and **essentially biological processes** for the production of plants or animals other than non-biological and microbiological processes...

Essentially biological processes

- European Parliament Resolution on the patenting of essentially biological processes, 10 May 2012 (2012/2623(RSP))
- *Calls on the EPO also to exclude from patenting products derived from conventional breeding and all conventional breeding methods, including SMART breeding (precision breeding) and breeding material used for conventional breeding;*

EPO validation States

- **MA Morocco**
- **MD Republic of Moldova**
- **TN Tunisia**
- **KH Cambodia**
- Validation is s the process of registering your granted European patent at the national patent offices of the Contracting States where you would like to own an enforceable right.

EPO training

- Our bilateral co-operation activities with non-member states focus on long-term, strategic partnerships designed to make the global patent system more efficient and better suited to user needs...The EPO has offered technical co-operation to IP offices all over the world since its early days.

<https://mail.google.com/mail/u/0/#search/info%40no-patents-on-seeds.org/FMfcgzGqQvvRVgfBmSBfQXDbnxJMpTlb>

Possible exclusions from patentability

- Plants
- Plant varieties
- Essentially biological processes
- **Parts and components of plants**

Plant patents in developing countries

Legal provisions	Number of developing countries
Plants are excluded	53
Plants are patentable. No explicit exclusion	101
Plant varieties are excluded	72
Plant varieties are patentable	4
No explicit exclusion to plant varieties	24
Essentially biological processes are excluded	96
No available information	29

What is an invention?

- In most countries (including under European law) there is no explicit definition of the concept of ‘invention’

Plant patents

- DNA sequence (complete or partial gene)
- promoters
- enhancers
- transit peptides
- individual exons
- cloning vectors
- expression vectors
- amino acid sequences (proteins)
- nucleic acid probes
- isolated host cells transformed with expression vectors
- modified plants

Invention v. discovery

- A rigorous application of the concept of 'discovery' is likely to lead to the rejection of patent applications relating to natural traits found in nature.

UN Rapporteur on the Right to Food

- The expansion of IPRs can constitute an obstacle to the adoption of policies that encourage the maintenance of agrobiodiversity and reliance on farmers' varieties.

The role of patent offices

- The patent office should function ‘as a steward of the public interest, not as a servant of patent applicants. The PTO must protect the public against the issuance of invalid patents that add unnecessary costs and may confer market power...
- Federal Trade Commission (2003), To promote innovation: the proper balance of competition and patent law policy, available at <http://www.ftc.gov> , p. 14.

European Parliament Resolution of 2 March 2017 on EU options for improving access to medicines ([2016/2057\(INI\)](#))

48.... emphasises that the European Patent Office (EPO) and the Member States should only grant patents on medicinal products that strictly fulfil the patentability requirements of novelty, inventive step and industrial applicability, as enshrined in the European Patent Convention;

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